

PROFESSIONAL SERVICE CONSULTANT AGREEMENT CIS PROJECT, CDBG 13-CIS-102

THIS CONTRACT made on November 25, 2014 and entered into by and between the **CITY OF LEXINGTON, 406 EAST 7TH STREET, LEXINGTON, NE 68847** (hereinafter referred to as the OWNER) and **MILLER & ASSOCIATES, CONSULTING ENGINEERS, P.C., 1111 CENTRAL AVENUE, KEARNEY, NE 68847** (hereinafter referred to as the CONSULTANT) WITNESSES THAT:

WITNESSETH THAT:

WHEREAS, the OWNER and the CONSULTANT are desirous of entering into a contract to formalize their relationship, and

WHEREAS, pursuant to Title I of the Housing and Community Development Act of 1974, as amended through 1981 and 24 CFR 570, the State of Nebraska Department of Economic Development (DED) is authorized by the Federal Department of Housing and Urban Development (HUD) to provide Community Development Block Grant Program funds (hereinafter referred to as CDBG funds) to units of local government selected to undertake and carry out certain programs and projects under the Nebraska State Community Development Block Grant Program in compliance with all applicable local, state and federal laws, regulations and policies, and

WHEREAS, the OWNER, as part of its 2013 CDBG grant contract with DED, under Contract No. 13-CIS-102, has been awarded CDBG funds for the purposes set forth herein, and

WHEREAS, the Scope of Work included in this contract is authorized as part of the OWNER'S approved CDBG program, and

WHEREAS, it would be beneficial to the OWNER to utilize the CONSULTANT as an independent entity to accomplish the Scope of Work set forth herein and such endeavor would tend to best accomplish the objectives of the local CDBG program.

NOW, THEREFORE, in consideration of the mutual promises, covenants and provisions contained herein and the mutual benefits to be derived therefrom, the parties hereto agree as follows:

1. Services to be provided by the Parties

a. The CONSULTANT shall complete in a satisfactory and proper manner as determined by the OWNER for the work activities described in the Scope of Work (Attachment #1 to this contract).

b. The OWNER will provide such assistance and guidance as may be required to support the objectives set forth in Section 3 below.

2. Time of Performance

The effective date of this contract shall be the date the parties sign and complete execution of the contract. The termination date of the contract shall be June 23, 2015, unless the grant period is extended by program amendment.

3. Consideration

The OWNER shall reimburse the CONSULTANT in accordance with the Payment Schedule described in Attachment #2 for all allowable expenses agreed upon by the parties to complete the Scope of Work. In

no event shall the total amount reimbursed by the OWNER exceed the lump sum of Forty-one Thousand Two Hundred Sixty Dollars (\$41,260) for design services. The resident construction services shall be charged at the hourly rates as outlined, not to exceed an additional Twenty-nine Thousand Dollars (\$29,000) for 2 calendar months of service. Reimbursement under this contract shall be based on billings, supported by appropriate documentation of services rendered for the design services. Reimbursement for resident construction services shall be based on costs actually incurred. It is expressly understood that claims for reimbursement shall not be submitted in excess of actual, immediate cash requirements necessary to carry out the purpose of this contract.

It is also understood that this contract is funded in whole or in part with CDBG funds through the State of Nebraska Community Development Block or Grant Program as administered by the Department and is subject to those regulations and restrictions normally associated with federally funded programs and any other requirements that the state may prescribe.

4. Records

The CONSULTANT agrees to maintain such records and follow such procedures as may be required under 24CFR85.42 (paragraphs (b) and (c)) and any such procedures that the department may prescribe. In general such records will include information pertaining to the contract, obligations and unobligated balances, assets and liabilities, outlays, equal opportunity, labor standards (as appropriate), and performance.

All such records and all other records pertinent to this contract and work undertaken under this contract shall be retained by the CONSULTANT for a period of ten years after the final audit of the OWNER'S CDBG project, unless a longer period is required to resolve audit findings or litigation. In such cases, the OWNER shall request a longer period for record retention.

