

Agreement between Owner and Consultant for Planning Services

THIS IS AN AGREEMENT made as of _____, 2015, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and Development Concepts, Inc., 277 E. 12th Street, Suite 200, Indianapolis, IN 46202 (**CONSULTANT**). **OWNER** intends to proceed with the **Oxford Circle Redevelopment Feasibility Study** as described in the attached Exhibits A and B, "33-2015 Oxford Circle Redevelopment Feasibility Study." The services are to include preparing a redevelopment feasibility study to consider a library, community center, and neighborhood-serving retail for the entirety of the property bound by Versailles Road and Oxford Circle in close cooperation with LFUCG Planning staff and stakeholders, including Urban County Council (UCC) representation, Planning Commission representation, and others identified by UCC and staff; and will include outcomes described in Exhibit A and B, detailing the findings of all existing conditions and opportunities analysis, and recommendations for the implementation/funding strategy completed by the **CONSULTANT**. The services are hereinafter referred to as the **PROJECT**. The **PROJECT** is supported with federal funds from the U.S. Department of Housing and Urban Development under the Community Development Block Grant Program (CFDA No. 14.218), awarded to Lexington-Fayette Urban County Government in the 2015 Consolidated Plan.

OWNER and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional consulting 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 redevelopment feasibility study in close cooperation with LFUCG UCC representation, Planning Commission representation, and Planning staff; and selected stakeholders.

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, "33-2015 Oxford Circle Redevelopment Feasibility Study."

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 an 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 ten hard copy 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 4 months of execution of this Agreement.

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 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, 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 professional services consultant 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**.

Coverage

Limits

General Liability (Insurance Services Office Form CG 00 01) million combined single limit	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. 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. **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.
- f. 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, TITLE VI, WOMEN AND MINORITY OWNED BUSINESSES, AND HUD SECTION 3 CLAUSE

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, or handicap.

7.3 Title VI

7.3.1. The **CONSULTANT** agrees to comply with Title VI of the Civil Rights Act of 1964 as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 104(b) and Section 109 of Title I of the Housing and Community Development Act of 1974 as amended, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Orders 11375 and 12086.

7.3.2. The **CONSULTANT** agrees that no person shall on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, or any other basis prohibited by applicable law be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with Community Development Block Grant Program.

7.3.3 The **CONSULTANT** agrees that it shall be committed to carry out pursuant to the **OWNER's** specifications an Affirmative Action Program in keeping with the principles as provided in President's Executive Order 11246 of September 24, 1965. The **OWNER** shall provide Affirmative Action guidelines to the **CONSULTANT** to assist in the formulation of such program.

7.4 Women and Minority Owned Businesses

7.4.1 The **CONSULTANT** will use its best efforts to afford minority- and women-owned business enterprises the maximum practicable opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and female business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. For the purpose of this definition, "minority group members" are African-Americans, Spanish-speaking, Spanish surnamed or Spanish-heritage Americans, Asian-Americans, and American Indians. The **CONSULTANT** may rely on written representations by businesses regarding their status as minority and female business enterprises in lieu of an independent investigation.

7.5 HUD Section 3 Clause

7.5.1. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR 135, and all applicable rules and orders issued hereunder prior to the execution of this Agreement, shall be a condition of the federal financial assistance provided under this Agreement and binding upon the **CONSULTANT** and any of the **CONSULTANT'S** consultants and subcontractors. Failure to fulfill these requirements shall subject the **OWNER**, the **CONSULTANT** and any of the **CONSULTANT'S** consultants and subcontractors, their successors and assigns, to those sanctions specified by the Agreement through which Federal assistance is provided. The **CONSULTANT** certifies and agrees that no contractual or other disability exists which would prevent compliance with these requirements.

7.5.2. The **CONSULTANT** further agrees to comply with these "Section 3" requirements and to include the following language in all subcontractors executed under this Agreement:

"The work to be performed under this contract is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area and contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located."

7.5.3. The **CONSULTANT** further agrees to ensure that opportunities for training and employment arising in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to low- and very low-income persons within the service area of the project or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs; and award contracts for work undertaken in connection with a housing rehabilitation (including reduction and abatement of lead-based paint hazards), housing construction, or other public construction project are given to business concerns that provide economic opportunities for low- and very low-income persons residing within the metropolitan area in which the CDBG-funded project is located; where feasible, priority should be given to business concerns which provide economic opportunities to low- and very low-income residents within the service area or the neighborhood in which the project is located, and to low- and very low-income participants in other HUD programs.

