

PROFESSIONAL SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of APRIL 17, 2015, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and CITYVISIONS ASSOCIATES, 815 West Market Street, Louisville, Kentucky (**CONSULTANT**) and AU ASSOCIATES, 150 Old Georgetown Street, Lexington, Kentucky (**SUBCONSULTANT**) for Development Agent Services as described in "Request for Proposals #9-2015, Exhibit C. The services are to include development agent services related to the reuse of the Old Fayette County Courthouse as described in Exhibit A. The services are hereinafter referred to as the **PROJECT**.

OWNER and **CONSULTANT/SUBCONSULTANT** in consideration of their mutual covenants herein agree in respect to the performance of Development Agent Services by **CONSULTANT/SUBCONSULTANT** and the payment for those services by **OWNER** as set forth below.

CONSULTANT/SUBCONSULTANT shall provide Development Agent Services for **OWNER** in all phases of the **PROJECT** to which this Agreement applies, serve as **OWNER'S** development representative for the **PROJECT** as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF CONSULTANT/SUBCONSULTANT

1.1. General

CONSULTANT/SUBCONSULTANT shall perform professional services as hereinafter stated that include customary development agent services incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Scope of Professional Services (Exhibit "A"), Certificates of Insurance (Exhibit "B"), Request for Proposal No. 9-2015 (Exhibit "C") and Consultant's Response dated March 25, 2015 (Exhibit "D").

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of EXHIBIT C, then EXHIBIT A, and then EXHIBIT D.

1.2. Project Phase

After written authorization to proceed, **CONSULTANT/SUBCONSULTANT** shall:

- 1.2.1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Manager and liaison representative between the **CONSULTANT/SUBCONSULTANT** and the **OWNER**.

- 1.2.2. The **CONSULTANT/SUBCONSULTANT** must perform all duties necessary to fully complete the services described in attached Exhibit A.
- 1.2.3 The **CONSULTANT/SUBCONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in the development services rendered..
- 1.2.6 Immediately notify **OWNER** of any delay in the delivery of its services, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT/SUBCONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT/SUBCONSULTANT'S** services.

SECTION 2 - EXTRA WORK BY CONSULTANT/SUBCONSULTANT

- 2.1. The **OWNER** may desire to have the **CONSULTANT/SUBCONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as "Extra Work", subject to a modified Task Order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such modified Task Order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted project deliverables / reports or parts thereof revised, the **CONSULTANT/SUBCONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Extra Work" and shall be paid as such.
- 2.2. All "Extra Work" is subject to prior written authorization of **OWNER** and, if necessary, appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT/SUBCONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, memoranda, proposals and other documents presented by **CONSULTANT/SUBCONSULTANT**, and render its review comments pertaining thereto within a reasonable time so as not to delay the services of **CONSULTANT/SUBCONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and

decisions with respect to all matters pertinent to **CONSULTANT/SUBCONSULTANT'S** services.

- 3.5. Give written notice to **CONSULTANT/SUBCONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT/SUBCONSULTANT'S** services.
- 3.6. Furnish or direct **CONSULTANT/SUBCONSULTANT** to provide, necessary Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence in the performance of this Agreement. Work shall begin immediately upon execution of this Agreement and continue through July 1, 2017, subject to the provisions of Section 5.1. This period of service may be extended or otherwise altered with the mutual consent of the parties.
- 4.2. The provisions of this Section Four (4) and the rates of compensation for **CONSULTANT/SUBCONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.

SECTION 5 - PAYMENTS TO CONSULTANT/SUBCONSULTANT

5.1. Methods of Payment for Services of CONSULTANT/SUBCONSULTANT.

5.1.1. For Basic Services

OWNER shall issue a Notice To Proceed for each Phase or SubPhase (Phase 1A; Phase 1B; Phase II; Phase III) to be performed under this Agreement by **CONSULTANT/SUBCONSULTANT** or its sub-consultants. Each such Notice To Proceed shall authorize the tasks to be undertaken and the lump sum fee for that Phase as specified in **EXHIBIT A**. The execution of this Agreement shall constitute the Notice to Proceed for Phase 1A at a cost of **\$500,000.00**.

The **OWNER** and **CONSULTANT/SUBCONSULTANT** acknowledge that the ability to issue a Notice to Proceed for each individual Phase or Subphase is dependent upon the availability of funding for such Phase or Subphase, and that no Notice to Process will be issued until such time as its funding permits. If funding for any future Phase fails to materialize, the **OWNER** is under no obligation to authorize such Phase.

5.1.2. For Extra Work

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to

negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT/SUBCONSULTANT** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (**Disputes**).

5.2. Times of Payment

5.2.1 **CONSULTANT/SUBCONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT/SUBCONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT/SUBCONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

5.3. Other Provisions Concerning Payments

5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT/SUBCONSULTANT**, the **CONSULTANT/SUBCONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT/SUBCONSULTANT**.

5.3.2. In the event the services of the **CONSULTANT/SUBCONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT/SUBCONSULTANT**, the **CONSULTANT/SUBCONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. **CONSULTANT/SUBCONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT/SUBCONSULTANT** to be unable to perform its duties and

responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.

- 6.1.2. The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT/SUBCONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT/SUBCONSULTANT**.

6.2. **Ownership and Reuse of Documents**

All documents, including raw data, reports, memoranda, and other materials prepared by the **CONSULTANT/SUBCONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT/SUBCONSULTANT**.