The OWNER, the Department, and duly authorized officials of the state and federal government shall have full access and the right to examine any pertinent documents, papers, records and books of the CONSULTANT involving transactions to this local program and contract.

5. Relationship

The relationship of the CONSULTANT to the OWNER shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the OWNER and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the OWNER and the CONSULTANT.

6. Suspension, Termination and Close-out

If the CONSULTANT fails to comply with the terms and conditions of this contract the OWNER may pursue such remedies as are legally available including, but not limited to the suspension or termination of this contract in the manner specified herein:

- a. Suspension - If the CONSULTANT fails to comply with the terms and conditions of this contract, or whenever the CONSULTANT is unable to substantiate full compliance with the provisions of this contract, the OWNER may suspend the contract pending corrective actions or investigation, effective not less than seven (7) days following written notification to the CONSULTANT or its authorized representative. The suspension will remain in full force and effect until the CONSULTANT has taken corrective action to the satisfaction of the OWNER and is able to substantiate its full compliance with the terms and conditions of this contract. No

obligations incurred by the CONSULTANT or its authorized representatives during the period of suspension will be allowable under the contract except;

- (1) Reasonable, proper and otherwise allowable costs which the CONSULTANT could not avoid during the period of suspension.
- (2) If upon investigation, the CONSULTANT is able to substantiate complete compliance with the terms and conditions of this contract, otherwise allowable costs; incurred during the period of suspension will be allowed.
- (3) In the event all or any portion of the work prepared or partially prepared by the CONSULTANT be suspended, abandoned, or otherwise terminated the OWNER shall pay the CONSULTANT for work performed to the satisfaction of the OWNER, in accordance with the percentage of the work completed.

b. Termination for Cause – The OWNER may terminate its contract with the CONSULTANT if the CONSULTANT fails to comply with the terms and conditions of this contract and any of the following conditions exist;

- (1) The lack of compliance with the provisions of this contract are of such scope and nature that the OWNER deems continuation of the contract to be substantially detrimental to the interests of the OWNER;
- (2) The CONSULTANT has failed to take satisfactory action as directed by the OWNER or its authorized representative within the time specified by same;
- (3) The CONSULTANT has failed within the time specified by the OWNER or its authorized representative to satisfactorily substantiate its compliance with the terms and conditions of this contract; then, the OWNER may terminate this contract in whole or in part, and thereupon shall notify the CONSULTANT of the termination, the reasons therefore, and the effective date provided such effective date shall not be prior to notification of the CONSULTANT. After this effective date, no charges incurred under any terminated portions are allowable.

c. Termination for Other Grounds - This contract may also be terminated in whole or in part:

- (1) By the OWNER, with the consent of the CONSULTANT, or by the CONSULTANT with the consent of the OWNER, in which case the two parties shall devise by mutual contract, the conditions of termination including effective date and in case of termination in part, that portion to be terminated.
- (2) If the funds allocated by the OWNER via this contract are from anticipated sources of revenue, and if the anticipated sources of revenue do not become available for use in purchasing said services.
- (3) In the event the OWNER fails to pay the CONSULTANT promptly or within sixty (60) days after invoices are rendered, the OWNER agrees that the CONSULTANT shall have the right to consider said default a breach of this contract and the duties of the CONSULTANT under this contract terminated. In such an event, the OWNER shall then promptly pay the CONSULTANT for all services performed and all allowable expenses incurred.
- (4) The OWNER may terminate this contract at any time giving at least ten (10) days notice in writing to the CONSULTANT. If the contract is terminated for convenience of the OWNER as provided herein, the CONSULTANT will be paid for time provided and expenses incurred up to the termination date.

7. Changes, Amendments, Modifications

The OWNER may, from time to time, require changes or modifications in the scope of services to be performed hereunder. Such changes, including any increase or decrease in the amount of compensation therefore, which are mutually agreed upon by the OWNER and the CONSULTANT shall be incorporated in written amendments to this contract.

8. Personnel

The CONSULTANT represents that he has, or will secure at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees or have any contractual relationship to the OWNER.

All services required hereunder will be performed by the CONSULTANT or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state or local law to perform such services.

