

ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT made as of _____ day of _____, 2014 between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, (OWNER)**, and **Strand Associates, (CONSULTANT)**. **OWNER** intends to contract for a Scoping Study for the project known as the **Legacy Trail Project Phase 3** (the "Project"). The services include a preparation of a Scoping Study and design for a trail between the western terminus at or near Jefferson Street and 5th Street and the eastern terminus at the Isaac Murphy Memorial Art Garden Trail Head near the intersection of Midland Avenue and 3rd Street.

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** 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 planning and scoping studies, and environmental (as needed), civil engineering services, and customary surveying services incidental thereto.

1.2 Scoping Study

- 1.2.1 Notify the **OWNER** in writing of its authorized representative who shall act as liaison representative between the **CONSULTANT** and the **OWNER**.
- 1.2.2 On the basis of the "Scope of Services", conduct public meetings, identify stakeholders, facilitate community input sessions, and gather other necessary data or information, for the purposes of creating an alignment for the Project.
- 1.2.3 Based on the information contained in the Scoping Study, submit an estimate of probable Project costs.
- 1.2.4 Furnish sufficient copies 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.

The duties and responsibilities of **CONSULTANT** are amended and supplemented as indicated in Exhibit A "Further Description of Basic Engineering Services and Related Matters".

The scope of services requested herein is to investigate various corridor options, providing the desired connectivity between the Coolavin Rail Trail and the Isaac Murphy Memorial Art Garden Trail Head. The services required are two-fold:

- perform a scoping study for the entire corridor; after which
- develop construction documents and plans for the corridor.

These two parts will be funded independently and all cost-of-service expenses need to be separated. The construction documents and plans are not part of this Scope and it is intended to be negotiated at a later date. The LFUCG reserves the right to limit this award to the Scoping Study and negotiate a separate contract for the preparation of construction documents, with the same or a different consultant. .

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. However, given the nature of Scoping Studies it is inherent that some minor changes will occur. Therefore any minor changes requested during the Public Participation, stakeholder, neighborhood or private meetings shall be considered incidental. Any major changes as a result of these meetings 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, 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 the **CONSULTANT**, **SUBCONSULTANTS** or ultimately of the construction 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 “**Further Description of Basic Engineering Services and Related Matters**” for the detailed project schedule.
- 4.2 The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.

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

See Exhibit A “Further Description of Basic Engineering Services and Related Matters” (attached).

5.1.1 For Basic Services.

OWNER shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding \$139,320.00. The **CONSULTANT** will provide services outlined in the Exhibit A “Further 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 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 **SUBCONSULTANTS**, 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 himself 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, even though Drawings and Specifications 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 reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications 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 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 **CONSULTANTS** and his sub-**CONSULTANTS** shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. 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 **CONSULTANT** engineering contracts.

6.9 Resident Services During Construction.

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

6.10. Risk Management Provisions, Insurance and Indemnification

6.10.1. 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.

6.10.2. 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.

6.10.3. 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.

6.10.4. Insurance Requirements

6.10.4.1. 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**.

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$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
Professional Liability	\$1 million per occurrence, \$2 million aggregate
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. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by **OWNER**. (**OWNER** does not need to be named as additional insured).
- f. **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.
- g. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, **CONSULTANT** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**.
- h. 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.

6.10.4.2. 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.

6.10.4.3. 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.

6.10.5 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.

6.10.6 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.

6.10.7 RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that upon reasonable notice LFUCG 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 insure 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 DBE Obligation. 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 locate 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 Keith Lovan (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:

8.2.1 Exhibit A - "Further Description of Basic Engineering Services and Related Matters" consisting of four (4) pages.

8.2.2 Exhibit B - "Certificates of Insurance" consisting of two (2) pages.

8.2.3 Exhibit C "Scope of Services" consisting of three (3) pages.

8.3 This Agreement (consisting of pages 1 to 23 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 Lea Road, Suite 100

Lexington, Kentucky 40507

Lexington, Kentucky 40511

The Honorable Jim Gray – Mayor



Matthew S. Richards
Corporate Secretary

EXHIBIT A

**FURTHER 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.

Legacy Trail Project Phase 3

Scoping Study

The basic services outlined in this Scope of Services document include a scoping study for a trail between the western terminus at Jefferson Street and Fifth Street and the eastern terminus at the Isaac Murphy Memorial Art Garden Trail Head near the intersection of Midland Avenue and Third Street. Upon completion of the scoping study and OWNER's selection of a preferred alternative, subsequent design phase services will commence after reconciliation and agreement on the scope and fee with respect to OWNER's desired implementation phase.

