

CONTRACT FOR PROFESSIONAL SERVICES

THIS CONTRACT FOR PROFESSIONAL SERVICES (“Contract”), is made by and between Citiss United, a project of the Tides Center, a California non-profit public benefit corporation (“Tides”), and the City of Lexington (“Client”).

1. **Services.** Tides agrees to provide Client with the services detailed in Exhibit A to this Contract (“Services”). Tides is a public charity and conducts services only to the extent and in a manner that is consistent with its exempt status as a public charity and to further its mission.
2. **Performance Dates.** Tides shall begin performing the Contract on the date of the final signature to this Contract, and finish performing the Contract on July 2022, unless the Contract (i) is mutually extended by written agreement of the parties or (ii) sooner terminated as provided herein.
3. **Compensation.** In consideration for the Services, Client shall pay Tides per the Payment Schedule in Exhibit B.
4. **Standard of Performance.** Tides represents that it has the necessary knowledge, experience, abilities, skills and resources to perform its obligations under this Contract, and agrees to perform its obligations under this Contract in a professional manner, consistent with prevailing industry standards and practices. All work performed must be in accordance with applicable local and federal laws and industry standards, and Tides will be responsible for obtaining all permits and licenses required in connection with performance of services under this Contract.
5. **Independent Contractor.** The relationship between Tides and Client will, at all times, be that of an independent contractor. It is further understood that neither party is, nor will be considered to be, an agent, partner, joint venturer, or employee of the other. Client shall not be responsible for withholding taxes with respect to the Tides’ compensation. Tides shall have no claim against Client hereunder or otherwise for vacation pay, sick leave, retirement benefits, social security, worker’s compensation, health or disability benefits, unemployment insurance benefits, or employee benefits of any kind. Tides does not have the authority to enter into any contract or agreement to bind Client and will not represent to anyone that it has such authority. Tides represents that Tides is authorized to work in the United States to service this Contract.
6. **Confidentiality.**
 - (a) Except as otherwise required by law, the party to whom disclosure is made (the “Recipient”) shall not, and shall cause each of its trustees, directors, officers, employees, agents, and representatives (collectively, “Representatives”) not to,
 - (i) disclose the Confidential Information (defined below) to any person or entity other than Representatives of the Recipient that
 - (A) need to know the Confidential Information for the purposes contemplated by this Contract; and
 - (B) agree to be bound by the provisions of this Section; or

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- (ii) use the Confidential Information for any purpose other than the purposes contemplated by this Contract.
 - (b) Promptly upon the written request of the party disclosing the Confidential Information (the “Disclosing Party”), the Recipient shall, and shall cause its Representatives to, return to the Disclosing Company or destroy all Confidential Information. If the Recipient destroys the Confidential Information, it shall certify that it has done so in writing and promptly deliver that certificate to the Disclosing Party. This provision shall not be construed in any manner that would conflict with the Client’s obligations under the Kentucky Open Records Act or with any opinions and/or caselaw interpreting the Kentucky Open Records Act. Further, if litigation is filed or threatened that in any way relates to the subject matter of this Agreement, this provision shall not apply.
 - (c) “Confidential Information” means
 - (i) any information about the Disclosing Party or its business that is identified as “confidential” orally or in writing, at the time of the information’s written disclosure or within 3 days after the disclosure, or that is reasonably understood by the Recipient as being confidential and proprietary information of the Disclosing Party, even if not so identified; and
 - (ii) all notes, analyses, compilations, studies and other materials containing any information described in subsection (c)(i).
 - (d) “Confidential Information” excludes information that
 - (i) becomes generally publicly available other than as a result of disclosure by Recipient or any of its Representatives or
 - (ii) becomes available to the Recipient on a nonconfidential basis from a third party that is not bound by a similar duty of confidentiality.
7. **Rights in the Work Product.** All materials created by Tides pursuant to this Agreement (collectively, the “Work Product”) shall be a work made for hire under US copyright law. If a court of competent jurisdiction determines that the Work Product is not a work made for hire, then Tides hereby irrevocably transfers and assigns to Client all right, title and interest (including all copyright rights) in and to the Work Product in perpetuity. Tides understands that it retains no rights to the Work Product and may not use the Work Product for any purpose without the prior written consent of Client. Notwithstanding the foregoing, Tides retains all rights to the methodology and other know-how used in creating the Work Product, and also retains all rights to any preexisting materials incorporated into the Work Product by Tides. Tides hereby grants Client a nonexclusive, royalty-free, worldwide license to use the methodology and other know-how and all preexisting materials that are incorporated into the Work Product as part of the Work Product, in perpetuity. Client understands that Tides can use the methodology and other know-how and the preexisting materials in work for other clients.
8. **Assignment and Delegation.** No party may assign any of its rights or delegate any performance under this Contract except with the prior written consent of the non-assigning party. Any purported assignment of rights or delegation of performance in violation of this Section is void.
9. **Termination.** Either Party may terminate this Contract, in whole or in part, upon [Click or tap here to enter text.](#) days’ written notice to the other Party. If either Party breaches a material obligation under this Contract, and such breach is not cured within thirty (30) days after such Party’s receipt of written notice of the breach, the Party not in default may immediately terminate the Contract. If the Agreement is terminated pursuant to this Section 9, Tides shall invoice Client for any unpaid amounts through termination date, and Client shall pay. Any such payment will be due within 30 days of the receipt of Tides’ invoice.