None of the work or services covered by this contract shall be subcontracted without prior written approval of the OWNER. Any work or services subcontracted hereunder shall be specified by written contract or contract and shall be subject to each provision of this contract.

9. Assignability

The CONSULTANT shall not assign any interest on this contract, and shall not transfer any interest on this contract, without prior written consent of the OWNER thereto: Provided, however, that claims for money by the CONSULTANT from the OWNER under this contract may be assigned to a bank, trust company, or other financial institutions without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the OWNER.

10. Reports and Information

The CONSULTANT, at such times and in such forms as the OWNER may require, shall furnish the OWNER such periodic reports as it may request pertaining to the work or services undertaken pursuant to this contract, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this contract.

11. Findings Confidential

All of the reports, information, data, etc., prepared or assembled by the CONSULTANT under this contract are confidential and the CONSULTANT agrees that they shall not be made available to any individual or organization without prior written approval of the OWNER.

12. Copyright

No report, maps, or other documents produced in whole or in part under this contract shall be subject of an application for copyright by or on behalf of the CONSULTANT.

13. Compliance With Local Laws

The CONSULTANT shall comply with all applicable laws, ordinances and codes of the state and local governments and the CONSULTANT shall save the OWNER harmless with respect to any damages arising from any tort done in performing any of the work embraced by this contract.

14. Title VI of the Civil Rights Act of 1964

Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

15. Section 109 of the Housing and Community Development Act of 1974

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied benefits of or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title.

16. Section 3 Compliance in the Provision of Training, Employment and Business Opportunities

a. The work to be performed under this contract is on a project assisted under a program providing direct federal financial assistance from the Department of Housing and Urban Development Act and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u. Section 3 requires that to the greatest extent feasible opportunities for training and employment be given lower income residents of the project area and contracts for work in connection with the project be awarded to business concerns which are located in, or owned in substantial part by persons residing in the area of the project.

b. The parties to this contract will comply with the provisions of said Section 3. The parties to this contract certify and agree that they are under no contractual or other disability which would prevent them from complying with these provisions.

c. The CONSULTANT will send to each labor organization or representative or workers with which he has collective bargaining contract or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training.

d. The CONSULTANT will include this Section 3 clause in every subcontract for work in connection with the project and will, at the direction of the applicant for, or receipt of federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the subcontractor is in violation of regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The CONSULTANT will not subcontract with any subcontractor where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135 and will not let any subcontract unless the subcontractor has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

e. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued hereunder prior to the execution of the contract, shall be a condition of the federal financial assistance provided to the project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its CONSULTANTS and subcontractors, its successors and assigns to those sanctions specified by the grant or loan contract or contract through which federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135.

17. Age-Discrimination Act of 1975, As Amended (42 U.S.C. 6101, et.seq.).

The law provides that no person will be excluded from participation, denied program benefits or subjected to discrimination on the basis of age under any program or activity receiving federal funding assistance.

18. Section 504 of the Rehabilitation Act of 1973, As Amended (29 U.S.C. 794).

No otherwise qualified individual will, solely by reason of his or her handicap, be excluded from participation (including employment), denied program benefits or subjected to discrimination under any program or activity receiving federal assistance funds.

19. Executive Order 11246, As Amended

This Order applies to all federally assisted construction contracts and subcontracts. The Grantee and subcontractors, if any, will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Grantee and subcontractors, if any, will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin.

20. Conflict of Interest (24 CFR85.36(b)(3))

No officer, employee or agent of the Grantee who will participate in the selection, the award, or the administration of this grant may obtain a personal or financial interest or benefit from the activity or have an interest in any contract, subcontract or contract with respect thereto, or the proceeds thereunder either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. It is further required that this stipulation be included in all subcontracts to this contract. Upon written request, exceptions may be granted upon a case-by-case basis when it is determined that such an exception will serve to further the purposes of the Act and the effective and efficient administration for the recipient's program or project. These exceptions are granted by the Department.

21. Audits and Inspections

The OWNER, the Department, the State Auditor and HUD or their delegates shall have the right to review and monitor the financial and other components of the work and services provided and undertaken as part of the CDBG project and this contract, by whatever legal and reasonable means are deemed expedient by the OWNER, DED, the State Auditor and HUD.

