

## ENGINEERING SERVICES AGREEMENT

**THIS IS AN AGREEMENT** made as of September 12, 2019, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A (“**OWNER**”) and **Strand Associates, Inc.** with offices located at **Lexington, Kentucky** (“**CONSULTANT**”). **OWNER** intends to proceed with the Engineering Services for **RFP 21-2019 Requests for Qualifications for Professional Engineering Services** as described in the attached **EXHIBIT A, Scope of Engineering Services and Related Matters RFP #21-2019** (the “**PROJECT**”). The **CONSULTANT** shall perform professional engineering services and deliverables as described in **EXHIBIT A** which include customary master planning, civil, geotechnical, structural, mechanical, water quality and sanitary engineering services as related to providing the deliverables specific to this agreement—that will assist the **OWNER** in successfully implementing the **PROJECT** and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the “**CONSENT DECREE**”). The services are hereinafter referred to as the **PROJECT**. **The primary goal of the PROJECT is to provide the OWNER with the technical support necessary to successfully meet the Supplemental Environmental Project (SEP) obligation (Appendix K-2) to fund flood improvement projects by deadlines of the CONSENT DECREE.** **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 master planning, civil, geotechnical, structural, mechanical, water quality and sanitary engineering services incidental thereto.

#### **1.2. Incorporated Documents**

The following documents are incorporated by reference as part of this Agreement:

1. The **CONSENT DECREE**, as may be amended, including all appendices.
2. **EXHIBIT A** – Scope of Engineering Services and Related Matters RFP #21-2019 (Including Appendices and Addendums).
3. **EXHIBIT B** – Certificate of Insurance and Evidence of Insurability.
4. **EXHIBIT C** – Proposal of Engineering Services and Related Matters (the **CONSULTANT'S** response to RFP #21-2019).
5. ~~**EXHIBIT D** – Further Description of Basic Engineering Services and Related Matters.~~

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

### **1.3 Project Phase**

A complete description of the duties and responsibilities of the **CONSULTANT** are as indicated in **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # 21-2019, **EXHIBIT C** Proposal of Engineering Services and Related Matters, and **Exhibit D** Further Description of Basic Engineering Services and Related Matters. After written authorization to proceed from the **OWNER**, **CONSULTANT** shall:

- 1.3.1.** Notify the **OWNER** in writing of its authorized representative who shall act as Project Engineer and liaison representative between the **CONSULTANT** and the **OWNER**. **OWNER** has the right to approve the Project Engineer, or any change thereto, which approval shall not be unreasonably withheld.
- 1.3.2.** The **CONSULTANT** must perform all duties necessary to fully complete the deliverables as further described in attached EXHIBIT A, Scope of Engineering Services and Related Matters RFP # 21-2019, attached **EXHIBIT C**, Proposal of Engineering Services and Related Matters, and attached **EXHIBIT D** Further Description of Basic Engineering Services and Related Matters **unless otherwise agreed to in writing by the parties**.
- 1.3.3.** The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4.** The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5.** After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6.** Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

## **SECTION 2 - EXTRA WORK BY CONSULTANT**

- 2.1.** The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall

be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted 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 provide written approval or disapproval thereof 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 agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). 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 **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, 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 in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current 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.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
  - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.

- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Task Order 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 **OWNER** of any of its other rights in the Agreement.
- 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT**/Final Task Order within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Task Order or otherwise adjusting the scope of the services or work.
- 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “**DISPUTES**” of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, including but not limited to those assessed pursuant to the **CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

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

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

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

**OWNER** shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

**5.1.1.a** Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.

**5.1.1.b** Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

**5.1.1.c** Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER**'s designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

#### **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 pursuant to Section 6.5 (**Disputes**).

**5.2. Times of Payment**

**5.2.1** CONSULTANT shall submit to OWNER detailed 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 for which it has not already been paid in 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 for which it has not already been paid, and the amount to be paid shall be determined by the OWNER.

**SECTION 6 - GENERAL CONSIDERATIONS**

**6.1. Termination**

**6.1.1.** CONSULTANT may only terminate this Agreement due to OWNER'S material breach of the terms hereof which breach causes CONSULTANT to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to OWNER.

**6.1.2.** The OWNER may terminate this Agreement for cause upon seven (7) business days written advance notice to the CONSULTANT. The OWNER reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the CONSULTANT.

**6.2. Ownership and Reuse of Documents**

All documents, including raw data, reports, 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 itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

### **6.4. Successors and Assigns**

**6.4.1.** **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

**6.4.2.** In no event shall the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.

**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 hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision 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**

**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. **CONSULTANT** shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to terminate this Agreement

## **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 without prior approval of the **OWNER** unless otherwise required by law

## **6.8. Access to Records**

The **CONSULTANT** and its 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 Agreement period and for three (3) years from the date of final payment under the Agreement 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 Agreements.

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

### **6.9.1. 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 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.

## 6.9.2. 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** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "**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 the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "**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.
- f. **OWNER** is a political subdivision of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that **OWNER** is unable to provide indemnity or otherwise save, hold harmless, or defend the **CONSULTANT** in any manner.



**6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT**

In the event that CONSULTANT'S delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the OWNER pursuant to the CONSENT DECREE, or the OWNER otherwise suffers damage as a result of such delay or nonperformance, CONSULTANT shall be solely liable to OWNER for any and all such damages, including any costs and attorney's fees.

**6.9.4. 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 this Agreement.

**6.9.5. INSURANCE REQUIREMENTS**

**6.9.5.1. Required Insurance Coverage**

CONSULTANT shall procure and maintain for the duration of this Agreement 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. The cost of such insurance shall be included in any proposal:

<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. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.

- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- c. The General Liability Policy shall include Business Interruption coverage.
- d. The General Liability Policy shall include a Pollution Liability endorsement and/or Environmental Casualty coverage 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.

#### **6.9.5.2. 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.

#### **6.9.5.3. 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.

#### **6.9.6. SAFETY AND LOSS CONTROL**

**CONSULTANT** shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and **OWNER**.

### **6.9.7. DEFINITION OF DEFAULT**

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

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

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

- 7.1.** The **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2.** The **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

## **SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES**

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

**8.1.1.** Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (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.** This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or



IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION AT LEXINGTON

Eastern District of Kentucky  
**FILED**

JAN 03 2011

AT LEXINGTON  
LESLIE G WHITMER  
CLERK U S DISTRICT COURT

UNITED STATES OF AMERICA )  
and THE COMMONWEALTH OF )  
KENTUCKY, )

Plaintiffs, )

v. )

LEXINGTON-FAYETTE URBAN )  
COUNTY GOVERNMENT, )

Defendant. )

Civil Action No. 5:06-cv-386

CONSENT DECREE

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APPENDICES

- A. Recurring Locations of SSOs and Unpermitted Discharges
- B. Unpermitted Bypasses
- C. Exceedances at LFUCG's WWTPs
- D. Storm Water Quality Management Program, with its Appendices
- E. Performance Standards
- F. Cross-connections Relevant to Paragraph 15.A.
- G. Capital Projects
- H. List of Pumping Stations Relevant to Paragraph 15.C.
- I. U.S. EPA Region 4 CMOM Methodology
- J. Federal SEPs
- K. Commonwealth Environmental Projects

F. WHEREAS, LFUCG's Sanitary Sewer System is (except for certain illicit cross-connections) separate from the LFUCG's storm water collection system. The Sanitary Sewer System transports wastewater to two publicly owned wastewater treatment plants, West Hickman Creek WWTP, and Town Branch WWTP, which are operated by LFUCG pursuant to KPDES Permit Numbers KY0021504 and KY0021491. In addition, LFUCG has been operating the Blue Sky WWTP (KPDES Permit Number KY0027286) under receivership obligations. The Blue Sky WWTP is a poorly-designed and inadequate facility which has experienced permit exceedances.

G. WHEREAS, LFUCG has reported to EPA and EPPC that it has identified 111 recurring locations, set forth in Appendix A, at which SSOs (including illicit cross-connections) and Unpermitted Discharges have been documented. In addition, LFUCG has reported to EPA and EPPC that a number of Unpermitted Bypasses, in which the Town Branch WWTP has discharged wastewater without required secondary treatment, have occurred as set forth in Appendix B. LFUCG has also reported to EPA and EPPC that a number of Exceedances have occurred at LFUCG's WWTPs as set forth on Appendix C. The United States and the Commonwealth contend that these SSOs, Unpermitted Discharges, Unpermitted Bypasses, and Exceedances are violations of the CWA, the Commonwealth's regulations implementing the CWA, and the relevant KPDES permits;

H. WHEREAS, this Consent Decree requires LFUCG to develop, submit, finalize and implement plans for the continued improvement of its wastewater collection and transmission system and the WWTPs, to eliminate Recurring SSOs, Unpermitted Discharges, Unpermitted Bypasses, and Exceedances;

O. WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**I. JURISDICTION AND VENUE**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); and over the Parties. Venue lies in this District pursuant to Sections 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); and pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1395(a); because LFUCG is, and, at the time the action was commenced, was, located in, residing in, and doing business in this judicial district, and because the violations that are the subject of this action, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree or any action to enforce this Decree, LFUCG consents to the Court's jurisdiction over this Decree or such action and over LFUCG, and consents to venue in this judicial district.

2. Notice of commencement of this action has been given to the Commonwealth of Kentucky pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

**II. APPLICABILITY**

3. The obligations of this Consent Decree apply to and are binding upon the United States, the Commonwealth, and LFUCG and any successor or other entities or persons otherwise bound by law.



existence of this Consent Decree and provide a copy of the Consent Decree prior to such sale or transfer. LFUCG shall send a copy of such written notification to the United States and EPPC pursuant to Section XVII of this Decree (Notices) by certified mail, return receipt requested, at least forty-five (45) days (or a shorter period if the United States and LFUCG so agree in writing) before such sale or transfer. Any attempt to transfer ownership or operation of any facility governed by this Decree without complying with this Paragraph constitutes a violation of this Decree.

### **III. OBJECTIVES**

7. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the CWA, as stated in Section 101 of the CWA, 33 U.S.C. § 1251, and to eliminate SSOs, Unpermitted Discharges, Unpermitted Bypasses and Exceedances, to eliminate and prevent CWA permit violations, and, specifically with respect to LFUCG's Storm Water Quality Management Program ("SWQMP"), ensure implementation of a SWQMP that reduces the discharge of pollutants to the maximum extent practicable, and require implementation of measures to ensure compliance with LFUCG's MS4 Permit.

### **IV. DEFINITIONS**

8. Unless otherwise provided in this Decree, terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated pursuant to that Act, shall have the meanings assigned to them in the CWA, or such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Blue Sky WWTP" shall mean the wastewater treatment plant located at Blue Sky Parkway, Lexington, Kentucky, currently operated by LFUCG, which discharges to the

“Effective Date” is defined in Section XVIII of this Decree.

“Eligible SEP Costs” include the costs of planning and implementing a Supplemental Environmental Project (SEP), but do not include overhead, administrative expenses, legal fees, or oversight by LFUCG staff of contractors.

“EPA” shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

“EPPC” shall mean the Environmental and Public Protection Cabinet of the Commonwealth of Kentucky.

“Exceedance” shall mean any discharge from one of LFUCG’s WWTPs which contains any pollutant at a level which exceeds an effluent limit in the KPDES Permit for such WWTP, and which is not otherwise authorized under such KPDES Permit.

“Excessive Inflow/Infiltration” or “Excessive I/I” shall mean the Inflow/Infiltration (“I/I”) that LFUCG determines can be cost-effectively eliminated as determined by a cost-effectiveness analysis that compares the costs of eliminating the I/I with the total costs for transportation and treatment of the I/I (including capital costs of increasing transmission and treatment capacity, and resulting operating costs).

“Force Main” shall mean all sanitary sewer lines that operate under pressure due to pumping of sanitary wastewater at a pump station except for those sanitary sewer lines that serve a single structure or building.

“Gravity Sewer Line” shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity. Gravity sewers are typically not intended to flow full under normal operating

to accurately represent flow attributable to a service area in each of the Sewersheds; all Gravity Sewer Lines that convey wastewater from one Pumping Station service area to another pumping station service area; and all Gravity Sewer Lines that substantially contribute, or that LFUCG knows will likely substantially contribute, to Recurring SSOs.

“MS4” shall mean LFUCG’s municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26 (b)(8).

“MS4 Permit” shall mean KPDES Permit No. KYS000002 (“MS4 Permit”), with an effective date of January 1, 2000, and any subsequently issued permit, which authorizes discharges from LFUCG’s MS4 in accordance with conditions specified therein.

“NPDES” shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

“One Hour Peak Flow” as that term is used in Paragraph 16.B for the CMOM Capacity Assurance Program only, shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2-year 24-hour storm event.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral.

“Parties” shall mean the parties to this Consent Decree: the United States, the Commonwealth, and LFUCG.

“Peak Flow” as that term is used in Subparagraphs 15.D- 15.G, shall be determined based upon sound engineering judgment and commonly accepted design practice.

“Private Lateral” shall mean that portion of a sanitary sewer conveyance pipe,

operationally controlled by LFUCG are not SSOs. SSOs include any cross-connections between LFUCG's Sewer System and its MS4 which allow wastewater to pass from the Sanitary Sewer System to the MS4, but does not include exfiltration that does not reach waters of the United States, or land surface or structures.

"Sanitary Sewer System" shall mean the WCTS owned or operated by LFUCG designed to collect and convey municipal sewage (domestic, commercial and industrial) to a WWTP. The Sanitary Sewer System does not include LFUCG's MS4.

"Satisfactory Completion" shall mean that LFUCG shall timely complete the required work on supplemental environmental projects ("SEPs") in accordance with the SEP descriptions and specifications set forth in Appendix J and subsequently approved statements of work or work plans for the SEPs.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Sewershed" shall mean a section of LFUCG's WCTS that is a distinct drainage or wastewater collection area and designated as such by LFUCG. For purposes of this Consent Decree, the Sewersheds have been grouped as follows: Group One consists of West Hickman, East Hickman, and Wolf Run Sewersheds; Group Two consists of Cane Run and Town Branch Sewersheds; and Group Three consists of North Elkhorn and South Elkhorn Sewersheds.