6.3. **Legal Responsibilities and Legal Relations**

- 6.3.1. The **CONSULTANT/SUBCONSULTANT** shall familiarize himself with and shall at all times comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the **CONSULTANT/SUBCONSULTANT** and its subconsultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT/SUBCONSULTANT** shall be acting as an independent contractor. The **CONSULTANT/SUBCONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT/SUBCONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT/SUBCONSULTANT'S** employees, agents and representatives, including subconsultants, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. **Successors and Assigns**

- 6.4.1. CONSULTANT/SUBCONSULTANT** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements, and obligations of this Agreement. **CONSULTANT/SUBCONSULTANT** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.
- 6.4.2.** The **CONSULTANT/SUBCONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value of the work. The **CONSULTANT/SUBCONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT/SUBCONSULTANT** of any responsibility for compliance with the provisions of this
- 6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT/SUBCONSULTANT**.

6.5. Disputes

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT/SUBCONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality & Public Works, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT/SUBCONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.7. Security Clause

The **CONSULTANT/SUBCONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law

6.8. Access to Records

The **CONSULTANT/SUBCONSULTANT** and his sub-**CONSULTANT/SUBCONSULTANTS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if

requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT/SUBCONSULTANT** from consideration for future Professional Service Agreements.

6.9. Risk Management Provisions, Insurance and Indemnification

6.9.1. DEFINITIONS

The **CONSULTANT/SUBCONSULTANT** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **CONSULTANT/SUBCONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**CONSULTANT/SUBCONSULTANT**” and “**OWNER**” shall be defined as follows:

- a. **CONSULTANT/SUBCONSULTANT** means the **CONSULTANT /SUBCONSULTANT** and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION

CONSULTANT/SUBCONSULTANT shall defend, indemnify, and hold harmless **OWNER** from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and reasonable attorney’s fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT/SUBCONSULTANT**’s (or its subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property, including the loss of use resulting therefrom; or to or from negligent acts, errors or omissions or willful misconduct; provided however, that **CONSULTANT/SUBCONSULTANT** shall

not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of **OWNER**. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT/SUBCONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT/SUBCONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT/ SUBCONSULTANT** in the performance of this agreement. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this Agreement.

6.9.3 FINANCIAL RESPONSIBILITY

CONSULTANT/SUBCONSULTANT understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

6.9.4 INSURANCE REQUIREMENTS

Required Insurance Coverage

CONSULTANT/SUBCONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to **OWNER** in order to protect **OWNER** against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by **CONSULTANT/SUBCONSULTANT** :

Coverage

Limits

General Liability

\$1 million per occurrence, \$2 million aggregate (Insurance Services Office Form CG 00 01) or \$2 million combined single limit

Commercial Automobile Liability	combined single, \$1 million per occurrence (Insurance Services Office Form CA 0001)
Professional Liability	\$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by OWNER.
- e. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, **CONSULTANT/SUBCONSULTANT** shall notify OWNER and obtain similar insurance that is commercially available and acceptable to OWNER.
- f. OWNER will endeavor, when possible, to provide at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to OWNER and shall be in a form acceptable to OWNER. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as

defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

6.9.5. RENEWALS

After insurance has been approved by OWNER, evidence of renewal of an expiring policy must be submitted to OWNER, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

6.9.6. VERIFICATION OF COVERAGE

CONSULTANT/SUBCONSULTANT agrees to furnish OWNER with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide OWNER copies of all insurance policies, including all endorsements.

6.9.5. RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that OWNER may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

6.9.7. SAFETY AND LOSS CONTROL

CONSULTANT/SUBCONSULTANT understands and agrees that OWNER is in no way responsible for the safety and property of CONSULTANT/SUBCONSULTANT or its personnel. CONSULTANT/SUBCONSULTANT shall comply with all applicable federal, state, and local safety standards related to the performance of its work or services under this Agreement and take reasonably necessary action to protect the life, health and safety and property of its personnel, the public, and OWNER in the locations and areas in which CONSULTANT/SUBCONSULTANT is performing services under the Agreement.

6.9.8. DEFAULT

CONSULTANT/SUBCONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that OWNER may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging

CONSULTANT/SUBCONSULTANT for any such insurance premiums purchased, or suspending or terminating the work.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this Agreement, the **CONSULTANT/SUBCONSULTANT** agrees as follows:

- 7.1. The **CONSULTANT/SUBCONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT/SUBCONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **CONSULTANT/SUBCONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2.1. The **CONSULTANT/SUBCONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT/SUBCONSULTANT**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT/SUBCONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.2. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT/SUBCONSULTANT**.
- 8.4. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

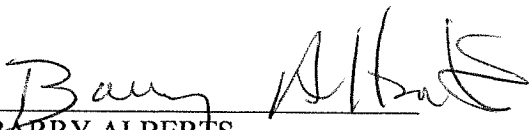
OWNER:

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
JIM GRAY, MAYOR

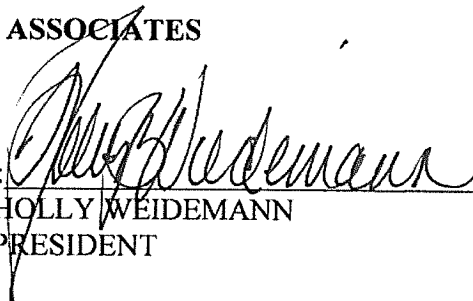
CONSULTANT:

CITYVISIONS ASSOCIATES

BY: 
BARRY ALBERTS
MANAGING PARTNER

SUBCONSULTANT:

AU ASSOCIATES

BY: 
HOLLY WEIDEMANN
PRESIDENT

ATTEST:

URBAN COUNTY COUNCIL CLERK)
COMMONWEALTH OF KENTUCKY)
COUNTY OF FAYETTE)

COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by _____, as the duly authorized representative for and on behalf of _____, on this the ____ day of _____, 2015.

My commission expires: _____.

NOTARY PUBLIC