22. Hold Harmless

The CONSULTANT will not be responsible for Contractor's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and CONSULTANT will not be responsible for Contractor's failure to perform or furnish the Work in accordance with the Contract Documents.

CONSULTANT will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

Neither CONSULTANT'S authority to act under the Contract Documents nor any decision made by CONSULTANT in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of CONSULTANT to Contractor, any subcontractor, any supplier, or any other person or organization performing any of the work or to any surety for any of them.

Unless otherwise agreed to in writing between CONSULTANT and OWNER, CONSULTANT shall be under no duty to undertake responsibility or liability for the performance or furnishing of work or services not expressly or specifically required of CONSULTANT herein.

The CONSULTANT agrees to indemnify and hold harmless the OWNER, its appointed and elected officers and employees from and against all loss and expense, including attorney's fees and costs by reason of any and all claims and demands upon the OWNER, its elected or appointed officers and employees from damages sustained by any person or persons, arising out of or in consequence of the CONSULTANT'S and its agents' negligent performance of work associated with this contract. The CONSULTANT shall not be liable for property and bodily injury as may result from the negligence of any construction contractor or construction subcontractor.

23. Governing Law

This Agreement will be governed by the laws of the State of Nebraska, without regard to that body of law controlling conflicts of law. Any legal proceeding arising out of, or relating to this Agreement shall be instituted in any court of general jurisdiction in the State of Nebraska.

24. Limitation of Liability

To the maximum extent permitted by law, CONSULTANT'S liability for OWNER'S damages for any cause or combination of causes will, in the aggregate, not exceed the compensation received by CONSULTANT under this Contract. This article takes precedence over any conflicting article of the Contract or any document incorporated into it or referenced by it.

This contract contains all terms and conditions agreed to by the OWNER and the CONSULTANT. The attachments to this contract are identified as follows:

- Attachment #1, Scope of Work
- Attachment #2, Payment Schedule

WITNESS WHEREOF, the OWNER and the CONSULTANT have executed this contract as of the date and year last written below.

CITY OF LEXINGTON

**MILLER & ASSOCIATES,
CONSULTING ENGINEERS, P.C.**

By _____

By *Paul A. Miller* _____

Title _____

Title: President

Date _____

Date 11/14/14 _____

APPROVED AS TO LEGAL FORM:

Owner's Attorney

Date

ATTACHMENT #1

SCOPE OF WORK

SECTION 1 - SERVICES OF CONSULTANT

BASIC SERVICES OF CONSULTANT

The basic services are premised on the following scope of professional services:

Improvements reflected on attached Location Map. New water main installation on 5th and 6th Street from Grant Street to Washington Street along with new water service lines to each current user. A new 10' wide concrete parking apron will be constructed on both sides of the street from Grant to Lincoln Street on both 5th & 6th Streets. There will be a 4' wide strip of sidewalk removal and replacement behind the back of curb to facilitate the installation of the forms for apron construction. New alley returns and curb inlet reconstruction will be included in the project. All of the new construction will meet current ADA Standards. Evaluation of ADA standards on existing sidewalk or pavement slabs adjacent to the work limits was not included as part of the project scope.

1.1 General.

1.1.1 CONSULTANT shall perform professional services as hereinafter stated which include customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2 Preliminary Design Phase.

After written authorization to proceed with the Preliminary Design Phase, CONSULTANT shall:

1.2.1 In consultation with OWNER and on the basis of the accepted Report, determine the extent of the Project.

1.2.2 Prepare preliminary design documents consisting of final design criteria, preliminary drawings and outline specifications.

1.2.3 Based on the information contained in the preliminary design documents, submit a revised opinion of probable Project Costs.

