

**GRANT AWARD AGREEMENT**

***Fiscal Year 2018 Class B Infrastructure Incentive Grant Program***

***Feasibility Only Grant***

**THIS AGREEMENT**, made and entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG)**, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A (hereinafter "Government"), on behalf of its Division of Water Quality, and **LEXMARK INTERNATIONAL, INC.**, 740 W. NEW CIRCLE ROAD, Lexington, Kentucky 40550 (hereinafter "Grantee" and "~~Property Owner~~").

**WITNESSETH:**

**WHEREAS**, the Grantee is a documented fee-payer of the Government's Water Quality Management Fee; and

**WHEREAS**, the Grantee has proposed a need for the funds requested to develop and implement a proposed project by submitting a valid grant application; and

**WHEREAS**, the Grantee's grant application has been reviewed and selected for funding by the Water Quality Fees Board in accordance with Sections 16-408 and 16-410 of the Government's Code of Ordinances; and

**WHEREAS**, the Government has funds available through the Stormwater Quality Projects Incentive Grant Program to assist the qualified Grantee in the development and implementation of projects that meet the goals of the program; and

**WHEREAS**, the Grantee desires to implement a specific project that meets one or more Incentive Grant program goals to improve water quality, reduce stormwater runoff, and provide public or private education related to stormwater quality; and

**WHEREAS**, any such improvements funded by the Government shall benefit the public through installed improvements and/or educational programming;

**THAT FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN EXPRESSED, GOVERNMENT AND GRANTEE AGREE AS FOLLOWS:**

- (1) The Government hereby grants the Grantee the sum of **\$40,000.00** (hereinafter "the Grant"), for use in implementing the project elements as listed in Attachment A which is incorporated herein by reference as if fully set out herein. The Grantee agrees to cost share the Grant with contributions, labor, and/or other services equal to or greater than 20% of the total project cost.
- (2) The Grantee agrees to use the Grant only for the activities set forth in Attachment A which includes analysis of stormwater control infrastructure at the following site location(s): **740 W. NEW CIRCLE ROAD, LEXINGTON, KY 40550.**
- (3) The Grantee agrees to meet all design standards specified in the Government's Engineering Manuals or as further described in Attachment A in the design of all Grant-funded improvements. This includes all associated activities including but not limited to erosion and sediment control, traffic control, utility relocations, seeding, etc. The Grantee further

agrees to design the facilities in such a way as not to preclude the potential for future water quality/quantity monitoring by LFUCG.

- (4) The Grantee agrees to comply with all applicable local, state, and federal rules, regulations, ordinances, and laws in implementation of the project.
- (5) The Grantee agrees to obtain all necessary local, state, and federal permits, encroachments, permissions, approvals etc. in a timely manner and prior to start of construction.
- (6) The Grantee agrees to perform periodic reporting as detailed in Paragraph (7) herein below, and produce a Project Final Report within thirty (30) calendar days of the completion of the project elements in digital and hard copy following a standardized format to be provided by the Government summarizing all work completed and detailing the total grant expenditures. Other deliverables include the following:
  - (a) At the end of the Feasibility Phase (if applicable), the following five deliverables, sealed by a professional licensed to perform such work in accordance with Kentucky Revised Statutes (KRS), shall be provided:
    - Feasibility report evaluating the use of the potential BMP(s) on the proposed site;
    - Conceptual design concept;
    - Detailed cost estimate for design;
    - Conceptual cost estimate for construction;
    - Letter certifying all BMPs proposed for design as viable and feasible for the specific site and application.
  - ~~(b) At the end of the Design Phase or prior to the start of the Construction Phase, the following six deliverables, sealed by a professional licensed to perform such work in accordance with Kentucky Revised Statutes (KRS), shall be provided:
    - ~~Set of all final design calculations;~~
    - ~~Set of final construction plans, including traffic control, erosion and sediment control, grading plans, etc.;~~
    - ~~Set of final specifications and bidding documents (if applicable);~~
    - ~~Final detailed engineer's construction cost estimate including quantities;~~
    - ~~All required permit submittals and approvals;~~
    - ~~Inspection, Operation, and Maintenance Plan laying out the plan for regular inspection and maintenance of each proposed facility for design performance and safety in accordance with manufacturer's specifications and the Government's Stormwater Manual.~~(N/A to Feasibility Only Grants)~~
  - ~~(c) At the end of the Construction Phase, the following five deliverables shall be provided:
    - ~~Summary of final construction costs and quantities;~~
    - ~~Copies of all federal, state, and local permits obtained for the project;~~
    - ~~Record Drawing showing all field changes, and signed and sealed by the professional of record certifying the project as shown meets all original design intent;~~
    - ~~Photo documentation of site conditions and improvements before, during, and after construction;~~
    - ~~Signed Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Stormwater Quality Projects Class B Incentive Grant.~~(N/A to Feasibility Only Grants)~~
- (7) The Grant to the Grantee shall be disbursed in the following manner:
  - (a) The Grantee shall submit at least once every three (3) months, if not specified otherwise in Attachment A, a Request for Funds to the Government's Grant Manager designated by the Director of the Division of Water Quality for the project. Each

