

## Agreement between Owner and Consultant for Planning Services

**THIS IS AN AGREEMENT** made as of June 19, 2014, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and EHI Consultants, 333 West Vine Street, Suite 300, Lexington, KY 40507 (**CONSULTANT**). **OWNER** intends to proceed with the **Armstrong Mill Road West Small Area Plan** as described in the attached Exhibits A and B, "Armstrong Mill Road West Small Area Plan, RFP# 20-2014." The services are to include preparing a small area plan amendment to the 2013 Comprehensive Plan in close cooperation with citizens in the Armstrong Mill Road West Neighborhood area. The study will include a significant public participation process and will follow customary land use and related planning practices and procedures, including procedures in Kentucky Revised Statutes Chapter 100 for outcomes described in Exhibits A and B, detailing the findings of all inventory, analysis, and recommendations completed by the **CONSULTANT**. The services are hereinafter referred to as the **PROJECT**.

**OWNER** and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **CONSULTANT** and the payment for those services by **OWNER** as set forth below.

**CONSULTANT** shall provide professional consulting services for **OWNER** in all phases of the **PROJECT** to which this Agreement applies, serve as **OWNER'S** 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**

#### **1.1. General**

**CONSULTANT** shall perform professional services as hereinafter stated that include preparing a small area plan amendment to the 2013 Comprehensive Plan in close cooperation with citizens in the Armstrong Mill Road West Neighborhood area.

#### **1.2. Project Phase**

After written authorization to proceed, **CONSULTANT** 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** and the **OWNER**.

**1.2.2.** The **CONSULTANT** must perform all duties necessary to fully complete the deliverables described in attached Exhibits A and B, "Armstrong Mill Road West Neighborhood Small Area Plan, RFP# 20-2014." 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 A and B.

**1.2.3.** The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.

**1.2.4.** The **CONSULTANT** shall submit and electronic copy and five (5) paper copies of all initial draft final work products for this **PROJECT**. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.

**1.2.5.** After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**. One electronic copy of all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If the draft is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, the **CONSULTANT** will provide paper copies for the Planning Commission, steering committee, and staff (approximately fifty [50] final paper copies) in addition to an electronic copy.

**1.2.6** Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

## **SECTION 2 - EXTRA WORK BY CONSULTANT**

**2.1.** The **OWNER** may desire to have the **CONSULTANT** 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 change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** 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 necessary appropriations made or approvals necessary 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, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

**3.2.** Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.

**3.3.** Examine all studies, reports, drafts and other documents presented by **CONSULTANT**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **CONSULTANT**.

**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 materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.

**3.5.** Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

**3.6.** Furnish or direct **CONSULTANT** 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.** It is expected that this Project will be completed within 12 months of execution of this Agreement. Extensions

**4.2.** The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'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.

**4.3.** If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.

**4.3.1.** If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.

**4.3.2.** If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Project Assignment shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.

**4.3.3.** If the above type of delay would prevent complete performance of the **PROJECT**/Final Project Assignment within ninety (90) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Project Assignment or otherwise adjusting the scope of the services or work and any related fees.

**4.3.4.** If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.

**4.4.** If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will reasonably attempt to resolve the delay. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply. If the above type of delay would prevent complete performance of the **PROJECT/Final Project Assignment** within forty-five (45) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT/Final Project Assignment** or otherwise adjusting the scope of the services or work and any related fees.

## **SECTION 5 - PAYMENTS TO CONSULTANT**

### **5.1. Methods of Payment for Services of CONSULTANT**

#### **5.1.1. For Basic Services**

**OWNER** shall issue individual Project Assignments for each work assignment performed under this agreement by **CONSULTANT** or its sub-consultant(s). Each Project Assignment shall contain scope of work, fee and schedule for performance of the work. Individual Project Assignments shall be of the form included in Exhibit C.

**5.1.1.a.** Each Project Assignment issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER's** designated agent in Section 8.1.1 shall be the only person authorized to provide such approval.

#### **5.2. Times of Payment**

**5.2.1.** **CONSULTANT** shall submit monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'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**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

**5.3.2.** In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** 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 may only terminate this Agreement due to OWNER'S material breach of the terms hereof which breach causes CONSULTANT 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. 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.**

## **6.2. Ownership and Reuse of Documents**

All documents, including raw data, reports, recommendations, and renderings prepared by the CONSULTANT 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.