1.2.4 Furnish five copies of the above preliminary design documents and present and review them in person with OWNER.

1.3 Final Design Phase.

After written authorization to proceed with the Final Design Phase, CONSULTANT shall:

1.3.1 On the basis of the accepted preliminary design documents and the revised opinion of probable Project Cost, prepare for incorporation in the Contract Documents final drawings to show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.3.2 Furnish to OWNER such documents and design data as may be required for, and assist in the preparation of the required documents so that OWNER may apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and

assist in obtaining such approvals by participating in submissions to and negotiations with appropriate authorities.

1.3.3 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications.

1.3.4 Prepare for review and approval by OWNER, his legal counsel and other advisors, contract agreement forms, general conditions and supplemental conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.3.5 Furnish five copies of the above documents and present and review them in person with OWNER.

1.4 Bidding or Negotiating Phase.

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

1.4.1 Assist OWNER in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.

1.4.2 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.4.3 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.

1.4.4 Assist OWNER in evaluating bids or proposals and in assembling and awarding contracts.

RESIDENT CONSTRUCTION SERVICES

1.5 Construction Phase.

During the Construction Phase CONSULTANT shall:

1.5.1 Prepare pre-construction agenda, advise and act as OWNER'S representative during the meeting and prepare pre-construction minutes for distribution.

1.5.2 Consult with and advise OWNER and act as his representative as provided in Articles 1 through 17, inclusive, of the Standard General Conditions of the Construction Contract, No. 1910-8 (1990 Edition). All of OWNER'S instructions to Contractor(s) will be issued through CONSULTANT who will have authority to act on behalf of OWNER to the extent provided in said Standard General Conditions except as otherwise provided in writing.

1.5.3 Make visits to the site at intervals appropriate to the various stages of construction to observe as an experienced and qualified design professional the progress and quality of the executed work of Contractor(s) and to determine in general if such work is proceeding in accordance with the Contract Documents. CONSULTANT shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work.

CONSULTANT shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by Contractor(s) or the safety precautions and programs incident to the work of Contractor(s). CONSULTANT'S efforts will be directed toward providing a greater degree of confidence for OWNER that the completed work of Contractor(s) will conform to the Contract Documents, but CONSULTANT shall not be responsible for the failure of Contractor(s) to perform the work in accordance with the Contract Documents. During such visits and on the basis of on-site observations, CONSULTANT shall keep OWNER informed of the progress of the work, shall endeavor to guard OWNER against defects and deficiencies in the work and may disapprove or reject work failing to conform to the Contract Documents.

1.5.4 Review and approve (or take other appropriate action in respect of) Shop Drawings (as that term is defined in the aforesaid Standard General Conditions) and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents; (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incident thereto) determine the acceptability of substitute materials and equipment proposed by Contractor(s); and receive and review (for general content as required by the Specifications) maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection which are to be assembled by Contractor(s) in accordance with the Contract Documents.

1.5.5 Issue all instructions of OWNER to Contractor(s); issue necessary interpretations and clarifications of the Contract Documents and in connection therewith, prepare change orders as required; have authority, as OWNER'S representative, to require special inspection or testing of the work; act as initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work; but CONSULTANT shall not be liable for the results of any such interpretations or decisions rendered by him in good faith.

1.5.6 Based on CONSULTANT'S on-site observations as an experienced and qualified design professional and on review of applications for payment and the accompanying data and schedules, determine the amounts owing to Contractor(s) and recommend in writing payments to Contractor(s) in such amounts; such recommendations of payment will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of CONSULTANT'S knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any qualifications stated in his recommendation), and that payment of the amount recommended is due Contractor(s); but by recommending any payment CONSULTANT will not thereby be deemed to have represented that continuous or exhaustive examination have been made by CONSULTANT to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incidental thereto or that CONSULTANT has made an examination to ascertain how or for what purposes any Contractor has used the moneys paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s) have completed their work exactly in accordance with the Contract Documents.

1.5.7 Conduct an inspection to determine if the Project is substantially complete and a final inspection to determine if the work has been completed in accordance with the Contract

Documents and if each Contractor has fulfilled all of his obligations thereunder so that CONSULTANT may recommend, in writing, final payment to each Contractor and may give written notice to the OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed), but any such recommendation and notice shall be subject to the limitations expressed in paragraph 1.5.5.