7.5.4. The **CONSULTANT** certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements.

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 Janice Westlund, Planner Sr. in the Long-Range Planning section of 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.

DEBARMENT CERTIFICATION

All contractors/subcontractors shall complete the following certification and submit it with the bid proposal.

The contractor/subcontractor certifies in accordance with Executive Order 12549 (Debarment and Suspension 2/18/86) that to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by any Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other Federal law;
 - a) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - b) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(a) of this certification; and
 - c) Have not within a three year period preceding this bid has one or more public (Federal, State or local) transactions or contracts terminated for cause or default.

2) Where the contractor is unable to certify to any of the statements in this certification, such prospective contractors shall attach an explanation to this certification form.

Firm Name: _____

Project: _____

Printed Name and Title of Authorized Representative: _____

Signature: _____

Date: _____

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

OWNER:

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT**

BY: _____
JIM GRAY, MAYOR

CONSULTANT:

Development Concepts, Inc.

BY: _____

ATTEST:

URBAN COUNTY COUNCIL CLERK
COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

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

My commission expires: _____.

NOTARY PUBLIC

33-2015 Oxford Circle Redevelopment Feasibility Study

EXHIBIT A

Scope of Work Overview

In April 2015, the LFUCG Planning Commission adopted a Small Area Plan for the Cardinal Valley area, including Oxford Circle. One of the recommendations of the plan was for further study into the possibility of redeveloping the Oxford Circle commercial area, primarily to facilitate a new Lexington Public Library to replace an inadequate location currently in use, and to also possibly provide a community center with a YMCA and/or Community Action Council center, and neighborhood-serving retail. The goal of this study is to identify actionable, data-driven strategies to enable redevelopment of the study area that would utilize the library as an anchor tenant which would serve to attract private businesses back into the center with a design that best serves the diverse needs of the adjacent residential community.

The scope of work includes four distinct sections: Project Initiation, Existing Conditions Analysis, Opportunities Analysis, and Implementation/Funding Strategy. In addition, there are seven deliverables that represent the culmination of the scope of work: 1) a project schedule, 2) stakeholder involvement (to include but not limited to LFUCG Urban County Council Member for District 11, LFUCG Planning Commission member, Lexington Public Library, Community Action Council, and any other businesses, property owners, and/or organizations determined essential by the Project Team), 3) existing conditions report, 4) opportunities report with market study analysis of non-residential uses (includes, but not limited to community facilities and services, and neighborhood-serving retail and services) in Fayette County, 5) detailed 5-year work program funding, 6) funding strategies, and 7) power point presentation of deliverables 1) through 6).

Scope of Work

PHASE I. PROJECT INITIATION

PHASE I, Task A. Develop Project Team and Project Schedule:

DCI Team and Lexington-Fayette Urban County Government Planning (LFUCG) will form the project team. The Project Manager (PM) from the DCI Team will serve as the liaison between the DCI Team and LFUCG. Communication channels will be established between the DCI Team and LFUCG, with LFUCG assigning a member of LFUCG staff to serve as agent for LFUCG.

The DCI Team will develop a four month **project schedule**, coordinating all Phase I. II, III, and IV project work, to be reviewed in a meeting with LFUCG Planning 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 with other meetings and tasks as needed. The PM and team shall visit the site of the feasibility study and its surrounding area, and make observations and initial impressions of opportunities and constraints with the site

PHASE I, Task B. Oxford Circle Key Stakeholders, and Partners:

The Project Team will meet with the Urban County Council District 11 member to present the project schedule and to discuss and determine key stakeholders and potential partners to engage with to understand constraints and opportunities for the site for potential redevelopment. The CONSULTANT will schedule, organize, administer, and conduct all stakeholder meetings and interviews. The OWNER'S Agent will assist the CONSULTANT with acquiring meeting space for stakeholder meetings.

PHASE II. EXISTING CONDITIONS ANALYSIS

PHASE II. Task A. Land and Building Use

A survey of current land and building use in the study area is necessary to establish a baseline for further analysis. This examination may include the study of public data regarding properties in the area, and should include on-site assessments, and/or privately available information. Work in this area was completed under the Small Area Plan process, but further details on building integrity, architectural significance, lot configuration, etc. are called for in this process in order to help determine if there is any value in pursuing the adaptive reuse of existing structures versus new construction.

