

PROFESSIONAL ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____ between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and **Strand Associates, Inc.**[®] (**CONSULTANT**). **OWNER** intends to proceed with the Design Services for the **Liberty Road Sidewalk (RFP#31-2018)**, as described in the attached Scope of Services document. A copy of the RFP and **CONSULTANT**'s Response are also attached hereto and incorporated herein by reference as if fully stated. In the event of a conflict, this Agreement shall govern (including the Scope of Services), followed by **CONSULTANT**'s Response, and then the RFP.

The services include a design and preparation of construction drawings and specifications to construct urban roadway improvements along the south side of Liberty Road from Winchester Road to connect to the existing sidewalk just east of Dallas Avenue. It also includes all work associated with preparing permit applications to facilitate the construction. The services are hereinafter referred to as the "Project."

OWNER and **CONSULTANT** in consideration of their mutual covenants herein agree with respect to 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** professional engineering 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 customary civil engineering services and customary surveying services incidental thereto.

1.2. Design Phase

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

- 1.2.1.** On the basis of the "Description of Basic Engineering Services and Related Matters" per attached Exhibit A, conduct field surveys and gather other necessary data or information, prepare final design documents consisting of final design drawings, specifications and estimate of probable cost.
- 1.2.2.** Prepare such documents, design data and permit applications as may be required to obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, or jurisdiction over existing natural elements that

will be impacted by construction and assist the **OWNER** in obtaining such approvals by negotiations with appropriate authorities.

- 1.2.3. Furnish copies of the design documents to **OWNER** and to any utilities that could potentially be impacted, at approximately 60 percent completion and again at 90 percent complete. After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.
- 1.2.4. Advise **OWNER** of any adjustments to the latest estimate of probable Project cost caused by changes in extent or design requirements of the Project or construction costs and furnish a revised estimate of probable Project cost based on the Drawings and Specifications.
- 1.2.5. Prepare for review and approval by **OWNER**, contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid, instructions to bidders, addenda and other related documents.
- 1.2.6. Furnish copies as indicated in the Scope of Services of the above documents and present them in person to **OWNER**. After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.

1.3. Bidding Phase

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

- 1.3.1. Prepare documents, including addenda, in **OWNER** provided format suitable for reproduction and distribution to bidders and deliver originals to the location directed by **OWNER**.
- 1.3.2. Assist **OWNER** in evaluating bids or proposals by prime contractors.
- 1.3.3. Consult with and advise **OWNER** as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractors (hereinafter called "Contractors") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.3.4. Consult with and advise **OWNER** as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

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 drawings 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, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER’S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER’S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **CONSULTANT’S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT’S** services, or any defect in the work of Contractor(s).
- 3.6. Furnish, or direct **CONSULTANT** to provide, necessary Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4—PERIOD OF SERVICES

- 4.1. Time is of the essence. See Exhibit A “Description of Basic Engineering Services and Related Matters” for the project schedule.
- 4.2. The provisions of this Section Four 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.

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. If delays occur, the **CONSULTANT** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension.

Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, under DISPUTES, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

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

SECTION 5–PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services of CONSULTANT

5.1.1 For Basic Services

OWNER shall pay **CONSULTANT** for Basic Services rendered a one-time lump sum fee not to exceed **\$38,800.00**. The **CONSULTANT** will provide services outlined in Exhibit A “Description of Basic Engineering Services and Related Matters.”

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 (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 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 (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 6.1.2. The **OWNER** reserves the right to terminate the Agreement at any time upon seven (7) days written notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including Drawings and Specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. 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 applicable federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the **CONSULTANT** and its **CONSULTANTS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. The **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including **CONSULTANTS**, and shall save and hold **OWNER** harmless therefrom.

6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by Kentucky law, and venue shall lie in a court of competent jurisdiction in Fayette County, Kentucky.

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, to be provided under this Agreement. The **CONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

6.5. Disputes

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Engineer's Office and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Planning, Preservation and Development, 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 professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **CONSULTANT** shall be responsible for the accuracy of all work, within the limits of the paragraph above, even though Drawings and Specifications have been accepted by the **OWNER**, and upon notice to the **CONSULTANT**, 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 reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** has made a representation that the information is accurate within the limits of the paragraph above. Failure on the part of **CONSULTANT** to provide the expected level of accuracy, as described above, may be grounds for the **OWNER** to disqualify **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

6.7. Security Clause

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER**.