1.5.8 CONSULTANT shall not be responsible for the acts or omissions of any Contractor, any subcontractor or any of the Contractor(s)' or subcontractors' agents or employees or any other persons (except CONSULTANT'S own employees and agents) at the site or otherwise performing any of the Contractor(s) work; however, nothing contained in paragraphs 1.5.1 thru 1.5.7, inclusive shall be construed to release CONSULTANT from liability for failure to properly perform duties undertaken by him in the Contract Documents.

SECTION 2 - ADDITIONAL SERVICES OF CONSULTANT

2.1 General

If authorized in writing by OWNER, CONSULTANT shall furnish or obtain from others Additional Services of the following types which are not considered normal or customary Basic Services.

2.1.1 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.1.2 Services resulting from significant changes in extent of the Project or its design including, but not limited to, changes in size, complexity, OWNER'S schedule, or character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are due to causes beyond CONSULTANT'S control.

2.1.3 Providing renderings or models for OWNER'S use.

2.1.4 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.

2.1.5 Investigations involving detailed consideration of operations, maintenance and overhead expenses; providing Value Engineering during the course of design; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing and assisting OWNER in obtaining process licensing; detailed quantity surveys of material, equipment and labor; and audits or inventories required in connection with construction performed by OWNER.

2.1.6 Furnishing the services of special CONSULTANTS for other than the normal civil, structural, mechanical and electrical engineering and normal architectural design incidental thereto, such as CONSULTANTS for interior design, furniture, furnishings, communications, acoustics, kitchens and landscaping; and providing data or services of the types described in paragraph 3.3 when OWNER authorizes CONSULTANT to provide such data or services in lieu of furnishing the same in accordance with paragraph 3.3.

2.1.7 Services resulting from the award of more than one separate prime contract for construction, materials, equipment or services for the Project. Services resulting from the arranging for performance by persons other than the principal prime contractors of services for the OWNER and administering OWNER'S contracts for such services.

2.1.8 Providing any type of legal surveys for OWNER, and construction surveys and staking to enable Contractor to perform work, and any type of property surveys or related engineering

services needed for the transfer of interests in real property; and providing other special field surveys.

2.1.9 Services in connection with change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered, services after the award of each contract in evaluating substitutions proposed by Contractor(s), and in making revisions to Drawings and Specifications occasioned thereby, and services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.

2.1.10 Services during out-of-town travel required of CONSULTANT other than visits to the Project site.

2.1.11 Preparing for OWNER, on request, a set of reproducible record prints of Drawings showing those changes made during the construction process, based on the marked-up prints, drawings and other data furnished by Contractor(s) to CONSULTANT and which CONSULTANT considers significant.

2.1.12 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) prolongation of the contract time of any prime contract by more than sixty days, (4) acceleration of the work schedule involving services beyond normal working hours, and (5) default by any Contractor.

2.1.13 Preparation of operating and maintenance manuals; extensive assistance in the utilization of any equipment or system (such as initial start-up, testing, adjusting and balancing); and training personnel for operation and maintenance.

2.1.14 Services after completion of the Construction Phase, such as inspections during any guarantee period and reporting observed discrepancies under guarantees called for in any contract for the Project.

2.1.15 Preparing to serve or serving as a CONSULTANT or witness for OWNER in any litigation, public hearing or other legal or administrative proceeding involving the Project.

2.1.16 Additional services in connection with the Project, including services normally furnished by OWNER and services not otherwise provided for in this Contract.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

3.1 Provide all criteria and full 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; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.

3.2 Assist CONSULTANT by placing at his disposal all available information pertinent to the Project including previous reports and any other data relative to design and construction of the Project.

3.3 Furnish to CONSULTANT, as required for performance of CONSULTANT'S Basic Services, data prepared by or services of others, including without limitation core borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;

appropriate professional interpretations of all of the foregoing; environmental assessment and impact statements; property, boundary, easement and right-of-way surveys; property descriptions; zoning, deed restriction, and other and use; and other special data or consultations not covered in Section 2, Additional Services of CONSULTANT Section; all of which CONSULTANT may rely upon in performing his services.