## **6.3. Legal Responsibilities and Legal Relations**

**6.3.1. The CONSULTANT 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 and its consultants, 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 shall act as an independent contractor. The CONSULTANT 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 shall be solely responsible for any claims for wages or compensation by CONSULTANT'S employees, agents and representatives, including consultants, 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 Kentucky law, and that venue of any legal action shall only 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 binds himself 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 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** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value of the work. The **CONSULTANT** 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** of any responsibility for compliance with the provisions of this Agreement.

**6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

## **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**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Planning, Preservation, and Development, 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** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

## **6.6. Accuracy of CONSULTANT'S Work**

The **CONSULTANT** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by planning professionals prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **CONSULTANT** shall be responsible for the accuracy of all work, even though raw data, reports, recommendations, and renderings have been accepted by the **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of raw data, reports, recommendations, and renderings to the **OWNER**, the **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement.

## **6.7. Security Clause**

The **CONSULTANT** 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** and his sub-consultants 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** from consideration for future consultant engineering agreements.

## **6.9. Risk Management Provisions, Insurance and Indemnification**

### **6.9.1. Definitions**

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

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

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors or subconsultants 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**

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- b. **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against 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 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**’s performance or breach of the agreement and/or the provision of goods or services provided that:
  - (a) it 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 the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and
  - (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** 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** in the performance of this agreement.

d. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **OWNER**, which approval shall not be unreasonably withheld.

e. These provisions 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

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of Section 6.9 of this Agreement.

### 6.9.4. Insurance Requirements

#### 6.9.4.1. Required Insurance Coverage

**CONSULTANT** shall procure and maintain for the duration of this Agreement at its cost and expense 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 hereunder by **CONSULTANT**.

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01) million combined single limit	\$1 million per occurrence, \$2 million aggregate or \$2
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability aggregate	\$1 million per occurrence, \$2 million
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. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms. A copy of the certificates shall be submitted to **OWNER** and attached as Exhibit "D" to this Agreement.
- b. **OWNER** shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- c. The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- d. The General Liability Policy shall include a Pollution Liability endorsement unless it is deemed not to apply by **OWNER**.
- e. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage 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**. (**OWNER** does not need to be named as additional insured).
- f. **OWNER** shall be provided 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. 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** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**.
- h. 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.

#### **6.9.4.2. 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.

#### **6.9.4.3. Right to Review, Audit and Inspect**

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

### **6.9.5 Safety and Loss Control**

**CONSULTANT** understands and agrees that **OWNER** is in no way responsible for the safety and property of **CONSULTANT** or its personnel, **CONSULTANT** 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** is performing services under the Agreement.

### **6.9.6 Definition of Default**

**CONSULTANT** understands and agrees that the failure to comply with any of these provisions shall constitute default under this Agreement. **CONSULTANT** also agrees that **OWNER** may elect as 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** for any such insurance premiums purchased, or suspending or terminating this Agreement.

## **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

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

**7.1.** The **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT** 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** 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** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT**, 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 is subject to the following provisions.

**8.1.1.** Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Jim Duncan, Manager of Long-Range Planning in the Division of Planning (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this

Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.

**8.2.** This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.

**8.3. 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**.

**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.

**8.5. NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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


OWNER:

CONSULTANT:

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

EHI Consultants

BY:   
JIM GRAY, MAYOR

BY: 

ATTEST:  
  
URBAN COUNTY COUNCIL CLERK  
COMMONWEALTH OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing Agreement was subscribed, sworn to and acknowledged before me by  
Ed Holmes, as the duly authorized representative for and on  
behalf of EHI, on this the 26 day of June, 2014.  
My commission expires: 8/15/16.

Stephanie M. Ogna  
NOTARY PUBLIC

## EXHIBIT A

### Scope-of-Work

The purpose of this scope-of-work is to develop a small area plan for the Armstrong Mill West Neighborhood in Lexington, Kentucky. Development of the plan will require the consultant to serve as project manager (PM) and coordinate any related planning work performed by subcontractors, and to work closely with LFUCG staff, neighborhood liaisons, area residents, and other stakeholders to develop the plan. The consultant will be responsible for all public notices, meeting arrangements and summaries, and public information. The PM will be responsible for day-to-day contact with the designated Division of Planning staff project manager and should be designated by the consultant in their proposal.

There will be an advisory committee that will guide the planning work. The committee will be comprised of approximately 10 persons and will have a designated staff person to coordinate all committee activities. In consultation with the committee, some of the neighborhood meetings and tasks may be combined as determined useful and appropriate. Other tasks may also be modified upon mutual agreement and for the same reasons.