"Storm Water Quality Management Program" or "SWQMP" shall mean LFUCG's proposed program to manage municipal storm water quality as described in Appendix D to this Consent Decree, which may be modified from time to time pursuant to LFUCG's MS4 Permit as referenced herein.

at 645 West Hickman Plant Road/Ash Grove Pike, Nicholasville, Jessamine County, Kentucky, owned and operated by LFUCG, which discharges to West Hickman Creek from outfall 001 and pursuant to KPDES Permit No. KY0021504.

**V. CIVIL PENALTY**

9. Within thirty (30) days after the Effective Date of this Consent Decree, LFUCG shall pay a civil penalty to the United States of \$425,000, plus interest accruing from the date on which this Decree is entered with the Court, at the rate specified in 28 U.S.C. § 1961, as of the Effective Date. Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to LFUCG following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Kentucky.

10. At the time of payment required by this Section, LFUCG shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and to EPPC in accordance with Section XVII of this Decree (Notices). The notices shall reference Civil Action Number 5:06-cv-386.

**VI. COMPLIANCE MEASURES RELATING TO STORM SEWER SYSTEM**

11. **SWQMP.** LFUCG shall implement the SWQMP attached as Appendix D to this Consent Decree, or as subsequently amended pursuant to the KPDES permitting process. The SWQMP will be proposed by LFUCG as a component program of its KPDES Permit for its MS4. The SWQMP contains lists of "Measurable Goals," which describe a variety of activities to be implemented by LFUCG pursuant to its KPDES Permit in order to reduce pollution levels in its municipal storm water. Selected Measurable Goals from the SWQMP are listed on

requirement. Maximum penalties that may be assessed under such ordinances for each such violation shall be at least \$10,000 per day of violation.

B. Confer authority on LFUCG to issue stop-work orders compelling the cessation of construction activity at any Active Construction Site as defined in the SWQMP that is in violation of any LFUCG ordinance relating to storm water management at Active Construction Sites. LFUCG shall be authorized by such ordinances to issue such stop-work orders without first appearing before a judge.

C. Confer authority on LFUCG to issue enforceable orders compelling the elimination of any illicit connections to its MS4 without first appearing before a judge.

D. Confer authority on LFUCG to require Industrial Facilities, and High Risk Commercial Facilities as defined in the SWQMP, to develop and implement storm water pollution prevention plans ("SWPPPs"), and confer authority on LFUCG to require selected Industrial Facilities and High-Risk Commercial Facilities with the potential to discharge pollutants in substantial amounts to the MS4 to develop and implement a stormwater monitoring program that includes providing the monitoring results to LFUCG.

E. Confer authority on LFUCG to require owners of privately-owned retention and detention basins and other privately-owned storm water control structures to perform necessary maintenance and repairs on such structures.

13. Funding. Beginning with its first fiscal year after the Effective Date of this Consent Decree, LFUCG shall budget funds for each operating year in an amount reasonably expected to be sufficient to implement all measures in the SWQMP, comply with the MS4 Permit, and comply with all the requirements of this Section VI of the Consent Decree

identify all measures needed to ensure that LFUCG's Sanitary Sewer System complies with the requirements of the Clean Water Act, the regulations promulgated thereunder, the Kentucky pollution control laws, the regulations promulgated under such laws, and National Pollutant Discharge Elimination System Permits Nos. KY0021504 and KY0021491 and then shall implement all such measures in a timely manner, with the objective of eliminating all cross-connections and Recurring SSOs from the Sanitary Sewer System and Unpermitted Bypasses at the LFUCG's WWTPs. LFUCG shall complete the requirements identified below per the identified schedules based on three (3) Sewershed Groups with Group One consisting of West Hickman, East Hickman, and Wolf Run Sewersheds, Group Two consisting of Cane Run and Town Branch Sewersheds, and Group Three consisting of North Elkhorn and South Elkhorn Sewersheds. This Paragraph 15 shall not address the collection and transmission system serving the Blue Sky WWTP.

**A. Capital Improvement Projects and Short Term SSO Measures**

(i) LFUCG shall eliminate the cross-connections identified in Appendix F within thirty (30) days of the lodging of the Consent Decree.

(ii) LFUCG shall implement and complete the following capital projects described further on Appendix G by the dates specified below:

a. North Elkhorn Force Main Diversion Project to be completed within twenty-four (24) months of lodging date of the Consent Decree.

b. South Elkhorn Pump Station and Force Main Upgrade to be completed within thirty (30) months of the lodging date of the Consent Decree.

c. Deep Springs Pump Station Upgrade to be completed within thirty (30) months of the

System; d) the physical investigation of the causes of I/I and Recurring SSOs; and e) the documentation of the condition of the portions of the Sanitary Sewer System causing or contributing to Recurring SSOs.

(ii) Monitoring. The SSA Work Plan developed by LFUCG shall include a schedule for the installation of sewer flow, WWTP flow, groundwater level, and rainfall monitoring equipment; completion of monitoring activities; and completion of necessary investigative activities. In performing the SSA, LFUCG shall utilize existing sewer flow, WWTP flow, groundwater level, and rainfall monitoring and characterization data only to the extent that it is appropriate, both in terms of quality and location. The SSA Work Plan shall a) identify existing data to be utilized, b) identify additional data to be collected, and c) describe in detail how together the existing and proposed additional data will satisfy the objectives of the SSA.

(iii) Schedule. The SSA shall be completed in accordance with the following schedule: a) for Group One sewersheds, thirty-six (36) months after lodging of the Decree; b) for Group Two sewersheds, forty-two (42) months after lodging of the Decree; and c) for Group Three sewersheds, forty-eight (48) months after lodging of the Decree. LFUCG shall implement the plan in accordance with the schedule upon submission of such plan and schedule to EPA/EPPC. LFUCG may request an extension of these deadlines from EPA and EPPC where drought or other weather conditions prevent certain activities required under the SSA from being completed, such as excess rain preventing smoke testing from being completed. LFUCG shall provide written notice to EPA and EPPC of its justification for such extension of time.

(iv) Guidance Documents. LFUCG shall perform the SSA in accordance with



that LFUCG will be collecting in accordance with this Paragraph;

- b. Quality Control/Quality Assurance: A description of the quality assurance and quality control program LFUCG will follow to ensure the accuracy and reliability of data collected in accordance with this Paragraph;
- c. Data Review: A review of existing data concerning Recurring SSOs, sewage flows, WWTP and Sanitary Sewer System attributes (e.g., pipe diameters, pipe segment lengths, diversion structure characteristics, catchment characteristics, invert elevations, pipe interior roughness coefficients, etc.), and rainfall and groundwater levels; and an evaluation of the accuracy, completeness and adequacy of that data for purposes of supporting the characterization of the Sanitary Sewer System's condition and sources of extraneous wet weather flow. The data review will further identify the additional data needed to allow the SSA to satisfy the objectives stated herein;
- d. Rainfall and Flow Monitoring: As part of the SSA, LFUCG shall carry out additional dry and wet weather rainfall flow monitoring as needed to satisfy the requirements of this Paragraph. Where the review of existing data under Paragraph 15.B.(vi)c above, is found to be adequate to satisfy the requirements of this Consent Decree, LFUCG may use such data to complete the SSA in lieu of the collection of new and additional data. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and Infiltration rates. Wet weather monitoring shall be carried out following events of sufficient duration and intensity to cause significant I/I in the system to allow the collection

investigative activities shall include as appropriate:

- a. Further flow monitoring to isolate sources of I/I. Such flow monitoring will be carried out as specified above in this Paragraph;
- b. Smoke testing;
- c. Visual inspections of pipes and manholes;
- d. Dye testing;
- e. Night flow isolation;
- f. CCTV inspection; and
- g. Building inspections.

(viii) These further investigative activities shall be sufficient to allow detailed characterizations of all significant sewer defects in sewer sub-basins with significant I/I and Recurring SSOs, and to support the development of the Capacity Assessment Report in Paragraph 15.F. below, and the identification of remedial measures necessary to satisfy the objectives of the Capacity Assessment Report. In conducting the field investigative activities, LFUCG shall use sound engineering practice and conduct activities consistent with the guidance provided in the appropriate sections of a) *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; b) *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; c) *the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"*.

C. Pumping Station Design, Capacity, and Equipment Condition Adequacy Evaluation

Within one (1) year of Consent Decree lodging, LFUCG shall carry out an evaluation of the design capacity, current effective capacity, equipment condition and operational redundancy

- b. Provide detailed information regarding the results of the evaluation of each Pumping Station;
- c. Provide detailed information about its backup power and emergency pumping capability at each of its Pumping Stations;
- d. Provide information regarding lightning strike protection equipment at each Pumping Station;
- e. Provide detailed descriptions of its history of Pumping Station failures, including power-loss-related and lightning strike-related SSOs during the past five (5) years preceding the lodging date of the Consent Decree;

**D. Capacity Assessment**

(i) Within six (6) months of Consent Decree lodging, LFUCG shall provide a Capacity Assessment Work Plan for EPA/EPPC review and comment that describes how LFUCG will assess the capacity of the Sanitary Sewer System and WWTPs. The Capacity Assessment shall include all pumping stations, all Major Gravity Lines, all Force Mains and syphons and their respective related appurtenances, all Recurring SSO points, and any other portions of the Sanitary Sewer System that must be assessed so as to allow a technically-sound evaluation of the causes of Recurring SSOs or wet-weather Unpermitted Bypasses at the WWTPs. The Capacity Assessment Work Plan shall also include a schedule for completion no later than three (3) months before the dates provided for completion of the SSA in Paragraph 15. B.(iii), LFUCG shall provide the results of the Capacity Assessment in the SSA Report referenced in Sub-Section F below.

(ii) The Capacity Assessment shall specifically identify, at a minimum, the

Sanitary Sewer System, in accordance with sound engineering practice.

LFUCG may model its Sanitary Sewer System in different levels of detail, as necessary to identify the causes of all known Recurring SSOs, and to assess proposed remedial measures with the goal to eliminate those Recurring SSOs. LFUCG's Model shall include as a minimum: (i) all Major Gravity Lines; (ii) Pumping Stations; (iii) locations with Recurring SSOs; and (iv) Force Mains.

- b. LFUCG shall configure the Model using adequate, sufficiently accurate and current physical data of the Sanitary Sewer System, such as invert and ground elevations, pipe diameters, slopes, pipe run lengths, Manning roughness factors, manhole sizes and configurations, and pumping station performance factors. In particular, LFUCG shall field verify the physical data identified in the SSA Work Plan to allow calibration of the Model.
- c. LFUCG shall calibrate the Model using appropriate rainfall data, actual hydrographs and flow data. LFUCG shall use at least two (2) separate data sets for such calibration. As part of the calibration process, LFUCG shall either use existing sensitivity analyses for the selected model, or carry out its own sensitivity analyses, such that calibration effectiveness is maximized.

- (ii) Within one hundred twenty (120) days of Consent Decree lodging,

LFUCG shall develop and submit to EPA/EPPC for review and comment, the Hydraulic Model Report which shall include:

SSA, Pumping Station Design and Equipment Condition Adequacy Evaluation, the Capacity Assessment, and the Model, to EPA/EPPC for review and comment.

(ii) The SSA Report shall include a thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the aforementioned studies, and shall in general: a) identify Sewersheds with Excessive I/I, such that these conditions are causing and/or contributing to Recurring SSOs and wet-weather Unpermitted Bypasses at the WWTPs; b) identify and quantify sources of I/I within the Sewersheds determined to have Excessive I/I rates; c) identify and quantify Recurring SSOs; d) identify portions of the Sanitary Sewer System in which physical degradation of the Sanitary Sewer System is causing or contributing to Recurring SSOs; and e) identify cross-connections and unauthorized connections.

- (iii) The SSA Report shall also include the following information:
- a. Determination of existing flows for each Sewershed and sub-basin within the Sanitary Sewer System;
  - b. Average and peak daily dry weather flow;
  - c. Average dry weather Infiltration rate (in gpd/inch diameter-mile);
  - d. Peak Flow and peaking factors (the ratio of measured peak flow to average dry weather flow);
  - e. Identification of portions of the Sanitary Sewer System within the Sewershed experiencing levels of I/I that cause or contribute to Recurring SSOs and wet-weather Unpermitted Bypasses at the WWTPs;
  - f. Identification of specific sources of I/I to the Sanitary Sewer System, if

including a discussion of the reasons for such deviation;

- l. Identification of all portions of the Sanitary Sewer System with insufficient capacity to convey Peak Flows as identified by the Model. In the case of the Sanitary Sewer System, insufficient capacity is the inability of the sewer, Pumping Station or other structure to convey Peak Flows without experiencing surcharge sufficient to cause Recurring SSOs under either predicted Peak Flows or predicted average conditions or both. The SSA Report shall also identify any insufficient capacity in the WWTPs. In the case of a WWTP, insufficient capacity is the inability to provide full secondary treatment and disinfection, without an Unpermitted Bypass, to all flow reaching the plant, and to discharge those flows in full compliance with the applicable NPDES permit.
- m. The SSA Report shall describe future projected flows.
- n. The SSA Report shall provide information on the predicted (e.g. Manning equation) and actual Peak Flow capacity of all Major Gravity Lines (by segment), all Force Mains, syphons, Pumping Stations, and WWTPs;
- o. Summaries, by sub-basin, of the number and footage of sewer segments surcharged, and the number of structures at overflow, under each condition investigated;
- p. Mapping of each sub-basin, for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a Recurring SSO might be expected to occur;

weather Unpermitted Bypasses at the WWTPs. At a minimum, Peak Flows shall include the conditions considered as part of the SSA (see Sub-Sections B and D above). If insufficient capacity to accommodate projected Peak Flows exists in any portion of the system, including at the LFUCG WWTPs, LFUCG shall identify and propose measures to provide adequate capacity.