3.4 Arrange for access to and make all provisions for CONSULTANT to enter upon public and private property as required for CONSULTANT to perform his services.

3.5 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by CONSULTANT, obtain advice of an attorney, insurance counselor and other CONSULTANTS as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of CONSULTANT.

3.6 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project and pay the fees of such permits.

3.7 Provide such legal, accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as OWNER may require or CONSULTANT may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid to him under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule or regulation applicable to their performance of the work.

3.8 Designate in writing a person to act as OWNER'S representative with respect to the services to be rendered under this Contract. 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.

3.9 Give prompt 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 Contractor(s).

3.10 Furnish, or direct CONSULTANT to provide, necessary Additional Services as stipulated in Section 2, Additional Services of CONSULTANT Section, of this Contract or other services as required.

3.11 Bear all costs incident to compliance with the requirements of OWNER'S RESPONSIBILITIES.

ATTACHMENT #2

PAYMENT SCHEDULE

1.1 Methods of Payment for Services and Expenses of CONSULTANT.

1.1.1. The OWNER shall pay CONSULTANT \$41,260 for Basic Services outlined in Attachment #1, Sections 1.1, 1.2, 1.3 and 1.4.

1.1.1.1. Resident Construction Services. The OWNER shall pay CONSULTANT for Project Representative by the following rates (not to exceed a maximum fee of \$29,000) for services rendered in Attachment #1 Section 1.5.

Employee Classification	Rate
Professional Engineer	\$90.00/hour
Professional Architect	\$85.00/hour
Project Manager	\$80.00/hour
Licensed Land Surveyor	\$75.00/hour
Senior Design Technician	\$65.00/hour
Survey Crew	\$85.00/hour
Resident Project Representative	\$52.00/hour
CAD Draftsperson	\$45.00/hour
Mileage	\$0.40/mile

1.1.2. For Additional Services. OWNER shall pay CONSULTANT for Additional Services rendered under Attachment #1 as follows:

1.1.2.1. General. For Additional Services outlined in Attachment #1 of CONSULTANT'S principals and employees engaged directly on the Project and rendered shall be invoiced on the basis of hourly rates outlined in Section 1.1.1.2.

1.1.2.2. Professional Associates and CONSULTANTS. For services and Reimbursable Expenses of independent professional associates and CONSULTANTS employed by CONSULTANT to render Additional Services pursuant to Attachment #1 the amount billed to CONSULTANT therefor times a factor of 1.1.

1.1.3. For Reimbursable Expenses. In addition to payments provided for in paragraphs 1.1.1.1 and 1.1.2, OWNER shall pay CONSULTANT the actual costs of all Reimbursable Expenses incurred in connection with all Construction and Additional Services.

1.2. Times of Payments

1.2.1. CONSULTANT shall submit periodic statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. 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 make payments within 30 days in response to CONSULTANT'S statements.