The consultant is invited to make or recommend changes or modifications to the scope in their proposal. LFUCG will consider any suggestions or comments from responders to this RFP which in their experience would improve the process or make it more effective or efficient.

Perform the following work. Expected deliverables are shown in **bold/italicized** typeface:

**PHASE I, Task A. Site Program and Preliminary Site Survey:** The PM will develop a **project schedule** coordinating all Phase I and Phase II project work to be reviewed in a meeting with LFUCG staff and revised as needed. The schedule will be a digital format and updated as needed. It should provide for site visits (for out-of-town consultants) that will combine other meetings and tasks as needed. All requirements of Kentucky Revised Statutes Chapter 100 as it relates to amendments to Comprehensive Plans shall be addressed in the project schedule. The PM and team shall visit the site and become familiar with the area, its general character, significant landmarks, initial impressions of opportunities and constraints, etc. as a part of preparation for Task B.

**PHASE I, Task B. Client/Community Meetings:** Organize and conduct preparatory staff meetings and neighborhood public meeting inviting all area residents, property owners, and adjacent neighborhood organizations. Provide appropriate visual aids and aerial maps for these meetings. Give a general presentation on the study process and answer questions. Develop preliminary neighborhood goals and objectives.

**PHASE I, Task C. Final Scope of Plan Project:** Using the information generated in Tasks A and B, develop the final small area plan scope in conjunction with, and subject to the approval of, the Division of Planning. This will likely include revision of the **project schedule**. Likely plan elements will include, but not be limited to:

- Neighborhood vision, goals
- Background data (history, infrastructure, social fabric, zoning/land use, etc.)
- Plan Principles
- Traditional plan elements such as recommended land use, transportation, including complete streets and connectivity, urban design, public improvements, parks/open space, historic considerations, etc.
- Special plan elements addressing special issues of neighborhood concern such as social programming needs, applicable best practices, recommendations for green infrastructure and development, complete streets, access to neighborhood grocery stores and other neighborhood businesses, etc.
- Action Plan/Implementation Projects, Programs, etc.

**PHASE II, Task D. Base Studies:** Collect and assess all information. This will require preparation of a **study base map and display** of all engineering data, topographic conditions, all public and private easements, condition assessment of streets and sidewalks, storm and sanitary sewer constraints and problem areas, existing land use, zoning, housing conditions, property values, property ownership, graphic site analysis, photo boards of existing conditions, physical and environmental site limitations, and site statistics pertaining to future redevelopment yields. All maps generated must be compatible with an ESRI format (shape file or a coverage and subject to staff approval). Interview all applicable public agencies for needed background and cost information. It is anticipated that LFUCG staff can provide much of the necessary background data.

**PHASE II, Task E. Base Studies Reviews:**

- a. Present **preliminary base studies and revised program goals and objectives** to staff and advisory committee, and revise as needed. Plan on in-person meeting.
- b. Conduct neighborhood meeting to present all study findings to date, work underway, and next steps in the process. Present proposed program.
- c. Analyze results of meeting. **Refine base studies as needed.**

**Phase II, Task F. Plan Alternatives:** Develop a minimum of **2 plan alternatives** for the study area for staff review and comment, including land use plan recommendations for housing and commercial uses. Conduct a public meeting to take comment on the alternatives drafted.

**Phase II, Task G. Preferred Alternative:** Develop the **refined preferred alternative based on comments of public, advisory committee, and staff.**

Develop a draft **urban design element for the preferred alternative** recommending land uses, building types, public and private landscaping, applicable design guidelines, and public right-of-way treatments. This should be reviewed along with the site alternatives process. The graphics will include **site sketches** to allow the community to visualize the redevelopment potential of **several key locations** within the study area.

**Phase II, Task H. Final Report:** Prepare **draft final report** to include all elements as agreed upon for Phase II work. Allow four weeks for staff review:

Present final draft report at a community meeting.

**Phase II, Task I. Planning Commission Process:** Plan on two separate presentations, one for a Planning Commission work session and one for a Planning Commission public hearing. Allow two weeks for final client comments following public hearing.

**Phase II, Task J. Final Deliverables:** Revise **final report** deliverables.

## **EXHIBIT B**

### **Reporting**

LFUCG will form an advisory committee to guide this study. The committee will serve as the principal policy body for the project, with all final decisions subject to the appropriate adoption processes for the study recommendations. The day-to-day management of the project will be under the supervision of the Division of Planning.