(iii) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify all WWTP upgrades and repair measures necessary to achieve WWTP compliance with all NPDES permit limitations for LFUCG's WWTPs and requirements and to eliminate wet weather Unpermitted Bypasses.

(iv) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures that will address those capacity limitations not expected to be addressed by Excessive I/I removal. Anticipated I/I removal rates used in the development of the Sanitary Sewer System and WWTP Remedial Measures Plan shall reflect current industry practice and local experience. Specific remedial measures to address capacity limitations may also include increases in Pumping Station and Sanitary Sewer System capacity, construction of storage or equalization basin facilities, or increases in WWTP capacity.

(v) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify all measures necessary to eliminate all cross-connections, and Recurring SSOs caused by physical degradation of sewers, inadequate Pumping Station capacities, or inadequate Pumping Station reliability.

(vi) The Sanitary Sewer System and WWTP Remedial Measures Plan shall,

WWTP Remedial Measures Plan.

16. CMOM (Capacity, Management, Operation and Maintenance) Programs

Self-Assessment. LFUCG shall submit to EPA and EPPC within six (6) months of the Effective Date of this Consent Decree a CMOM Programs Self-Assessment of LFUCG's Sanitary Sewer System in accordance with U.S. EPA Region 4 methodology as set forth in the CD ROM disk attached hereto as Appendix I, to ensure that LFUCG has CMOM Programs in place that are effective at eliminating and preventing SSOs. This Self-Assessment shall include an evaluation of, and where appropriate, recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written, defined purpose(s); written, defined goal(s); written documentation with specific details; implementation by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements shall include schedules for implementation. However, LFUCG shall develop and implement the CMOM programs no later than two (2) years after the date of EPA/EPPC approval of the CMOM Self-Assessment, unless otherwise specified in the CMOM Specific Program Development subparagraphs below. Particular emphasis shall be placed, and recommendations for necessary improvement shall be made, regarding the following programs, as described in the attached CD ROM: Pump Station Preventative Maintenance Program, Pump Station Performance and Adequacy Program, and Pump Station Rehabilitation Program. EPA and EPPC jointly will act on the Self-Assessment in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). LFUCG shall submit an annual report of the status of implementation of its CMOM Programs as provided in Paragraph 29.B below. If LFUCG acquires ownership of the wastewater collection and



following elements:

- (a) Maintenance of a log of Building Backups separately from other SSOs;
- (b) A process a customer may follow to dispute a determination by LFUCG that a wastewater backup into a building is caused by a blockage or other malfunction of a Private Lateral, and therefore is not a Building Backup;
- (c) Repair and mitigation procedures that include measures necessary to disinfect and/or remove items potentially contaminated by the Building Backup.

B. CMOM Specific Program Development - System Capacity Assurance Program.

(i) The Program. Within two (2) years of the Effective Date, LFUCG shall submit for review, comment and approval, a Capacity Assurance Program ("CAP") to EPA and EPPC. EPA and EPPC shall jointly act on the CAP in accordance with Section X of this Consent Decree. No later than thirty (30) days after approval, LFUCG shall commence implementation of the CAP, subject to the schedules set forth in the approved CAP. The CAP shall identify each Sewershed or part of a Sewershed with insufficient capacity under either One Hour Peak Flow, or average conditions, or both, consistent with the capacity provisions of this Section. The CAP shall also analyze all portions of the WCTS that hydraulically impact known SSOs and all portions of the WWTPs that may contribute to violations of the NPDES Permits. The CAP shall assess One Hour Peak Flow capacity of all major system components for existing and proposed flows. The CAP shall enable LFUCG to authorize new sewer service connections, or increases in flow from existing sewer service connections except as otherwise provided

- connections and the completion of: (1) specific projects that add or restore capacity to the WCTS or WWTPs (“Capacity Enhancing Projects”); (2) specific projects that reduce One Hour Peak Flow through removal of I/I (“I/I Projects”); and (3) permanent removal of sewer connections (“Removal of Connections”);
- (d) An informational management system (IMS) capable of tracking the accumulation of banked credits, earned pursuant to Paragraph 16.B.(iii) below, from completion of Capacity Enhancing Projects, I/I Projects, and Removal of Connections, the capacity-limited portion of the Sewershed in which those credits were earned, and the expenditure of such credits on future increases in flow from new and existing sewer service connections in that capacity limited portion of the Sewershed; and
- (e) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), and water use (gallons per capita per day); projected flow impact calculation techniques; and metering of related existing

connections (including those which have not begun to discharge into the Sanitary Sewer System), the WWTP will not be in "noncompliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. LFUCG's certification of Adequate Treatment Capacity shall confirm that the new or increased flow to the WWTP will not result in Unpermitted Bypasses or diversions prohibited by the KPDES Permits due to lack of treatment capacity.

- (b) Transmission Capacity Certifications. LFUCG's certification of "Adequate Transmission Capacity" shall confirm that each Pumping Station through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit the existing One-Hour Peak Flow passing through the Pumping Station, plus the addition to the existing One-Hour Peak Flow predicted to occur from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System.
- (c) Collection Capacity Certifications. LFUCG's certification of "Adequate Collection Capacity" shall confirm that each

which case the identified level of surcharge will be used.

Notwithstanding the foregoing, no criteria contained in the Capacity Assurance Plan shall be construed as setting standards for the ultimate design or rehabilitation of LFUCG's WCTS.

- (e) Minor Sewer Connections. For minor sewer service connections, LFUCG may elect to perform a Quarterly capacity analysis for each Sewershed or part of a Sewershed by certifying that the Sewershed has adequate capacity, as defined in Paragraph 16B.(ii)(a) through (c) above, to carry existing One Hour Peak Flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent quarter. For any Sewershed or part of a Sewershed that can be so certified LFUCG may approve these projected minor sewer service connections without performing individual certifications for each connection. "Minor Sewer Connection" shall mean connections which do not exceed 2,500 gpd.

- (iii) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. LFUCG may authorize a new sewer service connection, or additional flow from an existing sewer service

- (e) Where LFUCG has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage and/or specific Removal of Connections to satisfy the requirements of subparagraph (d) above, the estimated added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by the following factor: 1.5:1 in West Hickman and 1:1 for all other Sewersheds.
- (f) Where LFUCG has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage and/or specific removal of connections, to satisfy the requirements of subparagraph (d) above, the estimated reduction in One Hour Peak Flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by the following factors: (a) a factor of 4:1 for I/I Projects and other Capacity Enhancing Projects in West Hickman Sewershed related to a Recurring SSO; (b) a factor of 3:1 for I/I Projects and other Capacity Enhancing Projects related to a Recurring SSO in other Sewersheds; and (c) a factor of 2:1 for I/I Projects and other Capacity Enhancing Projects not related to a Recurring SSO;

Enhancement Projects, I/I Projects, and Removal of Connections, completed after the Effective Date of this Consent Decree, to the affected sewer line segment, Pumping Station, wastewater treatment system or Recurring SSO may be accumulated in the form of credits in accordance with the factors set forth in subparagraphs (e) and (f) above, which may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pumping Station, wastewater treatment system or Recurring SSO in the capacity-limited portion of the Sewershed.

- (iv) Essential Services. Notwithstanding the provisions of Paragraph 16.B.(ii) above, LFUCG may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as set forth in Paragraph 16.B(ii)(a)-(c) above for health care facilities, public safety facilities, public schools, or other facilities as agreed upon in writing by EPA and EPPC; and in those cases where a pollution or sanitary nuisance condition exists, as determined by Fayette County Health

or additions to flow from an existing connection created after the entry of the Consent Decree that result from the elimination of illicit connections or discharges, excluding those connections considered minor connections, LFUCG shall make a subtraction from the balance in the credit bank described in Paragraph 16.B.(iii) above and modify the list described in Paragraph 16.B.(viii) below.

- (vi) Reconnections Following Termination as a Result of LFUCG's Private Lateral Program. Notwithstanding the provisions of Paragraph 16.B.(ii) and (iii) above, in the event of a temporary suspension or interruption of a customer's service as a result of LFUCG's private lateral program, any service that is resumed from a newly replaced or repaired Private Lateral shall not be deemed to be a new service connection or an addition to flow from an existing connection.
- (vii) Certifications. All certifications pursuant to this Paragraph 16.B. shall be made by a professional engineer registered in the Commonwealth of Kentucky and shall be approved by a responsible party of LFUCG as defined by 401 KAR 5:060 Section 9(4) and 40 C.F.R. 122.22(b). LFUCG shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by EPA and EPPC. EPA and EPPC may

comply with the regulations and any requirements of EPPC. Plans for sanitary sewer line extensions shall be submitted to EPPC and reviewed by EPPC in accordance with 401 KAR 5:005. With each request submitted for a sanitary line extension after implementation of the CAP, LFUCG shall submit to EPPC the analyses performed pursuant to Paragraph 16.B of the Consent Decree demonstrating that capacity exists for the proposed extension.

C. CMOM Specific Program Development - Fats, Oils, and Grease Control Program ("FOG Program"). LFUCG shall submit to EPA and EPPC within twelve (12) months of the Effective Date of this Consent Decree the FOG Program, including a schedule for implementation which shall provide for implementation within eighteen (18) months of EPA/EPPC approval. EPA and EPPC jointly will act on the FOG Program in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). The Program shall include:

- (i) legal authority to control the discharge of grease into the Sanitary Sewer System, including the ability to implement a permit program;
- (ii) specification of accepted devices to control the discharge of grease into the Sanitary Sewer System;
- (iii) establishment of standards for the design and construction of grease control devices including standards for capacity and accessibility, site map, design documents and as-built drawings;



Maintenance Program. LFUCG shall submit to EPA and EPPC within twelve (12) months of the Effective Date of this Consent Decree a Gravity Line Preventative Maintenance Program, including a schedule of implementation which shall provide for implementation within eighteen (18) months of EPA/EPPC approval. EPA and EPPC jointly will act on the Gravity Line Preventative Maintenance Program in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). This Program shall include:

(i) Routine Hydraulic Cleaning Program. LFUCG shall have in place protocols for implementing routine hydraulic cleaning component of the preventative maintenance program for gravity lines. The program will include provisions for needs determination, establishing priorities and scheduling, number of crews and personnel (including, where appropriate, contract crews), hydraulic cleaning equipment to be used, standard hydraulic cleaning maintenance procedures, standard forms, records and performance measures and an information management system.

(ii) Routine Mechanical Cleaning Program. LFUCG shall have in place protocols for implementing routine mechanical cleaning component of the preventative maintenance program for gravity lines. The program will include provisions for needs determination, establishing priorities and scheduling, number of crews and personnel (including, where appropriate, contract crews), mechanical cleaning equipment to be used, standard mechanical cleaning maintenance procedures, standard forms, records and performance measures and an information management system.

(iii) Root Control Program. LFUCG shall have in place protocols, methods, and approaches for implementing a root control component of the preventative

the Pumping Station and provision of a pump with the capability to handle that station's Peak Flows. This includes providing "quick-connect" couplers for a pump discharge.

(c) The ability of maintenance personnel to take corrective action within the critical response time calculated for each Pumping Station.

(d) In evaluating the adequacy of its current situation, LFUCG shall consider its history of equipment failure-related, power-loss-related and lightning strike-related SSOs during the past five (5) years preceding the lodging date of the Consent Decree.

(ii) LFUCG shall include in the Pump Station Operation Plan for Power Outages, detailed information regarding the criteria specified above for each of its Pumping Stations. In particular, the Pump Station Operation Plan for Power Outages shall:

- (a) Describe each station;
- (b) Provide detailed information regarding the results of the evaluation of each Pumping Station;
- (c) Provide detailed information about its backup power, emergency pumping capability, and emergency procedures at each of its Pumping Stations;
- (d) Provide information regarding lightning strike protection equipment at each Pumping Station;
- (e) Provide detailed descriptions of its history of power-loss-related and

20. With regard to the SEPs, LFUCG certifies the truth and accuracy of each of the following:

A. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and represents a fair estimate of the cost necessary to implement the SEPs and that LFUCG in good faith estimates that the cost to implement the Coldstream Park Stream Corridor Restoration and Preservation SEP, exclusive of administrative fees and legal fees, is \$1,000,000, and that the cost to implement the Green Infrastructure SEP, exclusive of administrative fees and legal fees, is \$230,000;

B. That, as of the date of executing this Decree, LFUCG is not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is LFUCG required to perform or develop any of the SEPs by agreement or grant or as injunctive relief awarded in any other action in any forum;

C. That the SEPs are not projects that LFUCG planned or intended to fund, construct, perform, or implement other than in settlement of the claims resolved in this Decree;

D. That LFUCG has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action; and

E. That LFUCG will not receive any reimbursement for any portion of the SEPs from any other person.

21. SEP Completion Reports

A. Within ninety (90) days after the completion of each SEP, LFUCG shall submit a SEP Completion Report to the United States in accordance with Section XVII of this Consent Decree (Notices). The SEP Completion Reports shall contain the following

official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 31 below.

26. Any written public statement made by LFUCG that publicizes any SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action under the Clean Water Act, United States et al. v. Lexington-Fayette Urban County Government, brought on behalf of the U.S. Environmental Protection Agency." Any oral statement made by LFUCG publicizing any SEP under this Decree in a public gathering shall acknowledge that the project was undertaken in connection with the settlement of this CWA case. "Publicize" means the dissemination of information intended to attract public notice, interest, or notoriety.