6.8. Access to Records

The **CONSULTANT** and any subconsultant 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. Resident Services During Construction.

The **OWNER** will furnish a Resident Project Inspector.

6.10. Required Risk Management Provisions.

6.10.1 GENERAL

The **CONSULTANT** understands and agrees that the Risk Management Provisions of this contract define the responsibilities of the **CONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**CONSULTANT**” and “**ENTITY**” shall be defined as follows:

- a.** **CONSULTANT** means the **CONSULTANT** and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b.** **ENTITY** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

6.10.2 INDEMNITY

6.10.2.1 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 negligent act or omission on the part of **CONSULTANT** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this agreement and/or the provision of services and the performance or failure to perform any work required thereby. **CONSULTANT** shall indemnify, save, hold harmless and defend **ENTITY** 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. **CONSULTANT** shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of **OWNER**.

6.10.2.2 Prior to and including the contract commencement date, owner shall have the right to examine and inspect the job sites, at any time during reasonable business hours. **ENTITY** reserves the right to have its own engineers inspect the job sites for environmental compliance, but such right shall in no event relieve **CONSULTANT** of its obligations hereunder.

6.10.3 FINANCIAL RESPONSIBILITY

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** bid and the commencement of any work, demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Contract.

6.10.4 INSURANCE REQUIREMENTS

6.10.4.1 Required Insurance Coverages

CONSULTANT shall procure and maintain for the duration of the Contract, insurance 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 the **CONSULTANT**. Any/all insurance shall be written on an "occurrence form" for

limits not less than those specified below or as required by law, whichever is greater. Below are minimum insurance requirements set to protect the **ENTITY** interest in this agreement. However, it does not limit the **CONSULTANT**'s liability and necessary additional limits of coverage are at the **CONSULTANT**'s discretion.

6.10.4.1.1 Professional Liability providing coverage of at least \$1 million per occurrence, \$2 million aggregate.

- a. Endorsement naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
- b. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

6.10.4.1.2 Commercial General Liability Insurance providing coverage at least as broad as Insurance Services Office Form CG-0001 (10/01) with:

- a. Combination of primary and umbrella coverage limits of not less than \$2,000,000 per occurrence for bodily injury and property damage.
- b. Business Interruption Coverage must be included.
- c. Endorsements naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
- d. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County

Government, 200 East Main Street,
Lexington, Kentucky 40507

6.10.4.1.3 Comprehensive Automobile Liability Insurance providing coverage at least as broad as Insurance Service Office Form Number CA 0001 (10/01), code 1 “any auto” with:

- a. Combined Single Limits not less than \$1,000,000 per occurrence.
- b. Endorsement naming as additional insured “The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, Boards, consultants, assigns, volunteers and successors in interest.”
- c. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

6.10.4.1.4 Worker’s Compensation Insurance as required by the Kentucky Revised Statutes, and Employer Liability Coverage with:

- a. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior notice by certified mail, return receipt requested to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

6.10.4.2 Acceptability of Insurers

Insurance is to be placed with insurers with a rating classification of no less than Excellent (A or better) and a financial size category of no less than VIII, as defined by the most current Best’s Key Rating Guide.

6.10.4.3. Notice of Coverage Renewals for Expiration

After insurance has been approved by **ENTITY**, evidence of renewal of an expiring policy must be submitted to **ENTITY**, at the Division of Law, 200 East Main Street Lexington, Kentucky 40507 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.

6.10.4.4. Verification of Coverage

Within thirty (30) days following signing of Contract, **CONSULTANT** agrees to furnish **ENTITY** with all applicable Certificates of Insurance; and **CONSULTANT** shall provide **ENTITY** copies of all bonds and make available for review upon request any insurance policies, including all endorsements.

6.10.4.5. Right to Review, Audit and Inspect

CONSULTANT understands and agrees that **ENTITY** may review, audit and inspect any and all of **CONSULTANT'S** records and operations to insure compliance with these Insurance Requirements in addition to any other proof of insurance required to obtain a license to perform the job stated herein.

