

## ENGINEERING SERVICES AGREEMENT

**THIS IS AN AGREEMENT** made as of \_\_\_\_\_ between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and Palmer Engineering (**CONSULTANT**). **OWNER** intends to proceed with the services as described in the attached Exhibit A “RFP# 41-2024” for the **RIGHT-OF-WAY SERVICES WORK CATEGORY**. 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 engineering 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 RIGHT-OF-WAY** 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 described in Exhibit A and hereinafter stated on an as needed basis at the discretion of **OWNER**.

#### **1.2 Project Assignment**

Work will be assigned on a rotational basis as described in Exhibit A. If **CONSULTANT** accepts a project assignment, **CONSULTANT** shall:

- 1.2.1** Notify the **OWNER** of its authorized representative who shall act as Project Manager and liaison representative between the **CONSULTANT** and the **OWNER**.
- 1.2.2** Meet with the **OWNER** to review the scope and schedule.
- 1.2.3** Submit proposed production-hours and supporting documentation or price proposal as requested by **OWNER** to enable negotiation of a fair and reasonable fee for the agreed scope of work.
- 1.2.4** If an agreement is reached, the **CONSULTANT** shall sign a Letter Agreement which will include the agreed scope of work, fee(s), and schedule for the project assignment. If an agreement is unable to be reached, the **OWNER** will cease negotiations with the **CONSULTANT** and follow the process described in Exhibit A.

### **1.3 Project Phase**

After executing the Letter Agreement and receiving written authorization by **OWNER** to proceed, **CONSULTANT** shall:

- 1.3.1** Perform any or all of the following, as requested by **OWNER**: appraisals; appraisal reviews; negotiations; relocation assistance; project management; titles and closings; property management, and other related acquisition services in accordance with the KYTC Right-of-Way Guidance Manual (Current Edition). Appraisals and appraisal reviews shall be performed by KYTC approved appraisers.
- 1.3.2** Perform all duties necessary to fully complete the work described in the Letter Agreement and this Agreement.
- 1.3.3** Provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in the final work product.
- 1.3.4** Immediately notify **OWNER** of any delay in the delivery of a work product, regardless of cause. Written notice to **OWNER** must be given 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 a project assignment other than provided by the expressed intent of the Letter 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 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 and any budgetary limitations.

- 3.2 Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3 Examine all work products, possibly including but not limited to: 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** Agent 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 pertinent to **CONSULTANT'S** services.
- 3.5 Give notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services.
- 3.6 Furnish, or direct **CONSULTANT** to provide, necessary Extra Work as stipulated in Section 2 of this Agreement or other services, as required by **OWNER**.

#### **SECTION 4 - PERIOD OF SERVICES**

- 4.1. The initial term of this Agreement is two (2) years. At the end of the initial contract period, the **OWNER** has the option to extend this contract on a year-to-year basis for a maximum of two additional years. No new work will be assigned after the contract period has ended; however, the contract may be extended to complete work already assigned.
- 4.2 Time is of the essence in the performance of this Agreement. Schedules for specific project assignments will be per the applicable Letter Agreement.
- 4.3 The rates of compensation for **CONSULTANT'S** services provided for in the Letter Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
  - 4.3.1 If delays result by reason of acts of the **OWNER** or approving agencies, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered by the **OWNER**. If delays occur, the **CONSULTANT** shall within thirty 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 Letter Agreement within six

months of the time specified therein, the Letter 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.

- 4.3.2** 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 services provided for in the Letter Agreement within ninety (90) days of the time specified therein, **OWNER** shall have the option of cancelling the Letter Agreement, otherwise adjusting the scope of the services or work and any related fees, delaying payment until the services provided for in the Letter Agreement are completed, or terminating this Agreement, at its sole discretion.

## **SECTION 5 - PAYMENTS TO CONSULTANT**

### **5.1 Methods of Payment for Services of CONSULTANT**

#### **5.1.1 For Basic Services**

**OWNER** shall issue individual Letter Agreements for each project assignment made under this agreement. Each Letter Agreement will contain the agreed scope of work, fee(s), and schedule for the assigned work. An individual Letter Agreement shall not exceed \$500,000 without approval from the Director of Engineering. The collective amount of all Letter Agreements between **OWNER** and **CONSULTANT** issued under this Agreement shall have an upset limit of \$1,000,000. Once **OWNER** reaches the upset limit, no new projects will be assigned by **OWNER** through the remainder of this Agreement's term. The upset limit will not be reset if the contract is extended.