PHASE II. Task B. Infrastructure

Documentation of current infrastructure is an important part of identifying strategies to recognize the full economic potential of the corridor. This examination may include the study of multi-modal traffic networks, storm and sanitary sewers, electric, gas and water utilities, and other infrastructure necessary for future development. A detailed look at the existing floodplain that bisects the property and its impact on redevelopment will be vital as well.

PHASE II. Task C. Business Inventory

An inventory of current retail supply in the study area is a critical component of this analysis. This examination will include the collection of information regarding all current retail-occupied or retail appropriate spaces, a categorization of those spaces into retail categories, rents, and assessment of the class of space.

PHASE III. OPPORTUNITIES ANALYSIS

PHASE III. Task A. Market Study

In order to develop potential retail and community services opportunities in the study area, all relevant regional and local data sources concerning retail, and service trends will be studied. The focus of the review will be to establish a base understanding of the market for each segment. All relevant competitive locations will be identified and evaluated. This would include future developments in addition to the current competitive environment. Review of the competitive environment will be a critical step in defining the trade area to be served by Oxford

Circle. Type and scale of existing services offered in Oxford Circle vicinity will be inventoried and Lexington Public Library, Community Action Council, YMCA, and LFUCG will be consulted regarding gaps and underserved areas that may be addressed through the redevelopment of Oxford Circle. Geographic areas from which various uses, including services, draw will be defined. A retail gap analysis will identify underserved market areas. This examination may include the regional and local trends, demographic analysis, competition analysis, trade area definitions, retail gap analysis, and identify gaps in services and underserved areas, and any other economic analysis as necessary.

PHASE III. Task B. Market-Based Opportunities

Discuss with Project Team and Stakeholders, when appropriate, the market research, and most immediate retail, service, and other investment opportunities. Existing retail opportunities including locating details and leveraging will be presented. New retail investment opportunities will be discussed and prioritization established following redevelopment objectives. Strategies will be developed to attract the priority retail types. As identified in the SAP several types of community services are needed. Redevelopment scenarios will include existing business impacts and relocation alternatives. The role and scale of community services opportunities, as well as, funding limitations and capital building plans will be defined. For each redevelopment scenario, a cost analysis will be performed and provided.

PHASE III. Task C. Potential Partnerships

Private and public partnerships will be identified and an analysis performed on their ability to support redevelopment. These partnerships will include but not be limited to businesses, public agencies at the federal and state level, institutions, conventional funding, non-profits, and non-traditional innovative financing. The role of each partner will be defined and their potential and funding limitations will be determined. Of particular interest are: Lexington Public Library, Community Action Council, YMCA, and LFUCG.

PHASE IV. IMPLEMENTATION/FUNDING STRATEGY

PHASE IV. Task A. Key Investments Opportunities

A priority list of community services and retail opportunities will be created. The list will include several services and programmatic opportunities to address local quality of life needs. Short-term and intermediate retail opportunities will also be provided on the list. Points of contacts and strategies for engaging opportunities for both services and retail will be provided. Intermediate term opportunities will have steps identified to take to pursue these retailers.

PHASE IV. Task B. Economic Development Strategies and Work Program

Economic development strategies will be outlined with specific goals and objectives for services, and retail, and other investments to occur. The Investment and Improvement Work Program will include a detailed 5-year Redevelopment Investment and Improvement Plan (RIIP). The RIIP will focus on key stakeholders through the redevelopment process with long-term investment activity. It will have quarterly benchmarks with the organization or agency responsible for advancing that stage of redevelopment. A less detailed 10-year work program will be provided with intermediate and long-term goals and objectives.

PHASE IV. Task C. Funding Strategies

A finance and resource plan will be prepared based upon the 5-year and 10-year plans in the work programming. A menu of resources, both private and public, and financing tools will be created to match the project outlined in the development program and RIIP. Public and private investments will have initial sources and uses budget. Early investments identified in the 5-year RIIP will have the funding and resource strategy outlined, and will include a sources and uses budget. Recommendations for organizational support needed to oversee implementation of the development plan and RIIP will be included.

