

AGREEMENT

THIS AGREEMENT, made and entered into on the _____ day of _____, 2017, by and between the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, Fayette County, Kentucky, (hereinafter referred to as the "Government"), and **Stantec Consulting Services Inc.** (hereinafter, referred to as the "Consultant").

WITNESSETH:

WHEREAS, the Kentucky Department of Military Affairs, Division of Emergency Management has awarded federal and state funds to the Government for the purpose of updating a mitigation plan for Lexington-Fayette County that meets the requirements of the Disaster Mitigation Act of 2000 and the regulations and prerequisites developed by the Federal Emergency Management Agency;

WHEREAS, the Kentucky Department of Military Affairs, Division of Emergency Management has entered into a Memorandum of Agreement with the Government, Master Agreement No.: **PON2 095 1700001334 1** implementing elements of a federal grant program from the United States Department of Homeland Security, CFDA number 97.039, DR-4239-0010, Hazard Mitigation Grant Program;

WHEREAS, the Government issued a Request for Proposals (RFP#32-2017) for Hazard Mitigation Grant Services;

WHEREAS, STANTEC Consulting Inc., the performing entity for the Consultant, has been selected by the Government to provide services pursuant to the Agreement with the Kentucky Department of Military Affairs, Division of Emergency Management;

WHEREAS, the Government's responsibility for ensuring compliance with all requirements of the Agreement with the Kentucky Department of Military Affairs, Division of Emergency Management necessitates a written Agreement with the Consultant;

NOW, THEREFORE, in consideration of the foregoing and mutually agreed upon promises, conditions, and covenants hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

Obligations of the Government:

The Government agrees to reimburse the Consultant in an amount up to \$88,014 for completion of the herein described scope of work. The Government shall make reimbursement within 30 days of the receipt of an acceptable invoice.

The Government's Director of the Division of Environmental and Emergency Management will provide supervision and cooperation for the development of the hazard mitigation plan update.

ARTICLE II

Obligations of the Consultant:

1. Scope of Work

The Consultant shall perform the scope of work that is fully described and attached to this Agreement as Exhibit A.

2. The Consultant may invoice the Government on a monthly basis requesting payment for work in progress. Invoices shall be in original form and shall include documentation of all work for which reimbursement is being requested.

3. The Consultant understands that this Agreement is for the sole benefit of the United States Government, the Kentucky Department of Military Affairs, Division of Emergency Management, and the Government, and is not intended to create any other beneficiaries.
4. In accordance with 200 KAR 5:314, the Consultant agrees to establish and maintain financial records and statements sufficient to document compliance with grant requirements, state and federal regulations, and the requirements of this Agreement. All program and financial records shall be retained for a period of not less than three (3) years after all matters pertaining to this Agreement (i.e., program audit, settlement of audit exceptions, disputes) are resolved in accordance with applicable state and federal laws and regulations. The Consultant agrees that officials of the Government, officials of the Commonwealth of Kentucky Finance and Administration Cabinet, the auditor of public Accounts, the Kentucky Department of Military Affairs, Division of Emergency Management, and the legislative research commission, or any of their duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to the specific grant program for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Government, the Kentucky Department of Military Affairs, Division of Emergency Management, the Finance and Administration cabinet, the auditor of public accounts, or the legislative research commission which are directly pertinent to this Agreement shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agree to by the Secretary of the Finance and Administration Cabinet as meeting the provision of KRS 61.878(1)(c) prior to the execution of the Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.
5. The Consultant agrees that no data collected and provided by the Government or the Kentucky Department of Military Affairs, Division of Emergency Management shall be used for any other purpose other than those expressly authorized in this Agreement.
6. The Consultant agrees that any intellectual property provided by the Kentucky Department of Military Affairs, Division of Emergency Management or the Government to the Consultant for the purposes of meeting the terms and conditions of this Agreement, shall remain the exclusive property of the Kentucky Department of Military Affairs, Division of Emergency Management or the Government, as applicable. In addition, Consultant assigns and transfers the entire right, title, and interest in and to the copyright in any deliverables outlined in Exhibit A, provided however that Consultant and its employees shall reserve a nonexclusive license in and to the copyright for non-commercial purposes of education, research, teaching, and public service.
7. Consultant agrees to complete the plan and obtain plan approval by June 30, 2018.
8. Consultant agrees that no travel time nor travel expenses are included in hourly rates and that all travel reimbursement shall be in accordance with 200 KAR 2:006. No travel time nor travel expenses will be included in the Consultant's hourly rates.
9. Consultant acknowledges that neither the Kentucky Department of Military Affairs, Division of Emergency Management nor the Government is liable for Social Security contributions pursuant to 42 U.S. Code, Section 418, relative to the compensation of the Consultant during the effective dates of this Agreement.
10. The term of this Agreement shall be for the period beginning November 1, 2017 and ending June 30, 2018.
11. **DISCRIMINATION (Because of race, religion, color, national origin, sex, age, or disability) PROHIBITED.** During the performance of this Agreement, the Consultant agrees as follows:
 - a) The Consultant will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex or age. The Consultant further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto-prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The