6.10.5 SAFETY AND LOSS CONTROL

6.10.5.1 **CONSULTANT** agrees to adhere to and comply with William-Steiger Act, enacted December, 1970, and all other federal, state and local safety health, sanitation and environmental laws, regulations and ordinances. The **CONSULTANT** shall provide all safeguards, safety devices and protective equipment, and take any other action necessary to protect the life, health and safety and property of its personnel, the public and **ENTITY** in the locations and areas in which **CONSULTANT** is performing services under the Agreement.

6.10.6 DEFINITION OF DEFAULT

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Contract. **CONSULTANT** also agrees that **ENTITY** 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 Contract.

CONSULTANT understands and agrees that the Risk Management provisions of this Contract define its responsibilities and those of its employees, agents, owners, principals, licensees, assigns, and subcontractors of any tier to the **ENTITY**, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

6.10.7 RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that upon reasonable notice **ENTITY** may review, audit, and inspect any and all of the **CONSULTANT'S** records and operations relative to the **SERVICES** performed under this Agreement to assure compliance with the Risk Management provisions of the Agreement.

SECTION 7-EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this contract, the **CONSULTANT** agrees as follows:

- 7.1.** **CONSULTANT** agrees to comply with 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 Order 11375 and 12086.
- 7.2** **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. The **CONSULTANT** shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, national origin, sex, age, disability or other handicap. **CONSULTANT** will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of 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.
- 7.3** A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, the **CONSULTANT** agrees as follows:
 - A.** **CONSULTANT** will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.
 - B.** Nondiscrimination: The **CONSULTANT** with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not

discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. The **CONSULTANT** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.

- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the **CONSULTANT** for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the **CONSULTANT** or the **CONSULTANT'S** obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
- D. Information and Reports: the **CONSULTANT** will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the **CONSULTANT** will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. Sanctions for Noncompliance: In the event of the **CONSULTANT'S** noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - 1) Withholding payment to the **CONSULTANT** under the AGREEMENT until the **CONSULTANT** complies; and/or
 - 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

7.4 It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this AGREEMENT. Consequently the DBE requirements of 49 CFR Part 23 apply to this AGREEMENT.

7.5 The **CONSULTANT** or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal

funds provided under this AGREEMENT. In this regard the **CONSULTANT** or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The **CONSULTANT** and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U. S. DOT–assisted contracts.

The **CONSULTANT** will make every effort to located DBEs to purchase materials and services for use in this AGREEMENT. The **CONSULTANT** shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:

- A. The names, addresses, and telephone numbers of DBEs that were contacted;
- B. A description of the information provided to DBEs regarding the type of work to be performed.

SECTION 8–SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

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

Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Andrew Grunwald (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.** The following Exhibits are attached to and made a part of this Agreement:

Exhibit A–“Description of Basic Engineering Services and Related Matters”

Exhibit B “Certificates of Insurance”

Exhibit C– “Scope of Services”; RFP#31-2018;
and Consultant’s Response to the RFP

Exhibit D–“Equal Employment Opportunity Plan”

- 8.3.** This Agreement (consisting of pages 1 to 16 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

OWNER:

CONSULTANT:

Lexington-Fayette Urban County Government

Strand Associates, Inc.[®]

200 East Main Street

1525 Bull Lane, Suite 100

Lexington, Kentucky 40507

Lexington, Kentucky 40511

The Honorable Jim Gray—Mayor

Matthew S. Richards, Corporate Secretary

EXHIBIT A
DESCRIPTION OF
BASIC ENGINEERING SERVICES AND RELATED MATTERS

Design services are described in the Scope of Services as outlined in Exhibit “C” with the exception of the following clarifications and/or changes.

Liberty Road Sidewalk Project Design and Bidding-Related Services

The basic services outlined in this Scope of Services document includes final design and bidding-related services for roadway improvements along the southside of Liberty Road from Winchester Road to connect to the existing sidewalk just east of Dallas Avenue.