Scope of Services

CONSULTANT will provide the following Services to OWNER:

- A. Review and Document Existing Field Conditions
 - 1. Assemble currently available base mapping information provided by OWNER.
 - 2. Obtain up to 38 existing lane and pavement widths along the proposed corridors.
 - 3. Provide photo documentation of each side of the 2.1-mile corridor, including alternate routes.
 - 4. Develop templates to field document intersection and driveways.
 - 5. Document Americans with Disabilities Act (ADA) accessibility issues at up to 38 intersections.
 - 6. Document dimensional characteristics and ADA compliance issues at up to 80 existing driveways along the corridor.
 - 7. Provide general review of ADA compliance issues along block sections of the sidewalk along each side of the 2.1-mile corridor including alternate routes.
 - 8. Document existing drainage structure impediments to the trail facility along the corridor.
 - 9. Communicate with OWNER on OWNER-provided on-street parking inventory data.
 - 10. Review existing conditions for public space and other amenity opportunities.
 - 11. Provide analysis and documentation of the existing field conditions.

B. Traffic Analysis of Fourth Street Corridor from North Broadway to Upper Street

1. Prepare Synchro traffic analysis along Fourth Street from North Broadway to Upper Street based on OWNER-provided traffic count data.
2. Prepare draft traffic report sections and appendices for OWNER and Kentucky Transportation Cabinet (KYTC) review.
3. Attend a meeting with OWNER and KYTC staff to review the traffic findings.
4. Prepare final traffic report sections and appendices.

C. Scoping Study Report

1. Prepare up to five case studies of other cycle track applications.
2. Develop up to two bicycle intersection treatment options for six typical intersections along the corridor.
3. Develop marking drawings for two alternative typical sections along four block segments.
4. Evaluate up to two alternate routes.
5. Evaluate amenity and public space opportunities and refine design vocabulary concepts.
6. Review and evaluate up to four options to address displaced parking.
7. Document other bicycle facility alternatives and future connectivity opportunities.
8. Prepare opinion of probable construction costs for two route alternatives and alternative typical sections.
9. Determine anticipated right-of-way and utility impacts.
10. Develop up to 15 exhibits including route, intersection and drive treatments, typical block segments, parking alternatives, and amenities.
11. Submit up to three copies of the draft report for OWNER review.
12. Submit up to five copies of the final report.

D. Project Meetings and Public Involvement

1. Attend initial meeting with OWNER and KYTC to review typical section alternatives and the North Broadway intersection.
2. Attend up to three meetings with individual neighborhoods.
3. Attend up to three meetings with OWNER, including meetings with OWNER's Traffic Engineering Division.
4. Attend one project steering committee meeting.
5. Prepare one questionnaire for public involvement.
6. Attend one public meeting, the meeting will be an open forum with multiple stations. Make concept revisions based on public feedback with input from OWNER.
7. Provide Microsoft PowerPoint presentation material for OWNER's presentation to the council.
8. Document the public involvement process.

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. 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 Division of Engineer, as appropriate.

Scoping Study Schedule

Project kickoff meeting	10 days
Submission of draft scoping study	80 days
Meeting to review draft scoping study	90 days
Submission of final scoping study	110 days
Hold public meeting	120 days

EXHIBIT B
CERTIFICATES OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
05/19/2014