Request for Funds shall include documentation that the Grantee has already expended the requested funds or shall be in a position to expend properly the requested funds within thirty (30) days of receipt of the funds. The Request for Funds shall include full accounting of these eligible grant-related expenses, as listed in Attachment A. Copies of invoices, purchase orders, or receipts showing vendor, date, amount, and items purchased or ordered shall be provided with the Request for Funds. For project specific personnel costs and stipends, documentation of all billed hours shall include copies of employee timesheets, hourly payroll rate, and description of work performed for hours billed.

- (b) Each Request for Funds shall be accompanied by a Project Status Report describing the progress of the project to date, including a description and schedule of all activities completed, and hardcopy or electronic copies of materials (e.g. calculations, preliminary plans, etc.) completed to date. For educational events (if applicable), copies of the class rosters or sign-in sheets documenting the number of attendees shall be provided.
  - (c) The Government's Grant Manager shall review each Request for Funds and supporting documents for compliance with the terms of this Agreement and the guidelines of the Stormwater Quality Projects Incentive Grant Program. If the Grant Manager finds the Grantee's Request for Funds is in compliance with the terms of this Agreement and the guidelines of the Stormwater Quality Projects Incentive Grant Program and that the activity progress and management program of the Grantee satisfy the terms of the grant award, he or she shall approve the Request for Funds within 15 calendar days of receipt and then forward it to the Division of Accounting for payment.
  - (d) The Government shall release payment of the final 10% of the Grant only after receipt and acceptance of the Project Final Report. The Government's Grant Manager shall review the Project Final Report and provide comments to the Grantee or, if acceptable, forward approval within 15 calendar days of receipt to the Division of Accounting for payment.
  - (e) Should the Government's Incentive Grant Program Administrator determine that the Grantee is not in compliance with the terms of this Agreement and/or the Stormwater Quality Projects Incentive Grant Program, including deficiencies in progress and management of the project, the Division of Water Quality shall notify the Grantee, the Mayor's Office, and the appropriate district Council person, and shall meet with the Grantee on matters that prevent approval of the Request for Funds. Failure to resolve any such matters to the satisfaction of the Government may lead to termination of the Agreement for cause pursuant to Paragraph (20) herein below.
- (8) The Grantee agrees to obtain written approval from the Government's Grant Manager or Program Administrator for any proposed changes to the Project Team or Project Plan as listed in Attachment A prior to implementing the changes. Failure to gain written approval prior to making changes may lead to termination of the Agreement for cause pursuant to Paragraph (20) herein below.
  - (9) The Grantee agrees to complete the project phase(s) (i.e. Feasibility) outlined herein within **15** months from the date of this Agreement. The Grantee shall obtain written approval from the Government's Grant Manager or Program Administrator for any time extensions beyond the schedule. Failure to obtain written approval prior to making changes may lead to termination of the Agreement for cause pursuant to Paragraph (20) herein below.
  - (10) This Agreement may not be modified except by written agreement of the Government and the Grantee.
  - (11) The Grantee understands that **the Grant amount shown herein in Paragraph (1) is a not-to-exceed amount**, and any additional funding needed to complete the project ele-