Scope of Services

CONSULTANT will provide the following Services to OWNER:

A. Survey

1. Establish survey control including temporary benchmarks for use during construction.
2. Research deeds and plats available at the Fayette County Clerk's Office.
3. Locate boundary monuments found during the topographic survey.
4. Calculate parcel boundary lines for determination of public right-of-way and necessary easements.
5. Conduct topographic survey of Liberty Road including:
 - a. Cross sections extending to the front of the buildings and taken at 50-foot intervals, driveways, sidewalks, and steps.
 - b. Locate existing pavement edges, sidewalks, driveway entrances, pavement markings, and signage.
 - c. Locate existing property features including structures, fences, and retaining walls.
 - d. Locate existing overhead and underground utilities.
 - e. Locate and provide structure data information for storm and sanitary sewer structures.
 - f. Locate and identify trees and vegetation.

B. Preliminary Design

1. Provide roadway drawings including:
 - a. Plan and profile drawings with street addresses, property lines, proposed alignment, existing storm and sanitary sewers and proposed modifications, and identify anticipated utility impacts.
 - b. Prepare typical sections using LFUCG standard drawings and pavement sections. OWNER to provide any geotechnical services required.
 - c. Proposed critical cross sections.

2. Contact utility providers to obtain facility maps, access anticipated impacts, and review avoidance measures.
3. Prepare preliminary opinion of probable construction cost.
4. Submit and deliver two paper copies to OWNER and one paper copy to each utility company of the preliminary drawings.
5. Attend a review meeting with OWNER.
6. Provide basic planimetric information to OWNER for OWNER's use in preparing environmental clearance documentation.

C. Final Design

1. Provide roadway drawings including:
 - a. Cover sheet.
 - b. Quantity summary, survey control, and general notes.
 - c. Typical sections.
 - d. Plan and profile drawings.
 - e. Proposed cross sections.
 - f. Typical sections.
 - g. Detail sheets including the intersection of Dallas Avenue.
 - h. Erosion and sediment control drawing.
2. Prepare final design opinion of probable construction cost for the project and submit to OWNER.
3. Review and provide recommendations for OWNER-provided bidding documents including front end documents and technical specifications. Provide the front end documents that require the contractor to name CONSULTANT as an additional insured on contractor's General Liability and Automobile Liability insurance policies and to indemnify CONSULTANT to the same extent that the contractor insures and indemnifies OWNER.
4. Submit final design drawings, comments on Bidding Documents, and final design opinion of probable cost to OWNER for review.
5. Attend a review meeting with OWNER.
6. Incorporate OWNER's review comments into the drawings and bidding documents. Submit and deliver one paper copy to OWNER and one paper copy to each utility company.
7. Submit and deliver the following documents to the OWNER:
 - a. Three paper copies of the final drawings and contract documents.
 - b. Electronic drawings and digital specification file.

D. Public Acquisition Plats.

1. Prepare up to two minor acquisition plats to acquire right-of-way at the intersection of Liberty Road and Dallas Avenue.
2. Set field monumentation as required.
3. Prepare legal descriptions as required for up to 2 easements.

E. Bidding-Related Services.

1. Provide bidding-related services for up to two separate bids including:
 - a. Prepare addenda and answer questions during bidding.
 - b. Attend bid opening, tabulate and analyze bid results, and assist OWNER in the award of the construction contract.

Schedule and Completion

The CONSULTANT shall meet the following schedule. Calendar days are counted from the date that a written notice to proceed is received by the CONSULTANT which is anticipated on January 4, 2019. Exact times of meetings shall be arranged by the CONSULTANT; locations of meetings shall be at either the sites of proposed improvements or at the offices of the OWNER, as appropriate.

Schedule

<u>Service</u>	<u>Schedule</u>
Project kickoff meeting	10 days
Submission of preliminary drawings	60 days
Meeting to review preliminary plans	70 days
Submission revised preliminary plans	90 days
Submission final plans	120 days
Meeting to review final plans	130 days
Submission of completed final plans	150 days
Submission of public acquisition plats	160 days

Compensation

OWNER shall compensate CONSULTANT for Services a lump sum of \$38,800.

EXHIBIT B
CERTIFICATES OF INSURANCE

EXHIBIT C

**SCOPE OF SERVICES, RFP#31-2018,
and Consultant's Response to the RFP**

**Liberty Road Sidewalk
Engineering Design Services**

EXHIBIT D

**Strand Associates, Inc.[®]
Equal Employment Opportunity Plan**

- (1) Affirmative Action Antidiscrimination Statement
- (2) Supplier Diversity Statement