Consultant agrees to provide, upon request, needed reasonable accommodations. The Consultant will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, age, or disability. 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 compensations; and selection for training, including apprenticeship. The Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

- b) 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, religion, color, national origin, sex, age, or disability.
 - c) The Consultant will send to each labor union or representative of workers with which she has a collective bargaining Agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Consultant's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
 - d) The Consultant will comply with all provision of Executive Order No. 11246 of September 24, 1965, as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
 - e) The Consultant will furnish all information and reports required by Executive Order No. 11246 of September 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
 - f) In the event of the Consultant's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the Consultant may be declared ineligible for further Government contracts or Federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
 - g) The Consultant will include the provisions of paragraphs (1) through (7) of Section 202 of Executive Order No. 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to Sections 204 of Executive Order No. 11246 of September 24, 1965, as amended so that such provisions will be binding upon each subcontractor or vendor. The Consultant will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the Consultant may request the United States to enter into such litigation to protect the interests of the United States.
12. The Consultant agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with Consultant's performance under this Agreement, on the grounds of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, Consultant covenants and agrees to comply with the following:
- a) Title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.);
 - b) Executive Order 11246 and Department of Labor regulations issued there under (41 CFR Part 60);
 - c) Section 504 of the Rehabilitation Act of 1973 (42 U.S.C. 794);

- d) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq);

13. Lobbying

- a) The Consultant agrees that they will not expend any funds appropriated by Congress to pay person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress, in connection with any of the following Federal actions: the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;
- b) The Interim Final Rule, New Restrictions on Lobbying, issued by the United States Office of Management and Budget is incorporated by reference

14. Certification of Lobbying

- a) No state funds appropriated to the Consultant pursuant to this agreement shall be used to influence, either directly or indirectly, the introduction or modification of any federal or state legislation, or the outcomes of any federal, state or local election, referendum, or initiative.
- b) In addition, for any payment involving federal funds, the Consultant certifies to the best of its knowledge and belief, that for the preceding contract period, if any, and for the current contract period:

No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

- c) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
- d) It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
- e) Lobbying Certification - Paragraph d

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- 15. The Consultant certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this Agreement, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this Agreement. The Consultant further swears under penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which he/she represents, has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the

award of a contract to him/her or the company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

16. In accordance with KRS 45A.485, the Consultant agrees to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the Consultant within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45.485, the consultant shall report any such final determination(s) of violations(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the Consultant shall be in continuous compliance with the provisions of those statutes which apply to the Consultant's operations, and that the Consultant's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of this Agreement, shall be grounds for the cancellation of the Agreement and the Consultant's disqualification from eligibility for future state-funded contracts for a period of two (2) years.

The Consultant must initial and check one:

_____The Consultant has not violated any of the provisions of the above statutes within the previous five (5) year period.

_____The Consultant has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violations(s). A list of such determination(s) is attached.

17. The Consultant hereby certifies that it is legally entitled to enter into the subject contract with the Government and certifies that it is not and will not be violating either directly or indirectly any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, KRS 164.390, or KRS 11A.040 of the Executive Branch code of ethics, relating to the employment of former public servants.
18. Consultant shall notify the Government of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect her ability to carry out any of her obligations under this Agreement.
19. The CONSULTANT agrees to be responsible (in the manner and to the extent permitted by law) for all lawfully proven claims, losses, actions, and expenses (including legal expenses), arising from the CONSULTANT'S performance of the Agreement, pursuant to the provisions and limitations of and in the manner and to the extent provided by KRS 44.072-44.160. In addition to the above, CONSULTANT agrees to procure and maintain throughout the term of this Agreement, and annually for any extension hereof, commercial general liability insurance in the principal amount of One Million (\$1,000,000) Dollars per occurrence with a Two Million (\$2,000,000) Dollar aggregate, with an insurance company authorized to do business in the Commonwealth of Kentucky with the provision, "it is agreed and understood that the Lexington-Fayette Urban County Government, its agents, employees, officers and elected officials, as their interests may appear, are additional insureds, in the same manner as if a separate policy had been issued, under the provision of the policies required to be issued during the term of the agreement or as otherwise required by this agreement." All insurance policies shall be broad form in nature and shall be written through a company with an A.M. Best Rating of "A" or better, admitted to do business in Kentucky, and the contract shall be non-cancelable without at least thirty (30) days advance written notice by registered mail to Government from the insurance company.
20. The Consultant certifies that no employee, official, or board member will attempt in any manner to influence any specifications to be restrictive in any way or respect, nor will any employee, official, or board member attempt in any way to influence any purchasing of services or commodities by the Commonwealth of Kentucky. For purpose of this paragraph,