#### **IX. COMMONWEALTH ENVIRONMENTAL PROJECTS**

27. In further consideration of the settlement with the Commonwealth of the action resolved by this Consent Decree, LFUCG shall timely perform Commonwealth environmental projects ("Commonwealth Environmental Projects") as set forth in Appendix K. The total expenditure for the Commonwealth Environmental Projects shall not be less than \$1,300,000 for the Blue Sky Package Treatment Plant Elimination project (Appendix K-1) and \$200,000 for the Flooding Evaluation project (Appendix K-2). If LFUCG fails to perform these Commonwealth Environmental Projects by the dates specified in Appendix K, LFUCG shall pay to the Commonwealth as a stipulated penalty the difference between its documented Commonwealth Environmental Project expenditures and \$1,500,000. Such payment shall be due and payable on the latest date for completion of the Commonwealth Environmental Projects identified in Appendix K. Alternatively, LFUCG may propose, and the EPPC shall consider, additional

minimum:

(i) A description of all projects and activities conducted during the most recently completed calendar quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format;

(ii) The date, locations, estimated volume, and cause (if known) of all SSOs for the most recently completed quarter; a cumulative accounting of the estimated reduction in volume and in number of occurrences of SSOs and Unpermitted Bypasses;

(iii) The anticipated projects and activities that will be performed in the next quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format; and

(iv) If LFUCG violates any requirement of this Consent Decree or has reason to believe that it is likely to violate any requirement of this Consent Decree in the future, LFUCG shall notify the United States and EPPC of such violation and its likely duration, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, LFUCG shall include a statement to that effect in the report. LFUCG shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days after the quarterly report.

(v) Any additional information that demonstrates that LFUCG is implementing the remedial measures required in this Consent Decree.

B. Annual Reports. LFUCG shall submit to EPA and EPPC an annual report

possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

32. Nothing in this Section X relieves LFUCG of the obligation to provide the requisite notice for purposes of Section XII (Force Majeure) of this Consent Decree.

33. The reporting requirements of this Consent Decree do not relieve LFUCG of any reporting obligations required by the Clean Water Act or its implementing regulations or by any other federal, state, or local law, regulation, permit, or other requirement.

34. Approval of Deliverables. After review of any modification of the SWQMP, CMOM Programs Self-Assessment, plan, workplan, statement of work, report, or other item that is required to be submitted pursuant to this Consent Decree for EPA/EPPC approval, EPA and EPPC may jointly, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If EPA/EPPC fails to approve, or otherwise act on a submittal within sixty (60) days of receipt of the submittal, then any subsequent milestone or completion date that is dependent upon such action by EPA/EPPC shall be extended by the equivalent number of days beyond the sixty (60) day review period for the submittal that is used by EPA/EPPC for the approval or other action.

35. If the submission is approved pursuant to Paragraph 34, subpart (a), LFUCG shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 34, subparts (b) or (c),

with the requirements of this Consent Decree, and one or both may assess stipulated penalties pursuant to this Consent Decree, subject only to the rights of LFUCG under the dispute resolution provisions of this Consent Decree.

39. Obligation to Implement Re-Submittal. In the event that EPA/EPPC approves, approves upon conditions, or modifies any submittal pursuant to this Section, LFUCG shall proceed to take any action required to implement the submittal as approved or modified by EPA/EPPC, subject only to the rights of LFUCG under the dispute resolution provisions of this Consent Decree.

40. Submittals are Enforceable. All submittals required to be approved, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon approval, approval upon conditions, or modification by EPA/EPPC, and after conclusion of any Dispute Resolution period. Any portion of a submittal that is not specifically disputed by LFUCG shall be enforceable during any Dispute Resolution period, provided that implementation of the non-disputed portions of the submittal is not dependent upon implementation of the disputed portion.

41. Revisions to Submittals. The Parties recognize the LFUCG may need or want to revise certain submittals during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XX of this Consent Decree (Modification). LFUCG must obtain EPA and EPPC's prior written approval of any revision to the substance of any submittal initially required to be approved. LFUCG may revise the form of any submittal without consulting EPA/EPPC, but shall provide a copy of any revised submittal to EPA and EPPC within seven (7) days after making such revision.

\$1,000 per day

31st day and beyond

Stipulated penalties shall not be assessed where the failure is caused by an order from a court that stays, vacates or otherwise invalidates such an ordinance.

B. For each failure to meet a Performance Standard listed on Appendix E to this Consent Decree, LFUCG may be assessed stipulated penalties as follows:

(i) For each Performance Standard that requires activities to be implemented or completed by a specific date, \$5,000 for failure to meet the deadline, and \$2,000 for each 30-day period thereafter that the activities remain not implemented or completed.

(ii) For each Performance Standard that requires a certain number of inspections or activities to be completed each calendar month, \$2,000 for each month in which LFUCG fails to comply. For any such Performance Standard that is not complied with more than three (3) times, the stipulated penalty shall be \$6,000 for each additional month that LFUCG fails to comply.

(iii) For each Performance Standard that requires a certain number or amount of activities to be implemented or completed on an annual or bi-annual basis, \$10,000 for failure to complete the activities within the relevant period, and \$5,000 for each 30-day period thereafter that the activities remain not completed.

C. For each violation of any other requirement of Section VI of this Consent Decree (Compliance Requirements Relating to Storm Sewer System), stipulated penalties of \$500 per day per violation may be assessed against LFUCG.

D. For failure to timely submit any of the submittals required in Section VII of this Consent Decree (Compliance Requirements Relating to Sanitary Sewer System),



per SSO of less than 5,000 gallons, \$2,000 per SSO of 5,000 gallons to 100,000 gallons, \$5,000 per SSO of more than 100,000 gallons.

- (ii) For any SSO that occurs other than those identified in subparagraph 44.E(i), \$2,000 per SSO occurring more than two (2) years after the approval of the CMOM Self-Assessment.
- (iii) For wet weather Unpermitted Bypasses at the WWTPs, \$3,000 per bypass occurring after the deadline established for eliminating such bypasses under the Sanitary Sewer System and WWTP Remedial Measures Plan.
- (iv) For the addition of a sanitary hook-up to the Sanitary Sewer System when there is a condition of inadequate collection, transmission, or treatment capacity exists, in violation of Paragraph 16.B(ii), \$1,000 per hook-up, unless LFUCG has relied upon a certification made in good faith under Paragraph 16.B(ii) and has, upon notice of the existence of inadequate capacity as defined in Paragraph 16.B(ii), promptly taken steps to rectify the inadequacy.
- (v) For any other violation of Section VII of this Decree, \$500 per day per violation.

45. Submission, Reporting and Notice Requirements. The following Stipulated Penalties shall accrue per violation per day for failure to timely submit a complete report

certification. If, the first time LFUCG certifies that a SEP has been fully implemented, the SEP has not been Satisfactorily Completed and LFUCG's performance of the SEP did not substantially comply with LFUCG's obligations under this Decree, then the stipulated penalty shall accrue as of the date of the first certification.

B. If LFUCG abandons work on any SEP, LFUCG shall pay:

For the Coldstream SEP: \$1,250,000

For the Green Infrastructure SEP: \$287,500

less any amounts of Eligible SEP Costs that EPA determines were expended in a manner consistent with the Consent Decree. The penalty under this Subparagraph shall accrue as of the date specified for completing the Project or the date performance ceases, whichever is earlier.

C. If LFUCG fails to comply with the schedules in Section VIII of this Consent Decree (Supplemental Environmental Projects) or in Appendix J to this Consent Decree (including the preparation of the SEP Completion Reports), for each failure to meet an applicable milestone LFUCG may be assessed Stipulated Penalties of \$3,000 per month. Such penalties shall accrue from the date LFUCG was required to meet each such milestone, until compliance with the milestone is achieved.

D. LFUCG shall issue a retraction in the same or similar medium as the original statement, and may be assessed a stipulated penalty of \$5,000 for each violation if it fails to comply with the requirements under Paragraph 26 regarding public statements related to the SEP.

47. Subject to the provisions of Subparagraphs A, B, and C of the immediately preceding Paragraph, Stipulated Penalties under this Section shall begin to accrue on the day

the United States within sixty (60) days of the effective date of the agreement or the receipt of EPA's decision or order;

B. If the dispute is appealed to the Court, LFUCG shall pay all accrued penalties determined by the Court to be owing within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph C, below;

C. If the United States or LFUCG appeals the District Court's decision, LFUCG shall pay all accrued penalties determined to be owing within sixty (60) days of receiving the final appellate court decision.

50. LFUCG shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section V (Civil Penalty), Paragraph 9, above, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-08858 and Civil Action Number 5:06-cv-386, delivered to the office of the United States Attorney, Eastern District of Kentucky, at 260 West Vine Street Lexington, KY 40507. If payment is due to EPPC under this Section, payment shall be made by certified check made payable to the Kentucky State Treasurer, referencing Civil Action Number 5:06-cv-386, and shall be sent to Director, Division of Enforcement, Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, KY 40601.

51. At the time of payments of stipulated penalties required by this Section, LFUCG shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and EPPC in accordance with Section XVII of this Decree (Notices). The notices shall reference Civil Action Number 5:06-cv-386 and DOJ Number 90-5-1-1-08858.

52. If LFUCG fails to pay Stipulated Penalties according to the terms of this Consent

knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay, its cause(s), LFUCG's past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and LFUCG's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph may be grounds for the United States to deny any claim of force majeure.

56. If the United States, after consultation with EPPC, agrees that a force majeure event has occurred, the United States will agree to extend the time for LFUCG to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to a material extension of time, the appropriate modification shall be made pursuant to Section XX of this Consent Decree (Modification).

57. If the United States, after consultation with EPPC, does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by LFUCG, the United States' position shall be binding, unless LFUCG invokes Dispute Resolution under Section XIII of this Consent Decree. In any such dispute, LFUCG bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that LFUCG gave the notice required by Paragraph 55, that the force majeure event caused any delay that LFUCG claims was attributable to that event, and that LFUCG exercised best efforts to prevent or minimize any delay caused by the event.

opinion supporting LFUCG's position and any supporting documentation relied upon by LFUCG.

61. The United States, after consultation with EPPC, shall serve its Statement of Position within forty-five (45) days of receipt of LFUCG's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) days of receiving the United States' Statement of Position, LFUCG requests to confer with the United States about the United States' Statement of Position, the United States will confer (in person and/or by telephone) with LFUCG, but such a conference shall be concluded no later than twenty-one (21) days after the issuance of the United States' Statement of Position. The United States will reaffirm its Statement of Position or, if the United States decides to amend its Statement of Position, the United States will amend its Statement of Position, within fourteen (14) days after the conclusion of the conference. If the United States fails to reaffirm or amend its Statement of Position, the Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on LFUCG unless LFUCG files a motion for judicial review of the dispute in accordance with the following Paragraph.

62. LFUCG may seek judicial review of the dispute by filing with the Court and serving on the United States and EPPC in accordance with Section XVII of this Consent Decree (Notices) a motion requesting judicial resolution of the dispute. If no conference was requested pursuant to the previous Paragraph, LFUCG's motion must be filed within fourteen (14) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If a

**XIV. INFORMATION COLLECTION AND RETENTION**

66. The United States, the Commonwealth, and their representatives, including attorneys, contractors, and consultants, shall have the right to enter LFUCG facilities at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Decree;
- b. verify any data or information submitted to the United States or the Commonwealth in accordance with the terms of this Consent Decree;
- c. obtain samples;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess LFUCG's compliance with this Consent Decree.

67. Until five (5) years after the termination of this Consent Decree, LFUCG shall retain, and shall instruct its respective contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that demonstrate or document LFUCG's compliance or noncompliance with the obligations of this Consent Decree. Drafts of final documents or plans, and non-substantive correspondence and emails do not need to be retained. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the Commonwealth may request copies of any documents or records required to be maintained under this Paragraph.

68. Before destroying any documents or records subject to the requirements of the

and the fish kill that resulted due to a bypass at East Hickman pump station on or about January 7, 2008.

71. The United States and the Commonwealth reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein, and LFUCG reserves all defenses thereto. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the Clean Water Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph. The United States and the Commonwealth further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, LFUCG, whether related to the violations addressed in this Consent Decree or otherwise.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations, and LFUCG's compliance with the Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. LFUCG is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The United States and the Commonwealth do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that LFUCG's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act or with any other provisions of federal, state, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of LFUCG or of the United

To EPA only, as opposed to the United States:

Chief  
Water Programs Enforcement Branch  
Environmental Protection Agency Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

& Office of Water Legal Support  
Office of Regional Counsel  
Environmental Protection Agency Region 4  
61 Forsyth St., SW  
Atlanta, GA 30303

For verbal notification:  
Chief, Water Programs Enforcement  
Branch 404/562-9938

To EPPC:

Director of the Division of Enforcement  
Department for Environmental Protection  
300 Fair Oaks Lane  
Frankfort, KY 40601

For verbal notification:  
Director of the Division of Enforcement  
502/564-2150

To LFUCG:

Commissioner of Law  
Lexington-Fayette Urban County  
Government  
200 East Main Street  
Lexington, KY 40507  
(859) 258-3500

Commissioner of Dept. for Env. Quality  
Lexington-Fayette Urban County  
Government  
200 East Main Street  
Lexington, Kentucky 40507  
(859) 425-2800

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address.

78. Notices submitted pursuant to this Section shall be deemed submitted upon the date they are postmarked and mailed or provided to a reputable overnight delivery service, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in



demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

#### **XXI. TERMINATION**

83. The Consent Decree is subject to termination, in whole or in part, after LFUCG certifies that it has met all requirement of this Consent Decree, including, without limitation, (a) completion of all SEPs and Commonwealth Environmental Projects, (b) payment of all penalties and stipulated penalties due, (c) submission and approval of all plans required in Sections VI and VII or in any amendment to this Consent Decree, and (d) completion of all work and implementation of all the requirements in the plans required in Sections VI and VII of this Consent Decree or in any amendment to this Consent Decree. EPA/EPPC's determination that the Consent Decree should be terminated shall be based on a consideration of whether all of the requirements listed above have occurred. Notwithstanding the above, Section VI (Compliance Measures Relating to Storm Sewer System) of this Consent Decree is subject to termination after LFUCG certifies that it has met all requirements of Section VI of the Consent Decree for a period of five (5) years following the Effective Date of this Consent Decree.