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 ANSAY & ASSOCIATES, LLC 702 N HIGH POINT RD, STE 201 PO BOX 45470 MADISON, WI 53744-5470 Richard A. Hagen	CONTACT NAME: Sue Simoneau PHONE (A/C, No, Ext): 608-828-0235 FAX (A/C, No): 608-831-4777 E-MAIL ADDRESS: sue.simoneau@ansay.com PRODUCER CUSTOMER ID #: STRAA01														
INSURED Strand Associates, Inc., & PEH Engineers Shawn Cannon 910 W. Wingra Drive Madison, WI 53715	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: center;">INSURER(S) AFFORDING COVERAGE</th> <th style="text-align: center;">NAIC #</th> </tr> <tr> <td>INSURER A : CNA Insurance Companies</td> <td style="text-align: center;">20443</td> </tr> <tr> <td>INSURER B :</td> <td> </td> </tr> <tr> <td>INSURER C :</td> <td> </td> </tr> <tr> <td>INSURER D :</td> <td> </td> </tr> <tr> <td>INSURER E :</td> <td> </td> </tr> <tr> <td>INSURER F :</td> <td> </td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : CNA Insurance Companies	20443	INSURER B :		INSURER C :		INSURER D :		INSURER E :		INSURER F :	
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INSURER C :															
INSURER D :															
INSURER E :															
INSURER F :															

COVERAGES	CERTIFICATE NUMBER:	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/SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> XCU Cov. incl. <input checked="" type="checkbox"/> completed ops. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	X	5099170076	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 1,000,000
A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	5099170062	01/01/2014	01/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (PER ACCIDENT) \$ \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE \$ <input checked="" type="checkbox"/> RETENTION \$ 10,000	X	5099170059	01/01/2014	01/01/2015	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$ \$
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	N/A	5095126844	01/01/2014	01/01/2015	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
B	Professional & Pollution Liab.		AEH 11-397-40-97 FULL PRIOR ACTS	07/11/2014	07/11/2015	ea. occur aggregate 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
PROJECT: Legacy Trail Project Phase 3

The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest are named as additional insureds SEE NOTES

CERTIFICATE HOLDER

CANCELLATION

LEXIF01 Lexington Fayette Urban County Government Division of Risk Management 200 E. Main Street, Suite 925 Lexington, KY 40507	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
---	---

NOTEPAD:

HOLDER CODE LEXIF01
INSURED'S NAME Strand Associates, Inc., &

STRAA01
OP ID: SS

PAGE 2
Date 05/19/2014

as per written agreement

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 the Certificate Holder.