#### **5.1.2 For Extra Work**

"Extra Work" shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for "Extra Work" if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for "Extra Work", then the amount of such payment shall be determined as set forth in Section 6.5, "DISPUTES" of this Agreement.

### **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 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 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 - GENERAL CONSIDERATIONS**

### **6.1 Termination**

- 6.1.1** 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 with the terms of a Letter Agreement, through no fault of the terminating party.
- 6.1.2** The **OWNER** reserves the right to terminate the Agreement at any time upon seven days written notice to the **CONSULTANT**.

### **6.2 Ownership and Reuse of Documents**

All documents 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 which in any manner affect the services of this Agreement.

**6.3.2** In performing the services hereunder, the **CONSULTANT** and its sub-**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 sub-**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, 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, performed 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.

**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 to 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 **OWNER's** Division of Engineering and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Environmental Quality and Public Works, 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 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 professionals in their field 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 work products have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **CONSULTANT**, without additional compensation. By submission of work to the **OWNER**, the **CONSULTANT** has made an incontrovertible representation that the information is accurate. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement. Further, failure on the part of **CONSULTANT** to provide the expected level of accuracy for work under this Agreement will be considered by the **OWNER** when making decisions regarding the selection of consultants for future engineering contracts and may result in disqualification of **CONSULTANT** thereof.

## **6.7 Security Clause**

The **CONSULTANT** certifies that they 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 **CONSULTANTS** and their 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 years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

## **6.9 Risk Management Provisions, Insurance and Indemnification**

**6.9.1** The "Risk Management Provisions" section contained within Exhibit A, including but not limited to those sections labeled "Indemnification and Hold Harmless

Provision”; “Financial Responsibility”; “Insurance Requirements”; and “Default” contained therein, are incorporated herein by reference, as if fully stated. Any reference contained therein to “Contractor” shall mean **CONSULTANT**, and any reference to “LFUCG” shall mean **OWNER** for the purposes of this Agreement.

#### **6.9.2 INDEMNIFICATION AND HOLD HARMLESS PROVISIONS**

(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** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter “**CONSULTANT**” for the purposes of this Section 6.9) 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 the **OWNER** and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter “**OWNER**” for the purposes of this Section 6.9) 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) 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.

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

(e) **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.



(f) 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.

## **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

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 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, EXHIBITS AND SCHEDULES**

- 8.1 Pursuant to subparagraph 3.4 of this Agreement, **OWNER** will assign an Agent in the Letter Agreement for each project assignment. The **OWNER'S** Agent will 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 days.
- 8.2 The terms of this Agreement shall be included in any Letter Agreement entered into between **OWNER** and **CONSULTANT**.

- 8.3** The following Exhibits are attached hereto and incorporated herein by reference, as if fully stated. The governing order of the documents incorporated herein is as follows:
1. Engineering Services Agreement
  2. Exhibit A – Request for Proposals
  3. Exhibit B – Statement of Qualifications
  4. Exhibit C – Certificate of Insurance
  5. Exhibit D – KYTC Right-of-Way Guidance Manual, as amended from time to time
- 8.4** This Agreement, together with the incorporated documents 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, modified, or canceled by a duly executed written instrument.
- 8.5 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**.
- 8.6 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.
- 8.7 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.

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: \_\_\_\_\_  
LINDA GORTON, MAYOR

CONSULTANT:  
Palmer Engineering

BY: [Signature]

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK  
COMMONWEALTH OF KENTUCKY  
COUNTY OF FAYETTE

The foregoing Agreement was subscribed, sworn to and acknowledged before me by  
Stephen Sewell, as the duly authorized representative for and on  
behalf of Palmer Engineering on this the 31 day of March, 2025.

My commission expires: 4/26/28.



[Signature]  
NOTARY PUBLIC