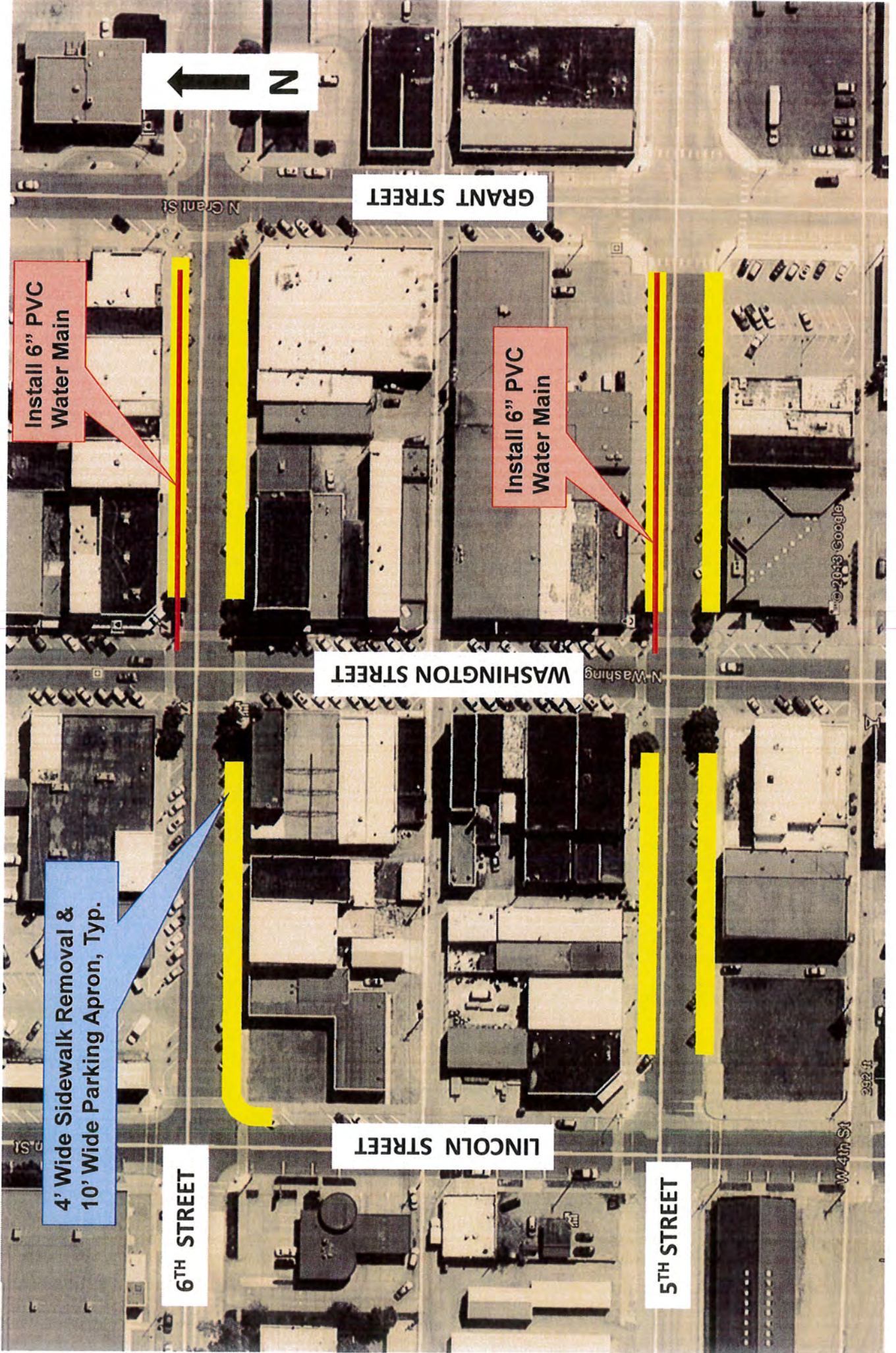
1.3. Other Provisions Concerning Payments.

1.3.1. If OWNER fails to make any payment due CONSULTANT for services and expenses within thirty days after receipt of CONSULTANT'S statement therefore, the amounts due CONSULTANT will be increased at the rate of 1% per month from said thirtieth day, and in

addition, CONSULTANT may, after giving seven days' written notice to the OWNER, suspend services under this Contract until CONSULTANT has been paid in full all amounts due for services, expenses and charges.

1.3.2. In the event of termination by OWNER upon the completion of any phase of the Basic Services, progress payments due CONSULTANT for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, CONSULTANT will be paid for services rendered during that phase on the basis of hourly rates from Section 1.1.1.2 for services rendered during that phase up to date of termination by CONSULTANT'S principals and employees engaged directly on the Project. In the event of any such termination, CONSULTANT also will be reimbursed for the charges of independent professional associates and CONSULTANTS employed by CONSULTANT to render Basic Services, and paid for all unpaid Additional Services and unpaid Reimbursable Expenses.

LEXINGTON DOWNTOWN IMPROVEMENTS - 2014



Install 6" PVC Water Main

4' Wide Sidewalk Removal & 10' Wide Parking Apron, Typ.

Install 6" PVC Water Main

6TH STREET

LINCOLN STREET

5TH STREET

WASHINGTON STREET

GRANT STREET