84. LFUCG may serve upon the United States and EPPC a request that they jointly make a determination that this Consent Decree be terminated in whole or in part. Any such request shall be in writing and shall include a certification that the requirements listed in the above Paragraph have been met. If the United States and EPPC jointly agree that LFUCG has met all of the requirements listed above, the Parties shall submit for the Court's approval, a joint stipulation terminating the Consent Decree, or appropriate portions thereof. If the United States and EPPC determine not to seek termination of the Consent Decree in whole or in part because

challenge any provision of the Decree, unless the United States has notified LFUCG in writing that it no longer supports entry of the Decree.

89. LFUCG agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

**XXIX. INTEGRATION**

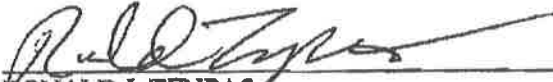
90. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

**XXV. FINAL JUDGMENT**

91. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Commonwealth,

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA:**



**RONALD J. TENPAS**  
Assistant Attorney General  
U.S. Department of Justice  
Environment and Natural Resources Division



**VALERIE K. MANN**  
Attorney of Record for United States  
Trial Attorney  
U.S. Department of Justice  
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Telephone: 202-616-8756  
Facsimile: 202-514-2583

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

**FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):**



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MARY J. WILKES  
Regional Counsel  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street  
Atlanta, GA 30303

Of Counsel:  
PAUL SCHWARTZ  
Assistant Regional Counsel  
United States Environmental Protection Agency  
Region 4  
61 Forsyth Street  
Atlanta, GA 30303  
Telephone: (404) 562-9576  
Facsimile: (404) 562-9486

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*,  
No. 5:06-cv-386 (E.D. Ky):

**FOR PLAINTIFF COMMONWEALTH OF KENTUCKY,  
ENVIRONMENTAL & PUBLIC PROTECTION CABINET:**



ROBERT D. VANCE

Secretary

Environmental & Public Protection Cabinet  
Commonwealth of Kentucky



BRENDA GAIL LOWE

SHARON R. VRIESENKA

Office of Legal Services

5<sup>TH</sup> Floor, Capital Plaza Tower

Frankfort, KY 40601

Telephone: (502) 564-5576

Facsimile: (502) 564-6131

# EXHIBIT A

## Scope of Services RFP #21-2019 Request for Qualifications (RFQ) and Hourly Rates for Professional Engineering Services

### 1. Background

The Lexington-Fayette Urban County Government (LFUCG) Division of Water Quality (DWQ) is in the process of preparing Stormwater Improvement Projects in accordance with its Consent Decree with the Environmental Protection Agency (EPA) and the Kentucky Department of Environmental Protection (KyDEP) that will identify system improvements necessary to eliminate recurring street and structure flooding. The planned improvements must be implemented (constructed) by January 2021.

In addition, DWQ and other divisions of LFUCG undertake additional stormwater management projects as needed.

LFUCG is accepting Statements of Qualifications (SOQs) from interested consulting engineering firms for the design and assistance with bidding and construction administration for stormwater improvements along with other stormwater infrastructure projects LFUCG believes is necessary to meet its' compliance requirements and to address the community's sewer and stormwater needs. This RFQ shall serve as the initial step in solicitations for specific projects. Prequalification of firms will be followed by solicitations of design fee quotes for specific projects from select firms. Approval of consultants' prequalification does not constitute a guarantee of being awarded projects at any point in the future; **there will be no guarantee of work for any firm or firms**. Selected consultants will be pre-qualified for stormwater management projects, and the maximum numbers of firms that will be prequalified in this process is as follows:

Stormwater management projects that involve storm sewers, open channels, and/or stormwater management facilities – maximum number of firms-6

**Engineering services for other projects such as stormwater quality capital improvements shall be solicited in a separate procurement.**

The Urban County Government reserves the right to re-solicit qualifications after each prequalified firm has had the opportunity to submit fees for at least one project. However, if a firm that submitted prequalification in response to this solicitation experiences a change in staffing or expertise that substantially changes their qualifications to perform work under this program, they must communicate the change in qualifications to LFUCG in written addenda.

### 2. Contract Type and Contracting Process

Each prequalified firm shall be awarded with an indefinite service delivery contract (Attachment 3, Engineering Services Agreement). Projects assigned to prequalified consultants shall be completed on a negotiated fee basis, authorized in approved Task Orders. Only the approval of project-specific Task Orders shall constitute a notice to proceed on specific projects.

The projects that are Consent Decree related will use the Task Order form found in Attachment 4. The projects that are not Consent Decree related will use the Task Order form found in Attachment 5.

consultant. LFUCG, at its sole discretion, reserves the right to disqualify consultants from future Task Orders based on performance.

### 3. General Project Description

The Consultant shall perform professional services as hereinafter stated which include customary civil, geotechnical, mechanical, structural, electrical, stormwater and sanitary engineering services as related to the design, bidding, and construction administration of DWQ projects. The following list of professional engineering services may or may not be included in each Task Order. All work shall be conducted in accordance with the LFUCG Sanitary Sewer and Pumping Station Manual and the current LFUCG Stormwater Manual

- Review of DWQ supplied information related to the specific project.
  - Prepare and maintain a specific project schedule that ensures compliance with required project completion deadlines.
  - Field Surveying.
  - Deed research / easement preparation as required. Easements may be in the form of metes and bounds, centerline, or platted as directed by DWQ. DWQ will determine compensation amounts for easements and transmit the amounts to the CONSULTANT to prepare Memoranda of Understanding and purchase offer letters. If easement acquisition is included in the scope of services of the design consultant, easement negotiations with property owners will be the responsibility of the consultant. All other easement work shall be on a unit price or hourly rate not-to-exceed basis, and not part of a separate lump sum fee.
  - Geotechnical investigations as necessary to support design services, as well as testing and certifications during construction.
  - Detailed design for new installations, replacement projects, or site specific specification of rehabilitation requirements and methods.
  - Preparation of all permit applications (Corps of Engineers (COE), Division of Water (DOW), Department of Transportation (KDOT), Lexington Fayette Urban County Government (LFUCG), railroad, other) and responding to permit grantor's requests for additional information until permit(s) are obtained. Fees for any permits shall be included in each proposal.
  - Preparation of Storm Water Pollution Prevention Plans (SWPPPs) and/or Erosion and Sediment Control Plans as required.
  - Preparation of Contract Documents (Plans and Specifications) in a suitable format for bidding and consistent with all DWQ/LFUCG standards. (NOTE: DWQ will provide each consultant standard front end and technical specifications for their use. However, the consultant shall be responsible for reviewing the documents and incorporating project-specific elements as necessary for each project.).
  - Prepare Engineer's pre-bid Opinion of Project Costs.
    - Design meetings: kick-off, progress as identified in the project scope of services, final review.
- Services during Bidding including but not limited to the following may or may not be included in an approved Task Order:
- Conduct pre-bid conference

- Provide an organizational chart identifying project manager, project engineers, surveyors, geotechnical subconsultant (as necessary), Disadvantaged Business Enterprise (DBE) Firm / Minority Business Enterprise Firm (MBE), and Veteran Owned Business Enterprise (VBE), and others as required. The identified team members must have measurable experience and contributions associated with the projects identified in Item 5 below. The organizational chart should clearly indicate the services to be provided by all sub-consultant firms. Include locations and one-page resumes of key project team individuals that will be providing substantial contributions to work products. This section shall also include a Risk Management Plan for substitute staffing in the event that key staff leaves the project team prior to completion of a Task Order.
4. List of Clients for Which Similar Work has Been Performed (one page maximum)
    - Provide client name, contact person, contact phone number and email address, and identify by name similar projects completed for each client.
  5. List of Similar Design Services Projects (two pages maximum)
    - Provide the project name, date, services provided, and a project description detailing the scope of the project and project construction cost. List only those projects where a key member of the project team provided a substantive contribution to the project completion. .
  6. Local Office (one page maximum)
    - Statement of presence of local office(s) for all firms comprising a Project Team, when the local office was established, local office staffing (number in each local office), and local office utilization (estimated percent of potential project services to be performed by the local offices). "Local office" shall be defined as being located in counties served by the Bluegrass Area Development District (see *BGADD.org* for a complete list). The attached form (Attachment 1) shall be used for this information.
  7. Disadvantaged Business Enterprise (DBE) Involvement (one page maximum)
    - Provide a statement regarding the commitment to meeting the goals of LFUCG's DBE program (see below).
  8. Statement of Hourly Rates (one page maximum)
    - Provide a statement of hourly rates for all personnel expected to work on the project(s), including project manager, project engineers, engineering/CAD technicians, clerical and two-man survey party. Provide a statement of expected reimbursable expenses.

**5. Disadvantaged Business Enterprise (DBE) Notice**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITIES AND DBE CONTRACT PARTICIPATION**

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of work conducted in this program be subcontracted to DBEs and three percent (3%) of the total value of the work conducted be subcontracted to Veteran Owned Business Enterprises (VBE). The goals for the utilization of certified DBEs/VBE's as subcontractors are recommended goals. Consultants who fail to meet such goals will be expected to provide written explanation to the EEO Officer and the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goals, and the extent to which they are successful in accomplishing the recommended goals will be a consideration in the procurement process. For



<b>Prime Consultant</b>	<b>Location (City, State)</b>	<b>Date Office Established</b>	<b>Total Number of Employees</b>	<b>No. of Employees expected to work on DWQ projects</b>
Headquarters				
Local Office				
PM Location				
<b>Subconsultants Name:</b>				
Service Provided				
Headquarters				
Local Office				
Name:				
Service Provided				
Headquarters				
Local Office				
Name:				
Service Provided				
Headquarters				
Local Office				

**Notes:**

1. "Headquarters" refers to the corporate office that provides project support to the local office, if applicable. If support comes from multiple locations, use the blank spaces in the form to provide relevant information.
2. Listing of sub-consultants is optional and should only be provided if the prime consultant considers the sub-consultant(s) services to be essential to meeting the required qualifications. In this event, documentation from the subconsultant(s) shall be submitted in the SOQ that provides a commitment to be a part of the prime consultant's team in providing the stated services. In such cases, for the purpose of evaluating the proposals, committed sub-consultants will be considered to be part of the prime consultant's workforce. Prime consultants face potential disqualification from future work if DWQ finds that the identified sub-consultants are not being utilized to deliver assigned work products.

Attachment 2

RFP #XX--2019 - Engineering Services for Division of Water Quality Projects

<b>Consultant Name:</b>				
<b>Project Category: Stormwater Quantity Management</b>				
<b>Selection Criteria</b>	<b>Notes</b>	<b>Score (1-5)</b>	<b>Total Points Possible</b>	<b>Weighted Score</b>
Overall expertise of the firm	Acceptable: at least 3 similar projects		5	
Overall expertise of the Team members	Acceptable: at least 2 similar projects last 5 years		15	
Past performance in the project category	Based on work for LFUCG and/or reference clients		20	
Project Manager Qualifications	Acceptable: at least 3 similar projects last 5 years		20	
Risk Management Plan	Acceptable: submits acceptable contingency plan		10	
Office status and location of employees	5.0 - Prime has Fayette Co. HQ		20	
	4.5 - Prime has "local" HQ			
	4.0 - Prime has local office > 30 employees			
	3.5 - Prime has local office ≤ 30 employees			
	3.0 - Prime has non-local Kentucky HQ			
	2.5 - Prime has non-local KY office			
	1.0 to 2.0 - Prime has no Kentucky office (consider distance)			
Hourly Rates	Acceptable: rates generally within 15% of the mean		10	
<b>Final Technical Score</b>			<b>100</b>	



# Lexington-Fayette Urban County Government

## Request for Proposals

---

The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #21-2019 Engineering Services for Stormwater Indefinite Services** to be provided in accordance with terms, conditions and specifications established herein.

Sealed proposals will be received in the Division of Central Purchasing, Room 338, Government Center, 200 East Main Street, Lexington, KY, 40507, until **2:00 PM**, prevailing local time, on **June 7, 2019**.

**A non-mandatory pre-proposal meeting will be conducted on May 29, 2019 at 9:00 AM at 125 Lisle Industrial Avenue Lexington, Ky.**

Proposals received after the date and time set for opening proposals will not be considered for award of a contract and will be returned unopened to the Proposer. It is the sole responsibility of the Proposer to assure that his/her proposal is received by the Division of Central Purchasing before the date and time set for opening proposals.

Proposals must be sealed in an envelope and the envelope prominently marked:

**RFP 21-2019 Engineering Services for Stormwater Indefinite Services**

If mailed, the envelope must be addressed to:

Todd Slatin – Purchasing Director  
Lexington-Fayette Urban County Government  
Room 338, Government Center  
200 East Main Street  
Lexington, KY 40507

Additional copies of this Request For Proposals are available from the Division of Central Purchasing, Room 338 Government Center, 200 East Main Street, Lexington, KY 40507, (859)-258-3320, at no charge.

Proposals, once submitted, may not be withdrawn for a period of sixty (60) calendar days.

(2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;

(3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and

(4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

(1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.

(2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor

(1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

KRS 45.630 Termination of existing employee not required, when

Notice of appeal of a RFP recommendation must be filed within 3 business days of the RFP recommendation by (1) sending a written notice, including sufficient documentation to support appeal, to the Director, Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his appeal. After reviewing the documentation and/or hearing the vendor and consulting with the Commissioner of Finance and the Chief Administrative Officer, the Director of Central Purchasing shall in writing, affirm or withdraw the recommendation.

**SELECTION CRITERIA:**

1. Overall Expertise of the Team Members in Project Category 15pts
2. Overall Expertise of the firm in Project Category. 5 pts
3. Past record and performance in the project category with the LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality or work and ability to meet schedules. 20 pts
4. Project Manager Qualifications. 20 pts
5. Office status and location of employees of which degree of local employment is included, to be provided by the person or firm in the performance of the contract by the person or firm. 20 pts
6. Risk Management Plan 10 pts
7. Hourly Rates 10 pts

Proposals shall contain the appropriate information necessary to evaluate based on these criteria. A committee composed of government employees as well as representatives of relevant user groups will evaluate the proposals.