Public meetings described herein will be held as proposed by the consultant. The consultant will be responsible for providing all necessary exhibits and for attending any public meetings or hearings as provided in the project schedule. Staff will assist the consultant.

Except as specifically noted otherwise herein, staff will require a minimum of two weeks to review each major draft product. One unbound original and 20 copies of each draft deliverable shall be submitted along with an approved digital version. LFUCG shall be provided copies of all digital presentations.

For each major written deliverable longer than 20 pages, the Consultant shall include an executive summary. The final report format shall include a digital and 35 paper copies for distribution.

All reports and accompanying documents are subject to review by the Lexington-Fayette Urban County Government Division of Planning and others. The consultant shall be responsible for addressing all comments and requirements.

# PROPOSED SCHEDULE

The proposed schedule represents our team's initial thinking on the project's timing through the program design to the final results and deliverables. Our team will review and refine this timeline during our initial project team meeting with LFUCG staff to ensure that it reflects all important requirements, planning needs, and major milestones.

SUGGESTED PROJECT SCHEDULE	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7	Month 8	Month 9	Month 10
<b>PHASE I : Site Program and Preliminary Site Survey</b>										
Task A- Preliminary Review										
Study Area Survey	■									
Task B- Client/Community Meetings										
Meet with LFUCG Division of Planning	■									
Kick-off Meeting			■							
Public Workshop and Analysis				■						
Public Workshop and Analysis					■					
Public Workshop and Analysis						■				
Task C- Final Scope of Plan Project										
Goals and Objectives										
Plan Principles and Elements										
Special Plan Elements										
Implementation plan										
<b>Phase II Plan Elements</b>										
Task D- Base Studies										
Prepare Study Map and Display										
Task E- Base Study Review										
Meet with Advisory Committee						■				
Neighborhood Meeting						■				
Refine Base Studies										
Task F- Plan Alternatives										
Develop two alternatives										
Meet with LFUCG Division of Planning							■			
Presentation at Public Hearing								■		
Task G- Preferred Alternative										
Refine based on Public Comment										
Develop urban design sketches										
Task H- Final Report									■	
Task I- Planning Commission Process										■
Task J- Final Deliverable										■



## **EXHIBIT C**

### **Fee and Method of Invoice and Payment**

The consultant may submit invoices for services or rendered work as often as a monthly basis, based on the contract schedule. The Division of Planning shall respond to the invoice within thirty days, either denying or making payment. An LFUCG Invoice Summary must accompany each invoice. Payments shall be monthly but not exceed the following schedule, but is subject to modification prior to a signed contract:

Completion through Task C: 25% of total contract

Completion through Task F: 50%

Completion through Task H: 75%

Completion through Task J: 100%

		EHI / LAS / PB	
		HOURS	FEES
<b>PHASE I: SITE PROGRAM AND PRELIMINARY SITE SURVEY</b>			
<b>Task A: Preliminary Review (Total Hours)</b>		<b>30</b>	<b>\$ 3,000</b>
Project Schedule	8		800
Site Visit & Analysis	14		1,400
Review of Comprehensive Plan	8		800
<b>Task B: Client/Community Meetings (Total Hours)</b>		<b>100</b>	<b>\$ 10,000</b>
Meet with LFUCG Division of Planning	8		800
Kickoff Meeting: Prep, Outreach, Analysis, and Social Media Campaign	15		1,500
Public Meeting 1 - Survey Development	12		1,200
Public Meeting 2 - Community Mapping	35		3,500
Public Meeting 3 - Public Comment Analysis and Development of Neighborhood Goals	30		3,000
<b>Task C: Final Scope of Plan Project</b>		<b>100</b>	<b>\$ 10,000</b>
Draft Neighborhood Goals	35		3,500
Draft Plan Principles	25		2,500
Draft Plan Elements	25		2,500
Revise Project Schedule	15		1,500
<b>Subtotal</b>		<b>230</b>	<b>\$ 23,000</b>
<b>Total Expense Allowance</b>			
Travel	\$	800	
Direct Costs	\$	1,475	
<b>Subtotal</b>	\$	<b>2,275</b>	
<b>PHASE II: PLAN ELEMENTS</b>			
<b>Task D: Base Studies</b>		<b>240</b>	<b>\$ 24,000</b>
Interview with LFUCG Staff & Housing Authority	45		4,500
Survey of Neighborhood Infrastructure and Housing	60		6,000
Review of Existing Reports	20		2,000
GIS Mapping	40		4,000
Graphic Design	35		3,500
Existing conditions analysis report	40		4,000
<b>Task E: Base Study Review</b>		<b>100</b>	<b>\$ 10,000</b>
Advisory & Staff Meeting (includes prep, meeting time, and analysis of comments)	25		2,500
Revise Goals & Objectives	15		1,500
Neighborhood Meeting (includes prep, meeting time, and analysis of comments)	25		2,500
Revise Base Studies	35		3,500
<b>Task F: Plan Alternatives</b>		<b>85</b>	<b>\$ 8,500</b>
Urban Design	25		2,500