EXHIBIT C

SCOPE OF SERVICES

Legacy Trail Project Phase 3

1. **Introduction:**

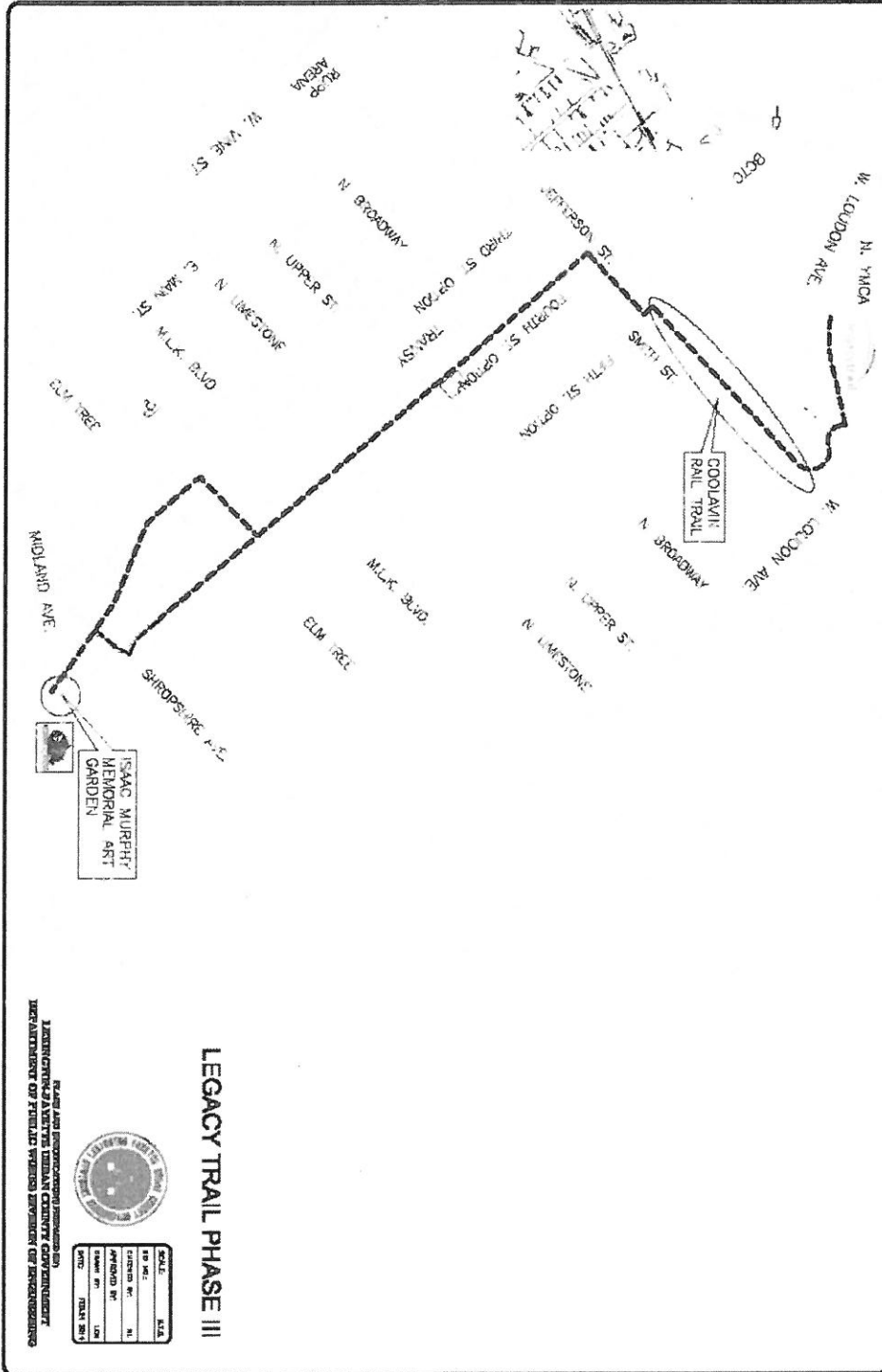
The proposed Legacy Trail Phase 3 will connect the existing Legacy Trail to downtown Lexington. Phases 1 and 2 of the trail were constructed in 2010 and run from the Northside YMCA on Loudon Avenue to the Kentucky Horse Park. A portion of Phase 3, the Coolavin Rail Trail is already designed and will be built along an abandoned rail corridor. The portion of Phase 3 pertinent to this Scope will connect the Coolavin Rail Trail and Isaac Murphy Memorial Art Garden Trailhead. This segment is expected to be almost entirely on-street, providing bicycle and pedestrian improvements along the designated corridor. See Attachment A.

The project consists of developing construction documents and plans for the on-street portion of Phase 3. A conceptual alignment was determined in the Legacy Trail Feasibility Study.

2. **Summary of Services Requested and Timeline:** A qualified firm (KYTC prequalified in the areas of **Multimodal Services (Bikeway Planning)**) will be selected to provide design and engineering services including but not limited to the following (see attachment B for a timeline):

- Perform all necessary agency coordination including but not limited to KYTC and FHWA
- Conduct and coordinate public and stakeholder meetings
- Prepare all final design and engineering components including final construction plans and assist in preparation of bid documents consistent with all Federal and State requirements
- Consideration of bicycle facilities where appropriate

Attachment A: Project Location Map



LEGACY TRAIL PHASE III

DEPARTMENT OF TRANSPORTATION AND INFRASTRUCTURE

SCALE:	AS SHOWN
DATE:	NOVEMBER 2014
PROJECT NO.:	14-0000000-0000
ISSUED BY:	TRANSPORTATION DIVISION
DATE:	NOVEMBER 2014

Attachment B: Project Scope and Timeline

Title: Legacy Trail Project Phase 3

Description:

Selection of design consultant will be performed utilizing Qualification Based Selection. Competitive bidding consistent with Federal guidelines will be utilized for contractor selection for construction services.

The consultant shall complete a full design including construction plans, specifications and bid documents for the specified limits of the trail project.

Project Schedule:

The following table identifies milestones and anticipated schedule.

Milestone/Task	Start/Completion Date
Meeting to review design intent	10 days
Submission of brief preliminary engineering report and environmental overview	30 days
Submission of preliminary plans	60 days
Meeting to review preliminary plans	70 days
Submission of revised preliminary plans	90 days
Submission of final plans	110 days
Meeting to review final plans	120 days
Submission of completed final plans	150 days