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10. **No Waiver.** No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power or remedy, and no waiver will be effective unless it is in writing and signed by the party to be charged thereby.
11. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal or invalid (in whole or in part), the validity of the remaining Contract provisions will not be affected, and the illegal or invalid provision shall be restated in accordance with applicable law to best reflect the intention of the parties at the time of entering into this Contract.
12. **Notice.** Unless otherwise expressly provided herein, any notice or other communication required or given shall be in writing and shall be effective for any purpose if served, with delivery or postage costs prepaid, by a nationally recognized commercial overnight delivery service or by registered or certified mail, return receipt requested, to the following addresses:

To Tides:

Tides Cities United
Synethia White
PO Box 889385
Los Angeles, CA 90088

[Click or tap here to enter text.](#)

502-709-6462, ext. 117
synethia.white@citiesunited.org

To Client:

City of Lexington
Devine Carama
Director of One Lexington
859-303-2637
DCarama@lexingtonky.gov

[Click or tap here to enter text.](#)

13. **Bankruptcy.** In the event of the bankruptcy or insolvency of either party or if either party shall make any assignment for the benefit of creditors, take advantage of any act or law for relief of its debtors, has a receiver, custodian or trustee appointed for all or a material portion of its assets and/or has its stock de-listed from the securities exchange on which it is currently listed, the other party to this Contract will have the right to terminate this Contract without further obligation or liability on its part. Should Tides terminate the Contract in accordance with this section, all amounts owed by Client to Tides for Services performed will immediately become due and payable to Tides, or, if some or all of such amounts are not available for immediate repayment, such amounts will be deemed to be amounts owed to Tides by Client and Tides will be identified as a creditor of the Client in such amounts.
14. **Legal Authority.** The Client represents that it has the legal authority to enter into this Contract and that it has taken all actions required by its procedures, bylaws, and/or applicable law to exercise authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the contractor to its terms. The person executing this Contract on behalf of the Client warrants that he or she has full authorization to execute this Contract.
15. **Indemnification.**
Tides shall, during and after the term of this Contract, indemnify, defend, and hold harmless Client and Client's directors, officers, employees, affiliates, and agents, past or present, against all losses, claims, demands, actions, causes of action, suits, liabilities, damages, expenses, and fees (including but not limited to reasonable attorneys' fees) arising out of or related to any actual or alleged:

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- (i) personal injury or property damage, but only to the extent caused by the negligent or willful acts, errors or omissions of Tides in performing the Contract;
- (ii) misrepresentation, breach of warranty, or breach of covenant or other promise by Tides of any representation, warranty, covenant or other promise in this Contract;
- (iii) infringement by Tides of any third party's patent, trademark or copyright, or misappropriation of any third party's trade secret; and,
- (iv) violation of any applicable laws or regulations, including failure to comply with any applicable taxing authority.

17. **Attorney Fees.** If any action (whether legal or equitable and whether litigation or arbitration or some other proceeding), is brought under this Contract, the substantially prevailing party (as will be determined by the court or other adjudicator) will be entitled to recover its reasonable attorney fees and costs of suit from the other party in addition to such other relief as may be granted.
19. **Modification: Final Contract.** No revision or modification hereof will be effective unless it is in writing and signed by both parties. This Contract as well as the attached Exhibits constitute the entire and complete agreement between Tides and the Client with respect to the subject engagement and supersede all other oral and written representation, understanding, or agreements relating to the subject engagement.

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SO AGREED,

For Tides:

For Client:

Signature

Signature

Name: Irimi Neofotistos

Name: Linda Gorton

Title: Senior Advisor

Title: Mayor

Date of Signature: _____

Date of Signature: _____

For Project:

Signature

Name: Synethia White

Title: Director, Strategic

Initiatives

Date of Signature: _____

SERVICES
(Exhibit A to Contract for Professional Services)

Tides agrees to provide Client with the following Services:

See attached.

PAYMENT SCHEDULE
(Exhibit B to Contract for Professional Services)

Fee:

Alternative A: In consideration for the services described in Exhibit A, Client agrees to pay Tides \$100,000.00.

Alternative B: In consideration for the services described in Exhibit A, Client agrees to pay Tides at a rate of \$XXXX PER HOUR/ PER DAY/ PER WEEK/ PER MONTH/ OTHER. The fee will be an amount not to exceed \$XXXX.

Expenses: In addition to its fee, Client SHALL NOT reimburse Tides for unusual costs approved in writing by Client in advance. [Click or tap here to enter text..](#)

Invoicing Schedule: Payment(s) will be issued upon receipt of invoice from Tides along with proof of performance report. The fee and expenses, if any, will be paid WEEKLY/ MONTHLY/ ON COMPLETION/ OTHER.

Late Payment Penalty: Payment terms will be 30 days from receipt of invoice. Should any invoice remain unpaid for more than **45 days**, interest must be paid at a rate of **1.0% per month**.