ments listed in Attachment A is the responsibility of the Grantee. If it becomes apparent to the Grantee or the Government that the Grantee will be unable to complete the project either in the manner or for the amount described in this Agreement, then the Grantee must immediately notify the Government's Grant Manager and Program Administrator by providing a complete and detailed written explanation of its inability to comply with the terms of the Agreement. The Grantee must further provide the Government's Grant Manager and Program Administrator with a complete and detailed written explanation of any proposed changes, and the reasons for those changes.

- (12) The Grantee asserts that it is in full compliance with all applicable provisions of the Lexington-Fayette Urban County Government's Code of Ordinances Chapter 5 – Buildings and Building Regulations, Chapter 7 – Finance and Taxation, Chapter 12 – Housing, and Chapter 16 – Sewage, Garbage, Refuse, and Weeds, or in compliance with Kentucky Department of Housing Buildings and Construction rules and requirements as is appropriate for those state institutions, parcels or buildings which are subject to state regulations and oversight as opposed to local ordinances and regulations. If the Grantee becomes out of compliance with any of these provisions, it will notify the Government's Grant Manager and Program Administrator immediately. Failure to notify the Government and resolve any such matters to the satisfaction of the Government may lead to termination of the Agreement for cause pursuant to Paragraph (20) herein below.
- (13) ~~The Grantee agrees to allow the Government access to its property to perform monitoring of the project elements for compliance with this Agreement, as provided in the "Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Stormwater Quality Projects Class B Incentive Grant" (Attachment B). (N/A to Feasibility Only Grants)~~
- (14) In any advertisement of the project funded by the Grant, whether written or oral communications, the Grantee agrees to identify the Lexington-Fayette Urban County Government as the source of the above referenced funds; the Grantee shall not specifically identify any individual or elected official as being responsible for the funds donated by the Government.
- (15) The Grantee agrees to allow the Government to publicize the Grantee's project through the Government's website and other media.
- (16) The Grantee agrees to reference the Lexington-Fayette Urban County Government's Water Quality Management Fee and the Stormwater Quality Projects Incentive Grant Program as a source of funding for the project on any permanent signage or educational brochures, presentations, websites, etc. produced using grant monies.
- (17) ~~The Grantee and Property Owner agree that all stormwater control facilities, including equipment and infrastructure, constructed and funded by a Construction Grant through the Stormwater Quality Projects Incentive Grant Program shall remain in service and maintained by the Grantee or its representatives following the Inspection, Operation, and Maintenance Plan developed for each facility referenced in (6b) above. The Property Owner further accepts and agrees to enter into the "Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Stormwater Quality Projects Class B Incentive Grant" attached hereto as Attachment B and which is incorporated herein by reference as if fully set out herein. (N/A to Feasibility Only Grants)~~
- (18) ~~The Grantee and Property Owner agree that all stormwater control facilities, including equipment and infrastructure, constructed and funded by this Grant shall remain the property of the current Property Owner, or his successors and assigns, unless otherwise specified in Attachments A and B. (N/A to Feasibility Only Grants)~~
- (19) ~~The Grantee and Property Owner understand that if any of the Grant funded facilities not owned by the Government are removed from service, the property owner of record at the time of removal shall be liable to reimburse the Government for 100% of the Remaining~~

~~Value of the facility or portion removed, based upon the depreciation schedule provided in Attachment B. (N/A to Feasibility Only Grants)~~