Questions shall be submitted via IonWave at: <https://lexingtonky.ionwave.net>

**AFFIDAVIT**

Comes the Affiant, \_\_\_\_\_, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is \_\_\_\_\_ and he/she is the individual submitting the proposal or is the authorized representative of \_\_\_\_\_, the entity submitting the proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

**Continued on next page**

## EQUAL OPPORTUNITY AGREEMENT

### Standard Title VI Assurance

The Lexington Fayette-Urban County Government, (hereinafter referred to as the "Recipient") hereby agrees that as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78Stat.252, 42 U.S.C. 2000d-4 (hereinafter referred to as the "Act"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, (49 CFR, Part 21) Nondiscrimination in Federally Assisted Program of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the "Regulations") and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, sex, age (over 40), religion, sexual orientation, gender identity, veteran status, or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the U.S. Department of Transportation, including the Federal Highway Administration, and hereby gives assurance that will promptly take any necessary measures to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the Regulations.

### The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.*

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.*

\*\*\*\*\*

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

**WORKFORCE ANALYSIS FORM**

Name of Organization: \_\_\_\_\_

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators																	
Professionals																	
Superintendents																	
Supervisors																	
Foremen																	
Technicians																	
Protective																	
Para-																	
Office/Clerical																	
Skilled Craft																	
Service/Maintena																	
<b>Total:</b>																	

Prepared by: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

*(Name and Title)*

*Revised 2015-Dec-15*



Firm Submitting Proposal: \_\_\_\_\_

Complete Address: \_\_\_\_\_  
Street City Zip

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Email address: \_\_\_\_\_

- 3) A Disadvantaged Business (DBE) is defined as a business which is certified as being at least 51% owned, managed and controlled by a person(s) that are economically and socially disadvantaged.
- 4) A Veteran-Owned Small Business (VOSB) is defined as a business which is certified as being at least 51% owned, managed and controlled by a veteran and/or a service disabled veteran.
- 5) Good Faith Efforts are efforts that, given all relevant circumstances, a bidder or proposer actively and aggressively seeking to meet the goals, can reasonably be expected to make. In evaluating good faith efforts made toward achieving the goals, whether the bidder or proposer has performed the efforts outlined in the Obligations of Bidder for Good Faith Efforts outlined in this document will be considered, along with any other relevant factors.

#### D. OBLIGATION OF BIDDER FOR GOOD FAITH EFFORTS

- 1) **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MWDBE and Veteran-Owned subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 2) Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 3) The Form of Proposal includes a section entitled "MWDBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4) **Failure to submit this information as requested may be cause for rejection of bid or delay in contract award.**

#### E. DOCUMENTATION REQUIRED FOR GOOD FAITH EFFORTS

- 1) Bidders reaching the Goal are required to submit only the MWDBE Participation Form." The form must be fully completed including names and telephone number of participating MWDBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Bid Price. The form must be signed and dated, and is to be submitted with the bid.
- 2) Bidders not reaching the Goal must submit the "MWDBE Participation Form", the "Quote Summary Form" and a written statement documenting their Good Faith Effort to do so. If bid includes no MWDBE and/or Veteran participation, bidder shall enter "None" on the subcontractor / supplier form). In addition, the bidder must submit written proof of their Good Faith Efforts to meet the Participation Goal:
  - a. Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.
  - b. Included documentation of advertising in the above publications with the bidders good faith efforts package

o. Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

p. Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

q. Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

**Note: Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to review by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.**

We have compiled the list below to help you locate certified MBE, WBE and DBE certified businesses. Below is a listing of contacts for LFUCG Certified MWDBEs and Veteran-Owned Small Businesses in (<https://lexingtonky.ionwave.net>)

<b>Business</b>	<b>Contact</b>	<b>Email Address</b>	<b>Phone</b>
<b>LFUCG</b>	Sherita Miller	<a href="mailto:smiller@lexingtonky.gov">smiller@lexingtonky.gov</a>	859-258-3323
<b>Commerce Lexington – Minority Business Development</b>	Tyrone Tyra	<a href="mailto:ttyra@commercelexington.com">ttyra@commercelexington.com</a>	859-226-1625
<b>Tri-State Minority Supplier Diversity Council</b>	Susan Marston	<a href="mailto:smarston@tsmsdc.com">smarston@tsmsdc.com</a>	502-365-9762
<b>Small Business Development Council</b>	Shawn Rogers UK SBDC	<a href="mailto:shawn.rogers@uky.edu">shawn.rogers@uky.edu</a>	859-257-7666
<b>Community Ventures Corporation</b>	Phyllis Alcorn	<a href="mailto:palcorn@cvky.org">palcorn@cvky.org</a>	859-231-0054
<b>KY Transportation Cabinet (KYTC)</b>	Melvin Bynes	<a href="mailto:Melvin.bynes2@ky.gov">Melvin.bynes2@ky.gov</a>	502-564-3601
<b>KYTC Pre-Qualification</b>	Sheila Eagle	<a href="mailto:Sheila.Eagle@ky.gov">Sheila.Eagle@ky.gov</a>	502-782-4815
<b>Ohio River Valley Women’s Business Council (WBENC)</b>	Sheila Mixon	<a href="mailto:smixon@orvwbc.org">smixon@orvwbc.org</a>	513-487-6537
<b>Kentucky MWBE Certification Program</b>	Yvette Smith, Kentucky Finance Cabinet	<a href="mailto:Yvette.Smith@ky.gov">Yvette.Smith@ky.gov</a>	502-564-8099
<b>National Women Business Owner’s Council (NWBOC)</b>	Janet Harris-Lange	<a href="mailto:janet@nwbec.org">janet@nwbec.org</a>	800-675-5066
<b>Small Business Administration</b>	Robert Coffey	<a href="mailto:robertcoffey@sba.gov">robertcoffey@sba.gov</a>	502-582-5971
<b>LaVoz de Kentucky</b>	Andres Cruz	<a href="mailto:lavozdeky@yahoo.com">lavozdeky@yahoo.com</a>	859-621-2106
<b>The Key News Journal</b>	Patrice Muhammad	<a href="mailto:production@keynewsjournal.com">production@keynewsjournal.com</a>	859-685-8488



## LFUCG MWDBE SUBSTITUTION FORM

Bid/RFP/Quote Reference # \_\_\_\_\_

The substituted MWDBE and/or veteran subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MWDBE Company Name, Address, Phone, Email	MWDBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1.					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title



## LFUCG SUBCONTRACTOR MONTHLY PAYMENT REPORT

The LFUCG has a 10% goal plan adopted by city council to increase the participation of minority and women owned businesses in the procurement process. The LFUCG also has a 3% goal plan adopted by cited council to increase the participation of veteran owned businesses in the procurement process. In order to measure that goal LFUCG will track spending with MWDBE and Veteran contractors on a monthly basis. By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentation may result in termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims. Please submit this form monthly to the Division of Central Purchasing/ 200 East Main Street / Room 338 / Lexington, KY 40507.

**Bid/RFP/Quote #** \_\_\_\_\_

**Total Contract Amount Awarded to Prime Contractor for this Project** \_\_\_\_\_

<b>Project Name/ Contract #</b>	<b>Work Period/ From:</b> _____ <b>To:</b> _____
<b>Company Name:</b>	<b>Address:</b>
<b>Federal Tax ID:</b>	<b>Contact Person:</b>

Subcontractor Vendor ID (name, address, phone, email)	Description of Work	Total Subcontract Amount	% of Total Contract Awarded to Prime for this Project	Total Amount Paid for this Period	Purchase Order number for subcontractor work (please attach PO)	Scheduled Project Start Date	Scheduled Project End Date

By the signature below of an authorized company representative, you certify that the information is correct, and that each of the representations set forth below is true. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Company Representative**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Title**

into economically feasible units to facilitate MWDBE and Veteran participation, even when the prime contractor may otherwise perform these work items with its own workforce

\_\_\_\_\_ Negotiated in good faith with interested MWDBE firms and Veteran-Owned businesses not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

\_\_\_\_\_ Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

\_\_\_\_\_ Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

\_\_\_\_\_ Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

\_\_\_\_\_ Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

\_\_\_\_\_ Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

**NOTE: Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to approval by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.**

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Company Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

#### A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.
- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
  - (a) Failure to perform the contract according to its terms, conditions and specifications;
  - (b) Failure to make delivery within the time specified or according



be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.
20. Contractor [or Vendor or Vendor's Employees] will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Contractor agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

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Signature

---

Date

## **INSURANCE REQUIREMENTS**

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AAND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

### **Required Insurance Coverage**

CONSULTANT shall procure and maintain for the duration of this contract 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 LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT. The cost of such insurance shall be included in any bid:

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Professional Liability	\$1,000,000
Worker's Compensation	Statutory
Employer's Liability	\$100,000

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.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement and a Products Liability endorsement unless they are deemed not to apply by LFUCG.
- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions) 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 LFUCG.
- e. 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 LFUCG and obtain similar insurance that is commercially available and acceptable to LFUCG.
- f. LFUCG 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.

CONSULTANT agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

CONSULTANT understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

**DEFAULT**

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at 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 the work.

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The intent of this contract is to assign projects to contracted firms on a rotational basis. LFUCG will rank proposers and select up to six qualified consultants for design work for a 365 day period beginning from contract execution date. LFUCG will have the option to renew the indefinite delivery contracts on an annual basis, at its sole discretion. LFUCG will also reserve the option to add additional qualified firms using another, identical RFQ process.

The firms will be initially ranked by their point totals based on the evaluation criteria. After the selection ranking, the firm with the highest total dollar value of awarded LFUCG contracts over the last 24 months (from the date of advertisement of this RFQ) will be placed at the bottom of the list for new project work. The process will continue until all firms with recent LFUCG work have been ranked from highest value of LFUCG contracts to the lowest value of LFUCG contracts over the last 24 months. The remaining firms that have not been awarded any LFUCG contracts over the last 12 months will then be ranked according to their point totals from the initial rankings with the highest scored team being the number one team on the list.

When LFUCG initiates a particular project, the three highest ranked firms will be asked to submit a fee proposal to perform the engineering services described by LFUCG, which will generally include the provisions of Section 3 below. The cost proposal shall use the hourly rates submitted and be based upon a man-hour projection. If more than one year has passed since the firm was prequalified, the cost proposal shall confirm in writing that the firm's qualifications have not changed. NOTE: firms will be allowed to adjust their hourly rates on the third anniversary date of their executed agreement for proposals to be submitted in the coming years (and every three years after that for long-duration contracts). The firm submitting the lowest and best cost proposal will be given a written task order, serving as their authorization to proceed. Fees will be expected to be consistent with current Rural Development (RD) fee curves as published by the USDA, unless specific project complexities warrant additional fees. If DWQ and the firm currently under consideration cannot reach a final agreement for professional services, the next lowest fee firm will be asked to negotiate. If the second negotiation does not produce a written authorization to proceed, DWQ will then initiate negotiation with the third firm. If that negotiation fails, DWQ will solicit cost proposals from the next three ranked firms. The cycle will continue until negotiations lead to a written authorization to proceed. All firms who provided written cost proposals, were selected for negotiations, and were not issued a written authorization to proceed will be placed at the bottom of the list. Firms that provide a written cost proposal but are not invited to negotiate shall not lose their place on the consideration list. All or some projects may consist of two or more "phases", including, but not limited to, initial investigation/analysis and final/detailed design. Each firm may be asked to provide a quote for each phase of a project. LFUCG realizes that providing a quote for future phases is uncertain, therefore, subsequent phase fees may be negotiated with the selected firm when the scope of work is better defined. If the negotiation results in a total fee which exceeds the next low original total fee quote, LFUCG reserves the right to have the original next 3 firms submit a quote for those phase(s).

As each firm is issued a task order for a specific project, they will then be moved to the bottom of the list, giving the next highest ranked firms the opportunity to provide quotes for the next project. As the next project is scheduled to proceed, the currently top ranked firms next on the list will be asked to submit a cost proposal for design services.

When LFUCG initiates a particular project, any of the current highest ranked firms may decline the project if it does not have current capacity to complete the work. A firm may decline up to two projects without being moved to the bottom of that categories list. After declining a third project, the firm will then be moved to the bottom of the list.

LFUCG will assess the performance of the consultants at the conclusion of each project based on the quality of contract documents, the satisfactory completion of task orders, and schedule compliance. Written performance evaluations shall be kept on file with copies provided to the

- Respond to questions and coordinate addenda issuance with the LFUCG Division of Central Purchasing, as necessary
- Bid review and evaluation and provide recommendation of award

Services during Construction including but not limited to the following **may or may not be included** in the Scope of Services for specific task orders:

- Contract administration
  - Review and approval of shop drawings
  - Responses to contractor requests for information (RFIs)
  - Review and approval of pay requests and change order requests
  - Preparation of Record Drawings in hard copy (reproducible) and electronic formats
  - Provide Global Positioning Systems (GPS) coordinates for all constructed features in accordance with LFUCG standards
  - Final Inspection and preparation of punchlist
  - Project start-up and preparation of operations and maintenance manuals (pump stations)
  - Project Certification
  - Meetings – consultant will be responsible for agenda and preparation of meeting summary
    - Preconstruction
    - Monthly progress meetings
    - Project closeout meeting

As part of their services, the selected consultant shall also provide LFUCG with all technical and administrative assistance necessary to fulfill required obligations of outside funding agencies, including but not limited to, Kentucky Infrastructure Authority (KIA), FEMA, USEPA, KyDOW.