“He” is construed to mean “They” if more than one person is involved and if a firm, partnership, corporation, or other organization is involved, then “He” is construed to mean any person with an interest therein.

21. The Consultant agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the United States Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.
22. The Consultant agrees that its performance under this Agreement shall comply with: the requirements of Section 114 of the Clean Air Act (42 U.S.C. 7414) and Section 308 of the Federal Water Pollution Control Act (33 U.S.C. 1318), that relate generally to inspection, monitoring, entry reports and information, with all regulations and guidelines issued thereunder; the Resources Conservation and Recovery Act (RCRA); the Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA); The National Environmental Policy Act (NEPA); and any applicable Federal, State, or Local environmental regulation.

The Consultant shall insure that no facility used in its performance under this Agreement is listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR Part 15 without the concurrence of the Government. The consultant shall notify the Government of the receipt of any communication from EPA indicating that a facility to be or being used in it performance under this Agreement is under consideration for listing on the EPA list of violating facilities.

23. The Consultant agrees to comply with 46 U.S.C. 1241(b) and regulations issued thereunder (46 CFR Part 381) concerning the use of privately-owned United States flag commercial vessels.
24. The acquisition of goods and services by the Consultant in performance of this Agreement shall be according to applicable Commonwealth of Kentucky contracting procedures, the standards, and procedures contained in applicable federal regulations (44 CFR, 49 CFR, 32 CFR, others).
25. The Consultant will follow the administrative requirements in OMB Circular No. A-102 and 49 CFR, will follow the cost principles in OMB Circular No. A-21, and the audit requirements of OMB Circular A-133.
26. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion, Lower Tier Covered Transactions

The Consultant certifies the following by signing this contract:

That neither they nor their principals and/or subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

Where the prospective recipient of federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall submit an explanation in writing to the Government.

The Final rule, Government-Wide Debarment and Suspension (Non-procurement), issued by the United States Office of Management and Budget is incorporated by reference and the Consultant covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

27. The Consultant agrees that he/she will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction materials. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Contract (NAFTA), provide the EC and NAFTA end products and construction materials are exempted from application of The Buy American Act.

ARTICLE III

ADDITIONAL PROVISIONS

1. Either party shall have the right to terminate this Agreement for convenience at any time upon 30 days written notice served upon the other party by certified or registered mail with return receipt requested. In addition, either party may terminate this Agreement immediately for cause upon written notice to the other party by registered or certified mail with return receipt requested. Claim or performance disputes will be in accordance with KRS Chapter 44.
2. All notices hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as first set out herein.
3. The Government and the Consultant each binds himself and his partners, successors, executors, administrators, assigns and legal representative to the other party to this Agreement and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements and obligations of the Agreement.
4. The laws of the Commonwealth shall govern all questions as to the execution, validity, interpretation and performance of this Agreement. Furthermore, the parties hereto agree that any legal action that is brought on the basis of this Agreement shall be filed in the Fayette County Circuit Court of the Commonwealth of Kentucky.
5. If any provision of this Agreement is held judicially invalid, the remainder of the Agreement shall continue in force and effect to the extent not inconsistent with such holding.
- 6.. This Agreement is incidental to the implementation of a federal grant program. Accordingly this Agreement shall be governed by and construed according to Federal law as it may affect the right, remedies, and obligations of the United States.
7. The Agreement constitutes the entire Agreement between the Government and the Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IT WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

By: _____
Jim Gray, Mayor

ATTEST:

Clerk of Urban County Council

STANTEC Consulting Inc.

By: _____
Signature of Authorized Official

Printed Name and Title of Authorized Official