- (20) If, through any cause, the Grantee ~~or Property Owner~~ shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Grantee shall violate any of the covenants, agreements or stipulations of this Agreement, the Government shall provide the Grantee ~~or Property Owner~~ thirty (30) calendar days to address the deficiency or violation. If the Grantee ~~or Property Owner~~ does not, after the thirty (30) days, come into compliance with this Agreement, the Government shall thereupon have the right to terminate this Agreement by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least five (5) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, receipts and reports prepared by the Grantee shall, at the option of the Government, become its property and the Grantee shall immediately repay to the Government all monies received pursuant to this Agreement less any amount representing just and equitable compensation for the Government's share of any satisfactory work completed pursuant to the Agreement; provided, however, that for any project involving the construction of capital infrastructure, other than feasibility only projects, the Government's share of any satisfactory work completed shall not include feasibility or design costs.
- (21) The Grantee shall provide equal opportunity in employment as required by applicable federal, state, and local laws, regulations, and ordinances.
- (22) The Grantee is solely responsible for assuring that adequate and appropriate insurance or other necessary coverage is maintained during the term of this Agreement.
- (23) The Grantee's sole remedy for a breach of this Agreement by the Government shall be limited to the amount of the Grant.
- (24) The Government assumes no responsibility whatsoever in the Grantee's project activities. Grantee ~~and Property Owner~~ shall, to the extent allowed by law, defend, indemnify, and hold harmless Government from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and 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, in whole or in part, from or by Grantee's ~~or Property Owner's~~ or its contractor(s), agents, or assigns, negligent acts or misconduct, or errors or omissions, in connection with the activities carried out pursuant to this Agreement, the Grant award or the Stormwater Quality Projects Incentive Grant Program.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Lexington, Fayette County, Kentucky, as of the day and year first above written.

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT**

BY: \_\_\_\_\_

JIM GRAY, MAYOR

ATTEST:

\_\_\_\_\_  
CLERK, URBAN COUNTY COUNCIL

**Grantee Organization: LEXMARK INTERNATIONAL, INC.  
740 W. NEW CIRCLE ROAD  
LEXINGTON, KENTUCKY 40550**

BY: K. Daniel Seever  
NAME: K. Daniel Seever  
TITLE: Dir of Dev ops

The foregoing Agreement was subscribed, sworn to and acknowledged before me by K. Daniel Seever, as the duly authorized representative for and on behalf of Lexmark, on this the 2 day of March, 2018.

My commission expires: January 19, 2022

Rob. Ann [Signature]  
NOTARY PUBLIC  
Notary ID 592742

**ATTACHMENT A**  
**to the GRANT AWARD AGREEMENT between**  
**Lexington-Fayette Urban County Government (LFUCG)**  
**and Lexmark International, Inc.**

**GRANT PROGRAM** **FY2018 Stormwater Quality Projects Incentive Grant Program**  
**Class B Infrastructure Project [FEASIBILITY ONLY Grant]**

- Funded through the LFUCG Water Quality Management Fee
- Administered by the LFUCG Division of Water Quality in the Department of Environmental Quality

**PROJECT TEAM AND CONTACT INFORMATION**

**Grantee Organization** Lexmark International, Inc.  
740 W. New Circle Road  
Lexington, KY 40550  
KY Organization #: 0291231



**Primary Project Contact:** Teresa Wharton & Paul Ackerman  
859-232-3885, 859-232-3213 (phone)  
whartont@lexmark.com, paul.ackerman@lexmark.com (email)

**Secondary Project Contact:** John Gagel  
859-232-6462 (phone)  
jgagel@lexmark.com

**Project Manager:** Eric Dawalt, P.E.  
EcoGro/Ridgewater  
859-806-1089 (phone)  
edawaltw@gmail.com (email)

**Project Site Location(s)** 740 W. New Circle Road  
Lexington, KY 40550

**Property Owner(s):** Lexmark International, Inc.

**Design Consulting Firm:** Stantec  
3052 Beaumont Center Circle  
Lexington, KY 40513  
859-422-3000 (phone)  
Bret Lavey, P.E., Design Manager (Engineer of Record)  
bret.lavey@stantec.com (email)