#### 4. Submittals

**Individual SOQ's should be spiral or comb bound to allow ease for archiving (no 3-ring binders). Each firm must submit one (1) master hardcopy, (1) electronic version in PDF format on a flash drive or CD and seven (7) duplicates (hardcopies). Statements of Qualification shall be no more than fifteen (15) pages, excluding tabs/dividers, and shall be structured as follows:**

##### Section

1. Letter of Transmittal (**one page maximum**)
  - Clearly specify which types of project(s) for which prequalifications are being requested.
2. Firm Qualifications (**two pages maximum**)
  - Provide an executive summary explaining why the firm should be selected to provide services for DWQ projects, along with general information about the firm (and subconsultants) related to their history and general qualifications. Provide specific information related to qualifications to complete the project types for which prequalification consideration is requested.
3. Project Team (**six pages maximum**)

assistance in locating DBE subcontractors contact the following Urban County Government agency:

Sherita Miller, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507  
(859) 258-3323

Note: Consultants may, but are not required to, identify specific DBE subconsultants in their prequalifications submittal. However, they must state their commitment to meeting the goals of LFUCG's DBE/VBE initiatives in each Task Order they are awarded.

## 6. Selection Criteria (Attachment 2)

Firms will be individually ranked by the evaluation committee using the following criteria:

Overall expertise of the firm in project category (1)	5 points
Overall expertise of the Team members in project category (1)	15 points
Past performance in the project category (2)	20 points
Project Manager Qualifications (3)	20 points
Risk Management Plan	10 points
Office status and location of employees (4)	20 points
Hourly Rates (5)	10 points
	100 points

### Notes:

1. Firms must have relevant experience in at least three similar projects to be rated as "acceptable". Individual Project Team members should demonstrate significant experience in at least two similar projects in the last five years to be rated as "acceptable".
2. Past performance on storm water projects completed under a government contract or government specifications.
3. Project Manager must have relevant experience with at least three projects in the last five years to receive maximum points.
4. Factors considered: Fayette County headquarters; Fayette County office established more than 12 months prior to issuance of this RFQ; office established in Bluegrass Area Development District counties more than 12 months prior to issuance of this RFQ. Project Manager must be located in the local office to be rated as "acceptable". Proposals should clearly present all information regarding all firms submitting as a "team". If the Prime firm qualifies for multiple point assignments, the highest one will be assigned.
5. Hourly rates must be within 15 percent of the mean for all prospective consultants to be rated as "acceptable".

Attachment 1

**Project Team Location(s)**



ATTACHMENT 2

**RFP #XX-2019 - Engineering Services for Division of Water Quality Projects**

Affidavit \_\_\_\_\_  
 Affirmative Action \_\_\_\_\_  
     Plan \_\_\_\_\_  
 EEO Agreement \_\_\_\_\_  
 Workforce Analysis \_\_\_\_\_  
 Insurance \_\_\_\_\_

Comments:

<b>Description</b>	<b>Adjective</b>	<b>Numeric Rating</b>
Fails to meet minimum requirements; major deficiencies which are not correctable	Unacceptable	1
Fails to meet requirements, significant deficiencies that may be correctable	Poor	2
Meets requirements; only minor deficiencies which can be clarified	Acceptable	3
Meets requirements and exceeds some requirements; no deficiencies	Good	4
Exceeds most, if not all requirements; no deficiencies	Excellent	5



2. **EXHIBIT A** – Scope of Engineering Services and Related Matters RFP #xx-2019 (Including Appendices and Addendums).
3. **EXHIBIT B** – Certificate of Insurance and Evidence of Insurability.
4. **EXHIBIT C** – Proposal of Engineering Services and Related Matters (the **CONSULTANT**'s response to RFP #XX-2019).
5. **EXHIBIT D** – Further Description of Basic Engineering Services and Related Matters.

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

### 1.3 Project Phase

A complete description of the duties and responsibilities of the **CONSULTANT** are as indicated in **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # XX-2019, **EXHIBIT C** Proposal of Engineering Services and Related Matters, and **Exhibit D** Further Description of Basic Engineering Services and Related Matters. After written authorization to proceed from the **OWNER**, **CONSULTANT** shall:

- 1.3.1. Notify the **OWNER** in writing of its authorized representative who shall act as Project Engineer and liaison representative between the **CONSULTANT** and the **OWNER**. **OWNER** has the right to approve the Project Engineer, or any change thereto, which approval shall not be unreasonably withheld.
- 1.3.2. The **CONSULTANT** **must perform all duties necessary to fully complete the deliverables as further described in attached EXHIBIT A**, Scope of Engineering Services and Related Matters RFP # XX-2019, attached **EXHIBIT C**, Proposal of Engineering Services and Related Matters, and attached **EXHIBIT D** Further Description of Basic Engineering Services and Related Matters **unless otherwise agreed to in writing by the parties**.
- 1.3.3. The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4. The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5. After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6. Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
- 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.
- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Task Order 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 **OWNER** of any of its other rights in the Agreement.
- 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT**/Final Task Order within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Task Order or otherwise adjusting the scope of the services or work.
- 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, including but not limited to those assessed pursuant to the **CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

## SECTION 5 - PAYMENTS TO CONSULTANT

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

#### 5.1.1. For Basic Services

**OWNER** shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

**5.1.1.a** Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.

**5.1.1.b** Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

**5.1.1.c** Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER**'s designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

#### 5.1.2. For Extra Work

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 itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

### **6.4. Successors and Assigns**

**6.4.1.** **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

**6.4.2.** In no event shall the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.

**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 hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision 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**

employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "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 the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "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.
- f. **OWNER** is a political subdivision of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that **OWNER** is unable to provide indemnity or otherwise save, hold harmless, or defend the **CONSULTANT** in any manner.

### **6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT**

In the event that **CONSULTANT**'S delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance,

- 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.

#### **6.9.5.2. 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.

#### **6.9.5.3. 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.

#### **6.9.6. SAFETY AND LOSS CONTROL**

**CONSULTANT** shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and **OWNER**.

#### **6.9.7. DEFINITION OF DEFAULT**

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



**EXHIBIT B**

**Certificate of Insurance**

**and**

**Evidence of Insurability**

**EXHIBIT D**

**Further Description of Basic Engineering Services**

**and**

**Related Services**



pursuant to this task order are necessary for the **OWNER** to meet the deadlines of the **CONSENT DECREE** and that the following requirements and conditions, which are in addition to those provided in the Engineering Services Agreement, shall apply to all work and services performed by the **CONSULTANT** under this task order:

1. Time is of the essence in the performance of the work and services. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines.
2. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Engineering Services Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.
3. In the event that **CONSULTANT'S** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **CONSULTANT** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

**ACCEPTED BY:**

**AUTHORIZED BY:**

\_\_\_\_\_  
Consultant's Authorized Signature

\_\_\_\_\_  
Owner's Authorized Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

*Two originals of this work order shall be executed by the Consultant and returned to \_\_\_\_\_.  
A fully executed copy will be returned to the Consultant.*



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/4/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BE REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

## EXHIBIT B

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be on the terms and conditions of the policy, certain policies may require an endorsement. A statement certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Ansay & Associates, LLC. MSN 702 N High Point Road Suite 201 Madison WI 53717		<b>CONTACT NAME:</b> Susan Simoneau <b>PHONE (A/C, No, Ext):</b> 800-643-6133 <b>FAX (A/C, No):</b> 608-831-4777 <b>E-MAIL ADDRESS:</b> sue.simoneau@ansay.com	
		<b>INSURER(S) AFFORDING COVERAGE</b> INSURER A : CNA Insurance Companies	<b>NAIC #</b> 35289
<b>INSURED</b> Strand Associates, Inc 910 W. Wingra Drive Madison WI 53715		<b>STRAASS-01</b> <b>INSURER B :</b> <b>INSURER C :</b> <b>INSURER D :</b> <b>INSURER E :</b> <b>INSURER F :</b>	

**COVERAGES**                                  **CERTIFICATE NUMBER: 787978967**                                  **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  <input checked="" type="checkbox"/> XCU Cov. Inc. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC	Y		5099170076	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 900,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y		5099170062	1/1/2019	1/1/2020	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"/> <b>UMBRELLA LIAB</b> <input checked="" type="checkbox"/> OCCUR <b>EXCESS LIAB</b> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000	Y		5099170059	1/1/2019	1/1/2020	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y / N <input type="checkbox"/> N / A			WC595126844	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liability Full Prior Acts			AEH113974097	7/11/2019	7/11/2020	Each Claim 2,000,000 Aggregate 2,000,000 Full Prior Acts

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
 RE: Lexington-Fayette Urban County Government Stormwater Indefinite Services

Lexington-Fayette Urban County is named as an additional insured on a primary and non-contributory basis as per written agreement.

Thirty (30) days advance written notice via certified mail, return receipt requested will be given to the Certificate Holder if policies are canceled or non-renewed.

<b>CERTIFICATE HOLDER</b>  Lexington-Fayette Urban County Government 200 E Main Street Lexington KY 40507	<b>CANCELLATION</b>  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 

## Exhibit C

### Engineering Services for Stormwater Indefinite Services

RFP #21-2019

## Proposal

Lexington-Fayette  
Urban County  
Government

June 7, 2019



Professional

Engineering

Services





**ADDENDUM #1**

RFP Number: #21-2019

Date: May 31, 2019

Subject: Engineering Services for Stormwater Management Indefinite Services

Address inquiries to:  
Brian Marcum  
(859) 258-3320

**TO ALL PROSPECTIVE SUBMITTERS:**

**Please be advised of the following clarifications to the above referenced RFP:**

1. Do firms submit 1 original & 7 duplicates or 1 original & 5 duplicates? 1 master original, 1 electronic version on a flashdrive or cd and 7 duplicates.
2. Is/Are subconsultant office location considered? Yes
3. Do the "standard forms" count as pages in the submittal? No
4. Do subconsultant hourly rates need to be provided? Yes. They were included the last time we did this.
5. Section 3, Project Team, of the submittal is limited to 6 pages and requires one page resumes of key team members. Are the resumes included in the page count? Yes, but "half-page" resumes are acceptable.
6. Section 8, Statement of Hourly Rates, requires that rates be provided for personnel expected to provide services described in the RFP. Does LFUCG require rates specific to each team member or categorical rates based on job classification? Hourly rates are to be provided for individual job classifications.
7. Should the one page on DBE Involvement (Item 7) also include VBE Involvement if applicable? Yes
8. Does the same DBE have to be used on each task order or may the project team include two DBEs that can fulfill the same role and be utilized at the discretion of the prime consultant as long as the stated DBE participation goals are met? Ok, as long as the goals are met but both should be listed



MAYOR LINDA GORTON



**LEXINGTON**

TODD SLATIN  
DIRECTOR  
CENTRAL PURCHASING

**ADDENDUM #2**

RFP Number: #21-2019

Date: June 3, 2019

Subject: Engineering Services for Stormwater Management Indefinite Services

Address inquiries to:  
Brian Marcum  
(859) 258-3320

**TO ALL PROSPECTIVE SUBMITTERS:**

**Please be advised of the following clarifications to the above referenced RFP:**

1. Does the same DBE have to be used on each task order or may the project team include two DBEs that can fulfill the same role and be utilized at the discretion of the prime consultant as long as the stated DBE participation goals are met? We understand this covers multiple projects and scope changes, we ask that you make a good faith effort to list DBE's that you could use in as many different areas as available along with the area of expertise.

Todd Slatin, Director  
Division of Central Purchasing

All other terms and conditions of the RFP and specifications are unchanged. This letter should be signed, attached to and become a part of your submittal.

COMPANY NAME: Strand Associates, Inc.

ADDRESS: 1525 Bull Lea Road, Suite 100, Lexington, KY 40511

SIGNATURE OF BIDDER:





**Strand Associates, Inc.®**

1525 Bull Lea Road, Suite 100

Lexington, KY 40511

(P) 859-225-8500

(F) 859-225-8501

June 7, 2019

Mr. Todd Slatin, Purchasing Director  
Lexington-Fayette Urban County Government  
Room 338, Government Center  
200 East Main Street  
Lexington, KY 40507

Re: Proposal for RFP #21-2019 Engineering Services for Stormwater Indefinite Services

Dear Mr. Slatin:

We appreciate the opportunity to submit this proposal for the above referenced project. By Selecting Strand Associates, Inc.® for the RFP #21-2019 Engineering Services for Stormwater Indefinite Services, we are confident that **Our Holistic Approach to Project Development will Fulfill Community Needs for Improved Stormwater Management.** Listed below are major factors that support this statement and demonstrates our Team's ability to meet your specific needs.

- **Comprehensive Stormwater Management Capabilities Bring Confidence in Delivering Effective Community Solutions**
- **Interactive Public Engagement Approach Fosters Support for Community Buy-in**
- **Experienced Project Manager and Technical Resources Provide the Specialized Experience to Support a Wide Range of Technical Needs**
- **Previous Project Achievements Demonstrate Understanding Required to Address Varied Stormwater-related Project needs**
- **References with Satisfied Stormwater Clients Attest to Strand's Ability to Help Clients Succeed through Excellence in Engineering**
- **Strand's 50+ Years of Local Service to LFUCG Demonstrates our Commitment to Successful Completion**

The enclosed proposal outlines how these factors will benefit the City and result in successfully delivered Stormwater Projects. Thank you again and we look forward to the opportunity to continue our service on behalf of the Lexington-Fayette Urban County Government.

Sincerely,

STRAND ASSOCIATES, INC.®

Michael A. Woolum, P.E., P.L.S.  
Vice President

## Firm Qualifications

### Strand's Holistic Approach to Project Development Fulfills Community Needs



**Ellerslie Regional Detention/Water Quality Basin (Expansion Area 2C - Basin C4) – Lexington, KY.**

From master planning to design and construction, our local office staff has been actively engaged with problem solving for stormwater-related concerns for over 50 years and counting. Having seen firsthand the impact of growth in this community on our drainage systems, we are keenly aware of the sensitivities involved with planning and designing stormwater solutions that work. To this point, members of our Project Team have been responsible for development of comprehensive Capital Improvements Plans that have been tested through implementation of recommended improvements. The working knowledge we have gained through our history of service to this community allows us to help LFUCG make highly informed infrastructure investment decisions that will in turn, help maximize community benefits.