Land Use Recommendations	20	2,000
Market Conditions	20	2,000
Public Meeting	20	2,000
<b>Task G: Preferred Alternatives</b>		<b>85 \$ 8,500</b>
Analysis of Public Input and Committee Comments	30	3,000
Revision of Recommendations	15	1,500
Site Sketches	25	2,500
Site Assessment of Preferred Alternatives	15	1,500
<b>Task H: Final Report</b>		<b>80 \$ 8,000</b>
Revision of Draft Final Report	80	8,000
<b>Task I: Planning Commission Process</b>		<b>80 \$ 8,000</b>
(1) Public Commission Work Session (includes prep, meeting time, and analysis of comments)	40	4,000
(1) Public Hearing (includes prep, meeting time, and analysis of comments)	40	4,000
<b>Task J: Final Deliverable</b>		<b>100 \$ 10,000</b>
Revise Final Report Deliverable	100	10,000
<b>Subtotal</b>		<b>770 \$ 77,000</b>
<b>Total Expense Allowance</b>		
Travel	\$ 500	
Direct Costs	\$ 2,000	
<b>Subtotal</b>	\$ 2,500	
<b>TOTAL FEES AND EXPENSE ALLOWANCE</b>		<b>1,000 \$ 104,775</b>

**EXHIBIT D**

**CERTIFICATE OF INSURANCE**



LFUCG PROJECT ASSIGNMENT NO. \_\_\_\_\_

UNDER LFUCG AGREEMENT WITH \_\_\_\_\_ FOR

	CONSULTANT	OWNER
Name	EHI Consultants	Lexington Fayette Urban County Government
Street Address	333 West Vine Street, Suite 300	200 East Main Street
City, State, Zip	Lexington, KY 40507	Lexington, KY 40507
Contact Person	Ed Holmes	Jim Duncan
Telephone	859-425-4881	859-258-3172
Fax		859-258-3163
E-Mail	holmes@ehiconsultants.org	jhduncan@lexingtonky.gov

Project Assignment Date: \_\_\_\_\_

Task Name: \_\_\_\_\_

Task ID: \_\_\_\_\_

**SCOPE OF WORK/DELIVERABLES**

Exhibit A

**SCHEDULE OF WORK**

Schedule A

**FEE**

Schedule C (\$104,975)

**ACCEPTED BY:**

  
\_\_\_\_\_  
Consultant's Authorized Signature

MAY 21, 2014  
\_\_\_\_\_  
Date Signed

**AUTHORIZED BY:**

  
\_\_\_\_\_  
Owner's Authorized Signature

6/30/14  
\_\_\_\_\_  
Date Signed

Two originals of this work order shall be executed by the Owner and returned to \_\_\_\_\_. A fully

*executed copy will be returned to the Owner.*

Received  
5-23-14



# EHI CONSULTANTS LETTER OF TRANSMITTAL

Date: May 22, 2014	Job Title: Armstrong Mill West Small Area Plan
Attention: Jim Duncan	Job Number:
To: Jim Duncan Planning Manager Lexington-Fayette Urban County Government	From: EHI Consultants 333 West Vine Street, Suite 300 Lexington, Kentucky 40507 859.425.4881 fax: 859.254.8639

WE ARE SENDING YOU:  Attached  
the following items:

Under separate cover via Mail

Shop Drawings

Plans

Samples

Specs

Copy of Letter

Contracts

Disks

Other

Copies	Date	No.	Description
1	May 22, 2014		Agreement - Orig. Signature

THESE ARE TRANSMITTED as Checked below:

For Approval

For review and comment

Resubmit  Copies

For your use

Approved as noted

Submit  Copies

As requested

Returned for corrections

Return  Corrected

(other)

SIGNED: 