**Project Partners:** WLEX-TV, Bluegrass Greensource, Cane Run Watershed Council  
UK Coldstream Research Campus (Jim Conner, Facilities Operation  
Director)

**PROJECT PLAN ELEMENTS**

The goals of Lexmark International Feasibility Study are to analyze Best Management Practice (BMP) alternatives, and develop costs at the locations shown in Figures 1 – Lexmark and Cane Run Watershed Site Map, as well as Preliminary Design of an In-Stream Floatable Trash Collection System (ISFTCS) to install on Cane Run on Lexmark property. The project also has a stormwater education component.

**Project Elements include:**

- 1) *EVALUATE THE APPLICABILITY OF THE FOLLOWING GENERAL STORMWATER BMPS AT VARIOUS LOCATIONS:***

- a) Feasibility Study for an ISFTCS “OSCAR”: for quality control. To provide an in-depth evaluation of an ISFTCS BMP on Lexmark property. Specifically, the study will evaluate the feasibility of:
  - i) Location: The best location(s) of the proposed ISFTCS based on land ownership, trash pollutant loading, other future projects (e.g., sanitary sewer upgrades), permitting issues, etc.
  - ii) Maintenance Plan: Which organization(s) will maintain the ISFTCS and remove the trash, as well as where will the trash be taken (landfill, recycled, etc.)
- b) Preliminary Design of the ISFTCS: Develop design of the ISFTCS and determine costs. A proof of concept laboratory quarter scale version of a system (OSCAR) has already been built and tested in the Hydraulics Laboratory at the UK UKBAE Department. NOTE: Design may be modified and/or improved based on the results of the location and maintenance plan determined by the Feasibility Study.
- c) Stormwater Education: Organization to provide stormwater education in the form of stream cleanups, a research project, and presentations. Stormwater education partners include UK’s Coldstream Research Campus, BAE, as well as WLEX-TV, Bluegrass GreenSource and others.

## 2) ***FINAL FEASIBILITY REPORT***

- a) The results of the Feasibility Study will be presented in a final report that will include:
  - i. A list of locations for ISFTCS that are determined to be effective and suitable for installation at the properties listed on Page 1 under “Project Site Locations and Property Owner(s). They will be prioritized for implementation according to input from project collaborators, at a minimum.
  - ii. A Plan of the Lexmark International, Inc. ISFTCS that will show the proposed location, the area draining to the BMP that will be treated, and its discharge location.
  - iii. Design and construction cost estimates.
  - iv. Special design and construction conditions such as necessary permit, etc.; and land acquisition costs.
  - v. The estimated pollutant removal effectiveness of the BMP.
  - vi. Letter certifying all BMPs proposed for design are viable and feasible for the specific site and application.
- b) Additional Deliverables (From Application):
  - i. Proposed maintenance plan
  - ii. Preliminary design of the ISFTCS BMP
  - iii. Results of the stream trash cleanup study

## 3) ***EDUCATIONAL OPPORTUNITIES***

The education components of the grant should at a minimum include the following:

- a) Stream Clean-ups: Collaboration with UK Coldstream Research Campus to perform stream cleanups.
- b) Research Project: Collaboration with UK BAE on a research project on the amount of trash collected during the stream cleanups and the understanding of trash by the participants.



- c) **Presentation:** Organization to provide at least one presentation relating to the needs and results of the project by Lexmark, UK, WLEX-TV Bluegrass Green Source, and others.