LFUCG Provided Assistance

LFUCG will provide consultant assistance in coordinating all staff meetings, Project Team meetings, Stakeholder meetings, and information. LFUCG uses an ESRI-based GIS system with a full complement of information layers, which has been extensively developed for mapping purposes. Please see the LFUCG [GIS home page](#) for a full listing of available LFUCG information, which will be provided, at no charge, for data uses in connection with this project. Other information and assistance may be provided by Division of Planning or other LFUCG staff as agreed between the consultant and the Director of Planning.

33-2015 Oxford Circle Redevelopment Feasibility Study

EXHIBIT B

Reporting

All final decisions subject to LFUCG. The day-to-day management of the project will be under the supervision of the Division of Planning.

Stakeholder meetings described herein will be held as proposed by the consultant, and dates, and locations for these meetings will be mutually agreed upon by the Project Team and LFUCG. The consultant will be responsible for providing all necessary exhibits and for attending any meetings as provided in the project schedule. Staff will assist the consultant. CONSULTANT will make a presentation with a powerpoint to the LFUCG UCC, and/or a UCC committee, and/or Planning Commission.

Except as specifically noted otherwise herein, staff will require a minimum of two weeks to review each major draft product. For the final report, which will include findings and reporting for all four phases of scope of work, 10copies for distribution shall be submitted by the Consultant, along with an approved digital electronic version. LFUCG shall be provided digital copies of all digital presentations and digital copy of all data, including market study data.

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

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 Phase I: 15% of total contract

Completion through Phase II: 40%

Completion through Phase III: 75%

Completion through Phase IV: 100%

EXHIBIT D

CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
9/2/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Arthur J. Gallagher Risk Management Services, Inc. 650 E. Carmel Drive, Suite 400 Carmel IN 46032	CONTACT NAME: Derick Warner
	PHONE (A/C No. Ext): 317-860-0343 FAX (A/C No.): 317-810-4930 E-MAIL ADDRESS: derick_warner@ajg.com

INSURED Development Concepts Inc Cindy Higbee 277 E. 12th Street, Ste 200 Indianapolis IN 46202	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : State Auto P&C Ins. Co.	25127
	INSURER B : Meridian Security Ins Co	23353
	INSURER C :	
	INSURER D :	
	INSURER E :	

COVERAGES **CERTIFICATE NUMBER:** 205058048 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y		PBP2540919	8/1/2015	8/1/2016	EACH OCCURRENCE \$1000000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100000 MED EXP (Any one person) \$5000 PERSONAL & ADV INJURY \$1000000 GENERAL AGGREGATE \$2000000 PRODUCTS - COMPI/OP AGG \$2000000 Emp Ben. \$1000000
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			BAP2271824	8/1/2015	8/1/2016	COMBINED SINGLE LIMIT (Ea accident) \$1000000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10000			PBP2540919	8/1/2015	8/1/2016	EACH OCCURRENCE \$2000000 AGGREGATE \$2000000 \$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	WCP2154165	8/1/2015	8/1/2016	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Lexington-Fayette Urban County Government Room 338, Government Center is an additional insured as required by written contract per form Per SI 10 01.

CERTIFICATE HOLDER Lexington-Fayette Urban County Government Room 338, Government Center 200 East Main Street Lexington KY 40507	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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LFUCG PROJECT ASSIGNMENT NO. [REDACTED]

UNDER LFUCG AGREEMENT WITH [REDACTED]

FOR [REDACTED]

	CONSULTANT	OWNER
Name	Development Concepts, Inc.	Lexington Fayette Urban County Government
Street Address	277 E. 12 th Street, Suite 200	101 E. Vine Street Suite 700
City, State, Zip	Indianapolis, IN 46202	Lexington, KY 40507
Contact Person	Mike Higbee, President	Janice Westlund
Telephone	317-923-4744	859-258-3179
Fax		859-258-3163
E-Mail	mhigbee@development-concepts.com	jwestlund@lexingtonky.gov

Project Assignment Date: [REDACTED]

Task Name: Oxford Circle Redevelopment Feasibility Study

Task ID: [REDACTED]

SCOPE OF WORK/DELIVERABLES

Exhibit A and Exhibit B

SCHEDULE OF WORK

Exhibit A and Exhibit B

FEE

Exhibit C \$85,000

ACCEPTED BY:

AUTHORIZED BY:

Consultant's Authorized Signature

Owner's Authorized Signature

Date Signed

Date Signed

Two originals of this work order shall be executed by the Owner and returned to [REDACTED]. A fully executed copy will be returned to the Owner.