

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made as of November 15, 2018 by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG" or the "Client"), an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 and WSP USA Inc. ("WSP" or the "Consultant"), a foreign corporation with principal offices located at One Penn Plaza, New York, NY 10119.

The Client intends to proceed with the development of new and/or more coordinated timing plans for the Hamburg area to strategically move vehicular and pedestrian traffic along the following routes: Sir Barton Way Corridor (9 intersections), Man o' War Boulevard Corridor (8 intersections), and Winchester Road Corridor (6 intersections), as described in the attached Scope of Work and Fee Estimate ("SOW"), Request for Proposal #29-2018 Traffic Signal Retiming Project (The "RFP"), and Consultant's response to the RFP ("Response"). These documents (collectively the "Project") are attached hereto and incorporated herein by reference as exhibits A, B & C, respectively. In the event of a conflict, the SOW shall govern, followed by this Agreement, the Response, and then the RFP.

Client and Consultant, in consideration the mutual covenants herein, agree with respect to the performance of the professional services by Consultant and the payment for those services by Client as set forth below.

- (1) **Consultant's Scope of Services and Additional Services.** The Consultant will perform only the services specifically described in this Agreement (contract deliverables set forth in Exhibit A). If requested by the Client and agreed to by the Consultant, the Consultant will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay the Consultant for any Additional Services an amount based upon the Consultant's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- (2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - (a) Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - (b) Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - (c) Provide the Consultant all available studies, plans, or other documents pertaining to the project, such as surveys, Engineering data, environmental information, etc., all of which the Consultant may rely upon.
 - (d) Arrange for access to the site and other property as required for the Consultant to provide its services.
 - (e) Review all documents or reports presented by the Consultant and communicate decisions pertaining thereto within a reasonable time so as not to delay the Consultant.
 - (f) Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - (g) Obtain any independent accounting, legal, insurance, cost estimating and feasibility services required by Client.
 - (h) Give prompt written notice to the Consultant whenever the Client becomes aware of any development that affects the Consultant's services or any defect or noncompliance in any aspect of the project.
- (3) **Term.** Unless otherwise stated herein, the Consultant will begin work after receipt of a properly executed copy of this Agreement. Upon commencement, this Agreement shall continue until project completion, which is scheduled for June 1, 2019 unless terminated in accordance with this Agreement. The term of this Agreement may be extended for one (1) additional term of six (6) months upon mutual written agreement of the parties.
- (4) **Cost & Method of Payment.** Consultant will perform this Agreement for the total lump sum fee of \$116,456.31 as summarized in Exhibit A. Client shall pay Consultant as follows:
 - (a) Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay any applicable sales tax. All retainers will be held by the Consultant and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after the Consultant's transmittal of its invoice, the Consultant may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.

- (b) If the Client relies on payment or proceeds from a third party to pay Consultant and Client does not pay Consultant's invoice within 60 days of receipt, Consultant may communicate directly with such third party to secure payment.
- (c) If the Client objects to an invoice, it must advise the Consultant in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due within 25 days of receipt.
- (d) The Client agrees that the payment to the Consultant is not subject to any contingency or condition. The Consultant may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of the Consultant to collect additional amounts from the Client.
- (5) **Use of Documents.** All documents and data prepared by the Consultant are related exclusively to the services described in this Agreement, and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of the Consultant's documents, or any reuse of the documents without written authorization by the Consultant will be at the Client's sole risk and without liability to the Consultant. The Consultant's electronic files and source code remain the property of the Consultant and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client, and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the documents prepared by the Consultant, the hardcopy shall govern.
- (6) **Opinions of Cost.** Because the Consultant does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Consultant's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- (7) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty (30) days' written notice for the convenience of the terminating party. The Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination.
- (8) **Standard of Care.** The standard of care applicable to Consultant's services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. It is agreed that the Consultant is not a fiduciary with respect to the Client.
- (9) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and the Consultant, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of the Consultant or the Consultant's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by the Consultant under this Agreement or \$100,000 whichever is greater. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify the Consultant. This provision is subject to the insurance and indemnification requirements set forth in Exhibit D, which is attached hereto and incorporated herein by reference.
- (10) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits. This provision is subject to the indemnification provision set forth in Exhibit D, which is attached hereto and incorporated herein by reference.
- (11) **Construction Costs.** Under no circumstances shall the Consultant be liable for extra costs or other

consequences due to the failure of third party contractors to perform work in accordance with the plans and specifications. Consultant shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before the Consultant has issued final, fully-approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.

- (12) **Certifications.** The Consultant shall not be required to execute certifications or third-party reliance letters that are inaccurate, that relate to facts of which the Consultant does not have actual knowledge, or that would cause the Consultant to violate applicable rules of professional responsibility.
- (13) **Governing Law.** . The parties agree that this Agreement is to be governed by and construed under the law of the Commonwealth of Kentucky without regard to its conflicts of law provisions. The parties further agree that all disputes shall be resolved exclusively in state or federal court in Fayette County, Kentucky.
- (14) **Hazardous Substances and Conditions.** Consultant shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Consultant's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. The Consultant will notify the Client of unanticipated hazardous substances or conditions of which the Consultant actually becomes aware. The Consultant may stop affected portions of its services until the hazardous substance or condition is eliminated.
- (15) **Construction Phase Services.**
If the Consultant prepares construction documents and the Consultant is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against the Consultant in any way connected thereto.
(a) The Consultant shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs, or safety practices, nor shall Consultant have any authority or responsibility to stop or direct the work of any contractor. The Consultant's visits will be for the purpose of endeavoring to provide the Client a greater degree of confidence that the completed work of its contractors will generally conform to the construction documents prepared by the Consultant. Consultant neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.
(b) The Consultant is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and the Consultant for all claims and liability arising out of job site accidents; and that the Client and the Consultant shall be made additional insureds under the contractor's general liability insurance policy.
- (16) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and the Consultant. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Consultant, without the written consent of the Consultant. The Consultant reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If the Consultant exercises this right, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- (17) **Confidentiality.** The Client consents to the use and dissemination by the Consultant of photographs of the project and to the use by the Consultant of public information obtained by the Consultant in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall maintain the confidentiality of that material.
- (18) **Miscellaneous Provisions.** This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such

unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement. The provisions of this Agreement shall be construed in accordance with the fair meaning of the language used and shall not be strictly construed against either party.

- (19) Notices. Any notice or demand desired and required to be given hereunder shall be in writing and deemed given when personally delivered or when deposited in the United States mail, postage prepaid, sent certified or registered, and addressed as follows:

If to LFUCG:
Director of Traffic Engineering
3rd Floor
Phoenix Building
101 E. Vine St.
Suite 300
Lexington, KY 40507

If to WSP USA Inc.:
Steve Slade
Vice President
1792 Alysheba Way
Suite 230
Lexington, KY 40509

[SIGNATURES ON THE NEXT PAGE]

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

Client: (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):

Signature: _____
JIM GRAY, MAYOR

Date: _____

ATTEST:

COUNCIL CLERK

Consultant: (WSP USA INC.)

Signature: Steve Slade

Printed Name: Steve Slade

Position: Vice President

Date: 11-15-18

Kentucky
STATE/JURISDICTION
COUNTY OF (Fayette)

The foregoing instrument was subscribed, sworn to and acknowledged before me by Steve Slade as Vice President for and on behalf of WSP USA Inc., on this the 15 day of November, 2018.

My commission expires: 4-11-2020

Regina R. Houchin
NOTARY PUBLIC, STATE AT LARGE

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