**REPORTING REQUIREMENTS**

In addition to the reporting requirements outlined in the Grant Award Agreement, the following special items are noted for this project:

- 1) Permissions - The Organization shall provide written authorizations for private property access (including LFUCG Parks) to the LFUCG Grant Manager prior to work on any area for which they are required.
- 2) Grantor shall be provided a minimum of two hard copies of the Final Feasibility Report along with a digital copy.
- 3) All attachments to Request for Funds & Project Status Reports shall reference the associated line Table 2 – Eligible Expenses.

**ADDITIONAL GRANT STIPULATIONS**

Note the following additional stipulations related to this project:

- 1) The project shall not proceed with field work until written approval to proceed is obtained from the Grant Administrator or Director or Water Quality, because of the potential for conflict with potential future LFUCG Projects.

**EQUIPMENT**

Any equipment purchased with the Grant shall remain the property of the Organization.

**PERMANENT CAPITAL INFRASTRUCTURE**

Does not apply to this grant. Attachment B is not required for this Agreement.

**GRANT PERIOD & PROJECT SCHEDULE**

The grant period starts on the date of execution by the Mayor and extends for the time period as listed in the Grant Award Agreement. Any time extensions must be approved in writing by the LFUCG Grant Manager. The project schedule shown in Table 1 is preliminary. Proposed changes to the project which alter this schedule significantly shall be discussed with the LFUCG Grant Manager prior to implementation.

**TABLE 1 - PROJECT SCHEDULE**

<b>Activity</b>	<b>Anticipated Date(s)</b>
Notice to Proceed	February 2018
Kickoff meeting with LFUCG	February 2018
Stakeholder Meetings	March – May 2018
Stream Cleanups at Lexmark and UK Coldstream Research Campus	Spring – Summer 2018
Perform UK BAE Research project	Spring – Summer 2018
Identify ISFTCS Location Opportunities and develop Maintenance Plan.	April – August 2018
Prepare ISFTCS Preliminary Design and Final Design and Construction Estimates	September - November 2018
Prepare Final Feasibility Study Report	December 2018
Final Payment (10% retainer)	After acceptance of Final Report

**PROJECT BUDGET – GRANT ELIGIBLE EXPENSES**

Table 2 lists the Eligible Expenses for this project. Only properly invoiced items shall be reimbursed with grant monies or counted toward the Organization’s cost share.

Any work performed on this project prior to grant award by Urban County Council and Notice to Proceed from the LFUCG Grant Administrator is not an eligible expense and shall not be reimbursed or counted toward the cost share with the following exception:

- None

The Grant budget is broken into the following components:

Feasibility/Preliminary Design/Education: \$ 40,000.00	Total Grant Amount
<u>\$ 10,000.00</u>	Proposed Cost Share to be provided
<b>\$ 50,000.00</b>	<b>Total Project Budget</b>

Additional detail is provided in Table 2.

**TABLE 2 - PROJECT ELIGIBLE EXPENSES**

	Type of Expense	Participants	Item	Unit Price	Quantity	Funded by Organization	Funded by Grant	Total Expense	
<b>1 Feasibility Study/Preliminary Design</b>									
2	Feasibility Study/Preliminary Design	Consultant	Feasibility Study/Preliminary Design *Partial...see line 3 (Labor by Lexmark personnel)	\$ 40,000.00	LS	1.0	\$ -	\$ 40,000.00	
3	Feasibility Study/Preliminary Design	Organization	Feasibility Study/Preliminary Design *Partial...see line 2 (Labor by Lexmark personnel)	\$ 3,000.00	LS	1.0	\$ 3,000.00	\$ -	
<b>4 Stream Cleanups and Student Research Project</b>									
5	Stream Cleanups and Student Research Project.	UK Coldstream Research Campus	Equipment/Supplies (for Research Project & Stream Cleanup Expenses)	\$ 5,000.00	LS	1.0	\$ 5,000.00	\$ -	
6	Stream Cleanups and Student Research Project.	Organization	Personnel	\$ 2,000.00	LS	1.0	\$ 2,000.00	\$ -	
7	<b>TOTAL PROJECT BUDGET:</b>						<b>\$ 10,000.00</b>	<b>\$ 40,000.00</b>	<b>\$ 50,000.00</b>
8							<b>ORGANIZATION</b>	<b>GRANT</b>	
9	*COST SHARE % = 20.00%						<b>SHARE</b>	<b>SHARE</b>	
10							20.0%	80.0%	

