

CONSULTANT SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2024 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and TOOLE DESIGN GROUP, LLC (**CONSULTANT**). **OWNER** intends to proceed with the Lexington Complete Streets Design Manual in Lexington, Kentucky as described in the attached Request for Proposal document. The services are to include professional engineering, planning and urban design services for the city as contemplated in the **OWNER's** Request for Proposal No. 9-2024. 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 planning services by **CONSULTANT** and the payment for those services by **OWNER** as set forth below.

CONSULTANT was selected by **OWNER** based upon its response to the Request for Proposal No. 9-2024.

CONSULTANT shall provide professional consulting services for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** professional engineering, planning and urban design 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

CONSULTANT shall perform professional services as hereinafter stated which include engineering, planning and urban design incidental thereto.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: RFP No. 9-2024 (Exhibit "A"); Consultant's Response dated February 12, 2024 (Exhibit "B"); and Amended Scope of Work to Consultant Response (Exhibit "C").

To the extent there is conflict among their provisions, the provisions of this Agreement shall take precedence, followed by the provisions of Request for Proposal No. 9-2024 (Exhibit "A"), followed by the provisions of Amended Scope of Work (Exhibit "C"), followed by the provisions of the Consultant's Response, (Exhibit "B"), in that order

After written authorization to proceed with the Project, **CONSULTANT** shall:

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**.

2. On the basis of "Selection Criteria" in the "Request for Proposal", attached in Exhibit "A", prepare/perform all required deliverables listed in the Request for Proposal and Amended Scope of Work (Exhibit "C").

This Agreement (consisting of pages 1 to 9 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

The General Condition provisions of RFP No. 9-2024 are incorporated herein by reference as if fully stated.

SECTION 2 - ADDITIONAL SERVICES 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 Exhibit A of this Agreement. Such work shall be considered as "Additional Services", 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 "Additional Services" and shall be paid as such.
- 2.2. All "Additional Services" is subject to prior written authorization of **OWNER** and 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 design objectives and constraints, space, 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. **CONSULTANT** shall be able to reasonably rely on all information furnished by **OWNER**.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals 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 Additional Services 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. **CONSULTANT** shall commence services no later than July 1, 2024 and shall complete the "Amended Scope of Work" on or before June 30, 2026. See Exhibit "C" (attached) for the project schedule.
- 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. **CONSULTANT** reserves the right to escalate rates annually on or around April 1st, but the total amount paid pursuant to this Agreement shall not exceed the amounts stated in Section 5 of this Agreement

If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule 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 the **OWNER** of any of its rights in the Agreement. Section 6.5, under DISPUTES, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee or fees shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the parties cannot mutually agree upon an adjustment of fee.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services of CONSULTANT

5.1.1 For Basic Services.

OWNER shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding \$450,000. The **CONSULTANT** will provide services outlined in the Exhibit C.

5.2 Times of Payment.

- 5.2.1 CONSULTANT** shall submit monthly statements for Basic Services, billing on a percentage complete by task basis. The total amount paid to **CONSULTANT** for the Basic Services shall not exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) for all tasks in Exhibit C. **CONSULTANT** understands that the Subdivision Regulations Update and Complete Streets Design Manual, identified as deliverables No. 5 and 6 respectively in Exhibit C, attached hereto, are key components of the Basic Services. **CONSULTANT** also understands and agrees the total amount paid by **OWNER** to **CONSULTANT** shall not exceed Two Hundred Fifty Thousand Dollars (\$250,000.00), unless and until the **CONSULTANT** provides a complete first draft of the Subdivision Regulations Update. **CONSULTANT** also understands and agrees the total amount paid by **OWNER** to **CONSULTANT** shall not exceed Three Hundred Ninety Thousand Dollars (\$390,000.00), unless and until the **CONSULTANT** provides a complete first draft of the Complete Streets Design Manual. The **CONSULTANT** also understands and agrees that the amount paid by **OWNER** to **CONSULTANT** shall not exceed Four Hundred Twenty Thousand Dollars (\$420,000.00), unless and until the **CONSULTANT** provides a revised draft of the Complete Streets Design Manual. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment. Should **OWNER** fail to make timely payment, **CONSULTANT** reserves the right to stop work until payment is received.

5.2. 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 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**.

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, and the amount to be paid shall be determined by the **OWNER**.

5.3.3. In the event the **CONSULTANT** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **CONSULTANT** shall be paid as set forth in Section 5.3.1. above.

SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. The obligation to provide further services under this Agreement may be terminated by either party upon ten (10) business days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party, provided the non-terminating party fails to cure or substantially begin to cure such default within the ten (10) business day period.

6.1.2. The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon seven (7) business days written notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents.

All documents, including Drawings and Specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. Ownership shall not extend to **CONSULTANT'S** underlying means and methods used to create work product. Additionally, any preexisting intellectual property contained within **CONSULTANT'S** deliverables thereto belonging to **CONSULTANT** shall remain the property of **CONSULTANT** unless otherwise indicated in the scope of services. 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 which 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 be acting 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 applicable provisions of the Kentucky Revised Statutes.

6.4. Successors and Assigns.

6.4.1. **CONSULTANT** 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** shall not assign any interest, obligation or benefit in this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement or 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, to be provided under this Agreement. 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. Consent to subletting or assigning shall not be unreasonably withheld.

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 concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Division of Central Purchasing and the **CONSULTANT**, shall be submitted to the Commissioner of the Division of Planning and Preservation, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or 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 professional architects and engineers 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 Drawings and Specifications have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from a breach of the above-mentioned standard of care by the **CONSULTANT**, without additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** has made a statement that, in its professional judgement, the information is accurate.

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**.

6.8. Access to Records.

The **CONSULTANTS** 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 contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested.

6.9 Indemnification and Hold Harmless Provision.

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** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "**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.

CONSULTANT shall indemnify, save, hold harmless and defend the **OWNER** and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "**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**.

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.

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.

These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

OWNER is a political subdivision of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that **OWNER** is unable to provide indemnity or otherwise save, hold harmless, or defend the **CONSULTANT** in any manner.

6.10 Required Risk Management Provisions.

The Risk Management Provisions of RFP No. 09-2024 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to **OWNER** as required therein. To the extent the provisions of the RFP conflict with the terms of this Agreement, the terms of this Agreement shall control.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this service 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 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

- 8.1. This Agreement is subject to the following provisions.

8.1.2. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned the appropriate LFUCG employee (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 their 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 their designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or their 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.

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):

Signature: Linda Gorton
LINDA GORTON, MAYOR

Date: 6/28/2024

ATTEST:

Abigail Allan
ABIGAIL ALLAN, COUNCIL CLERK

CONSULTANT (TOOLE DESIGN GROUP, LLC):

Signature: Ernest M. Baughman

Printed Name: Ernest M. Baughman, III

Position: Director of Operations, Southern US

Date: 5/29/24

COMMONWEALTH OF ~~KENTUCKY~~ ^{Maryland}
COUNTY OF (Montgomery)

The foregoing instrument was subscribed, sworn to and acknowledged before me by Ernest Baughman as Director of operations for and on behalf of Toole Design Group, LLC, on this the 29 day of May, 2024.

My commission expires: March 1, 2026

Emmanuel Klint-Gassner
NOTARY PUBLIC, STATE AT LARGE, KY Maryland
4875-6302-1507, v. 1