**FIGURE 1 – LEXMARK AND CANE RUN WATERSHED SITE MAP (FROM APPLICATION)**

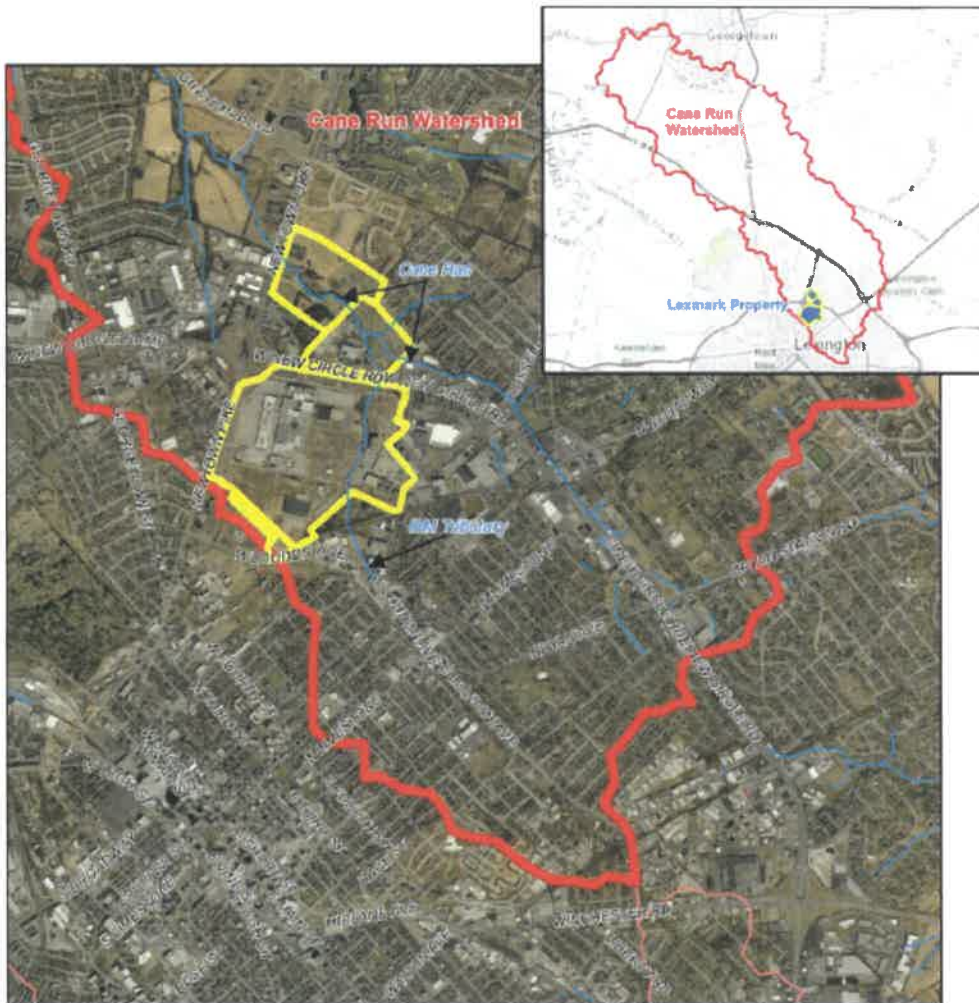


Figure 1. Lexmark and Cane Run Watershed Site Map

FIGURE 2 – PROJECT SITE LEXMARK IN-STREAM FLOATABLE TRASH COLLECTION SYSTEM (FROM APPLICATION)