### Experienced Management Team Brings Versatility to Skillsets Required for Varied Challenges to Stormwater Projects

Strand's Management Team and key personnel includes individuals with unique backgrounds that enable us to effectively tailor a delivery team to meet a given project's specific needs. We propose to utilize this approach since our experience with local stormwater issues recognizes the diverse range of potential stormwater challenges which could include among others:

- Structure flooding requiring rigorously developed performance-based solutions.
- Modifications and upgrades to large structural culvert systems.
- Improvements to collection and conveyance systems in congested corridors.
- Neighborhood flood abatement efforts requiring heightened public involvement.
- Watershed-sensitive environments requiring holistic solutions-based approach.

By matching project management skillsets to the needs of a given project, we can most efficiently and effectively satisfy your stormwater needs.

### Client History and Related References Provide Further Confirmation of Stormwater Expertise and Ability to Meet Client's Needs

We have had the opportunity to serve many major clients in this region for stormwater-related needs including: SD1 of Northern Ky, Louisville MSD, Cincinnati MSD, Kentucky Finance and Administration Cabinet, area universities and other central KY communities to name a few. Strand's achievements include award winning flood control dams, stormwater master plans utilized in guiding capital improvements programs and assistance with flood mitigation and floodplain management concerns. You are encouraged to contact our references to further document our quality commitment and reinforce your confidence in our ability to address your specific stormwater needs.



**Lick Run Valley Conveyance System – Cincinnati, OH. (Ongoing)**

### Previous Experience Strengthens Understanding Required to Address Stormwater-Related Needs

With many competing program needs and an ever-expanding funding gap between infrastructure spending capacity and public expectations, our Team understands the importance of leveraging stormwater investment. Having well-documented experience that ranges from Capital Improvements Program development to implementation of flood abatement projects, our Team brings a cost-benefit mindset to this program initiative. As no two stormwater projects are alike, our Team credentials are testimony to the nimble approach often required for successful project outcomes.



**Wellington Development Box Culvert – Lexington, KY.**





TEAM EXPERIENCE MATRIX

PROJECT EXAMPLES	KEY TEAM MEMBERS					PROJECT RELATED EXPERIENCE ATTRIBUTES										
<p><i>“Experience Matrix Validates Team’s Credentials for Every Anticipated Need.”</i></p>	Steve Vogel, P.E.	Mike Woolum, P.E., PLS	Matt McMackin, P.E., L.S.I.T.	Adam Weber, P.E.	Chase Wright, P.E.	Planning/Civil-Site Design	Hydraulics/Hydrology/Modeling	Pipe-Open Channel Analysis	Surveying/Utility Coordination	Stream Restoration/Permitting (401/404)	Detention Basin Analysis/Design	Special Structure Inspection/Design	Easement Development/ROW Acquisition	Sustainable Solutions	Construction Administration	
	Lexington Convention Center Expansion – Lexington, KY	•	•		•	•	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Paducah Comprehensive Stormwater Master Plan – Paducah, KY	•	•				✓	✓	✓	✓		✓	✓		✓	
	College Way Parking Lot – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓		✓	✓		✓	✓
	WGPL Drainage Improvements – Lexington, KY	•	•		•		✓	✓	✓	✓		✓	✓		✓	
	City Center – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓	✓		✓	✓	✓	✓
	Town Branch Commons – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓			✓	✓	✓	
	Valvoline World Corporate Headquarters Campus – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Asset Management Program – Georgetown, KY		•	•	•		✓		✓	✓			✓			
	North Broadway (US 27) Underpass/Drainage Improvements – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓	✓	✓	✓	✓	✓	
	Southland Area Master Plan – Lexington, KY	•	•				✓	✓	✓			✓	✓		✓	
	West Main-US 25 Streetscape – Richmond, KY	•	•	•	•	•	✓	✓	✓	✓				✓		✓
	Paynes Crossing Drainage Improvements – Georgetown, KY	•	•	•	•		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	Lexington Mall Infill/Redevelopment – Lexington, KY	•	•	•	•	•	✓	✓	✓	✓	✓	✓	✓		✓	✓
	Newport Drainage Improvements – Ft. Wright, KY	•	•		•		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
	South Limestone Street Reconstruction – Lexington, KY		•		•	•	✓	✓	✓	✓			✓	✓	✓	✓

**MICHAEL WOOLUM, P.E., P.L.S.**

Principal-In-Charge/Quality Control/Survey/Easement/Right-of-Way

Mike brings over 35 years of related project experience in the civil/municipal engineering field with an emphasis in stormwater management and regulatory matters. His stormwater-related credentials include leadership with comprehensive master planning initiatives involving hydrologic and hydraulic analysis for large urban watersheds and development of capital improvement plans with implementation strategies to support advancement of flood abatement and water quality enhancement programs.

His urban stormwater design experience includes large-scale conveyance systems, stormwater detention facilities integrated with water quality best management practices, as well as floodplain management assistance to local community participants in the FEMA National Flood Insurance Program. Mike is also a recognized resource for community asset management initiatives where has assisted clientele with program development and integration with ongoing MS4 related initiatives including completion of feasibility studies for dedicated funding streams that support these program needs.

Mike’s resume also includes significant involvement with design and construction of over 100 stormwater management control facilities and miles of conveyance systems.



**EDUCATION**

B.S. Civil Engineering – University of Kentucky, Lexington, 1983

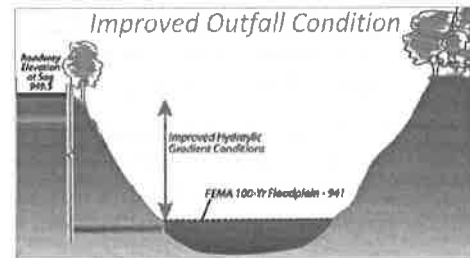
**REGISTRATION**

Professional Engineer in Kentucky – No. 15347

Professional Land Surveyor in Kentucky – No. 2937

**RELATED EXPERIENCE**

- Lexington Convention Center Expansion – Lexington, KY**  
Principal-In-Charge for site civil-related elements in support of this major renovation and expansion project involving site utilities, drainage-related box culvert upgrades for Town Branch Creek and a 36-inch sanitary trunk relocation. Scope included extensive utility investigations and analysis of sag area drainage condition plus relocations and upgrades for storm and sanitary sewer service to the existing High Street parking lot for its future redevelopment.
- US 27 Underpass and Drainage Improvements, Kentucky Transportation Cabinet – Lexington, KY**  
Project Manager for this complex underpass and roadway improvement project and replacement of an existing railroad bridge. Detailed drainage analysis was required to address an acceptable approach in solving flooding of the underpass areas during frequent rainfall events. To support the alternatives analysis phase, Strand employed HDS laser scanning technology to efficiently survey the congested corridor, which adjoins New Circle Road.
- Town Branch Commons, Lexington-Fayette Urban County Government – Lexington, KY**– Deputy Project Manager for this innovative linear park system that incorporates uniquely developed stormwater features designed to capture, treat and convey roadway drainage. The scope required numerous special structure designs to accommodate integration of a bioswale system, requiring investigations of the historic Town Branch Culvert System and resolution of numerous utility conflicts, all to the approval of KYTC.
- Woodlawn Creek Watershed Study and Newport Drainage Improvements , City of Newport, KY** – Project Manager for comprehensive 2500-acre watershed study and design of compensatory flood mitigation improvements for City of Newport and SD1 of N. KY. Project included design of 32-foot high earthen dam with large drop inlet structure and 14 ft x 10 ft box culvert spillway system in combination with an early warning system for this Class “C” high hazard structure. Two additional storage projects were developed and implemented within the watershed to fulfill the mitigation requirement.



**CHASE WRIGHT, P.E.**

Civil/Stormwater

Chase brings more than 12 years of relevant project experience in civil/ municipal engineering and stormwater management related field where he has served public and private sector clientele and various state agencies. He is routinely involved in all aspects of project development from conceptual studies and master plans to final completion of construction documents and construction-related support services.



**EDUCATION**

B.S. Civil Engineering  
University of Kentucky,  
Lexington, 2007

**REGISTRATION**

Professional Engineer in  
Kentucky – No. 28373

**ADAM WEBER, P.E.**

Structural

Adam has 19 years of experience in structural design for various state transportation departments and municipalities. His primary duties include design and constructability review for retaining walls, structural design of roadway bridges, pedestrian bridges, retaining structures, and sign bridges; and development of aesthetic details and surface treatments for bridge railings, abutments, wingwalls, and retaining walls.



**EDUCATION**

B.S. Civil Engineering  
(Structural Eng., 2000)  
Minor in Environmental  
Engineering, Rose-  
Hulman Institute of  
Technology

**REGISTRATION**

Professional Engineer in  
Kentucky – No. 25057

**Relevant Project Experience:**

- **City Center, Webb Companies – Lexington, KY**  
Project Manager for city block downtown high-rise development with a 3-story below ground parking garage that supports the four buildings comprising this project. His effort required permitting support for the controversial excavation bid package and assistance with all aspects of infrastructure improvements including assessment and special drainage connections to the historic Town Branch Culvert system.
- **Town Branch Commons, Lexington-Fayette Urban County Government – Lexington, KY** – Project Engineering lead for the Zone 7 - Newtown Pike Town Branch Trail connection to 4th Street which required extensive roadway reconstruction to accommodate the trail and address poor roadway drainage conditions. Efforts included a parallel effort for structure condition assessments and investigations for location of inaccessible structures and pipe systems.
- **College Way Parking Lot, University of Kentucky – Lexington, KY** – Senior Technical Advisor for redevelopment of the College Way parking lot with a documented history of un-detained stormwater runoff impacts through the adjacent neighborhood. The approach included storm sewer redirection with underground detention to bypass the neighborhood.
- **Lexington Convention Center Expansion, Lexington Center Corporation – Lexington, KY** – As Project Engineer, provided assistance with relocation, routing and design for replacement of High Street storm sewer system. Approach required extensive coordination and evaluation of utility impacts with 42-inch bore and jack routing solution through the remaining Jefferson Street MSE wall bridge abutment. The proposed 30-in carrier pipe anticipates tie in to existing Town Branch culvert.

**Relevant Project Experience:**

- **Kenton County Bridge Replacement, KYTC Bridging Kentucky Program Initiative – Kenton County, KY** – As Project Engineering lead for over 20 bridge replacement projects, Adam has led fast track delivery for all facets of these projects including structural design. The project included a 34'-foot bridge and accompanying three sided box culvert crossing of Brushy Creek. This bridge project will be packaged with others as part of a comprehensive project letting.
- **Stormwater Asset Management, City of Georgetown – Georgetown, KY** – As Structural Engineering Lead Adam established the structure condition assessment protocol to be followed for sub-basin assessment and mapping of stormwater infrastructure for the City's asset management program. This included standard criteria for identification of immediate repair needs and recommendations for continued maintenance of assets.
- **Newport Drainage Improvements and Woodlawn Creek Watershed Study, City of Newport, KY** – Senior Advisor for the design of large 20-foot high gated overflow drop inlet spillway and 14-ft x 10-ft reinforced concrete box culvert system which serves as the principal spillway. The 32-ft high earthen embankment and 43 ac-ft of storage helped mitigate flooding for 13 downstream properties as part of a watershed-based flood mitigation initiative.
- **Appomattox Road, Lexington-Fayette Urban County Government – Lexington, KY** – Project Manager and Structural Engineer for this fast track roadway and structure replacement project over Wolf Run Creek. Responsibilities included coordination for the relocation of multiple utilities, and outreach with the Friends of Wolf Run Advocacy Group resulting in selection of a preferred alternative to construct a three-sided culvert to minimize stream impacts.

## Clients for Which Similar Work has Been Performed

**Client References Provide Confirmation of Strand's Stormwater Expertise and Ability to Meet Clients Needs**

- 1) Greg Lubek, P.E.  
Lexington-Fayette Urban County Government  
Lexington, KY  
(859) 258-3446  
[glubeck@lexingtonky.gov](mailto:glubeck@lexingtonky.gov)

**Similar Projects:**

- WGPL Drainage Improvements
- Southland Area Master Plan
- Town Branch Commons

- 2) Bill Owen, President and CEO  
Lexington Center Corporation  
(859) 233-4567  
[bowen@rupparena.com](mailto:bowen@rupparena.com)

**Similar Projects:**

- West Main St. Local Area Drainage Study
- Lexington Convention Center Drainage Improvements
- Town Branch Culvert Evaluation

- 3) Joshua Samples, P.E.  
Kentucky Transportation Cabinet, District 7  
Lexington, KY  
(859) 246-2355  
[Joshua.Samples@ky.gov](mailto:Joshua.Samples@ky.gov)

**Similar Projects:**

- North Broadway (US 27) Underpass/Drainage Improvements (7-412.00)
- Liberty Road Corridor Improvements (7-8902.00)
- New Circle Road ROW Acquisition (7-366.00)
- Newtown Pike ROW Acquisition (7-593.20)

- 4) Sean Blake, P.E.  
Sanitation District No. 1 of KY  
Fort Wright, KY  
(859) 578-7468  
[sblake@SD1.org](mailto:sblake@SD1.org)

**Similar Projects:**

- Newport Drainage Improvements
- Woodlawn Creek Watershed Study
- Silver Grove Storm Sewer Separation

- 5) Rick Murphy, P.E.  
City Engineer & Public Works Director  
City of Paducah  
(270) 444-8511  
[rmurphy@paducahky.gov](mailto:rmurphy@paducahky.gov)

**Similar Projects:**

- Comprehensive Stormwater Master Plan
- Buckner Lane Bridge Replacement - Early Action Plan
- Stormwater Utility Feasibility Study

- 6) Tom Prather, Mayor  
City of Georgetown  
(502) 863-9800  
[arlene.wilson@georgetownky.gov](mailto:arlene.wilson@georgetownky.gov)

**Similar Projects:**

- Stormwater Asset Management Program
- Community Stormwater Master Plan
- City Hall Parking Lot and Drainage Improvements
- Water Street Redevelopment

# List of Similar Design Services Projects

## Previous Experience Demonstrates Understanding Required to Address Varied Stormwater Related Project Needs

Strand has served LFUCG and other state and local governments on a broad range of stormwater-related projects over these last 50+ years. Services provided have included planning, design, permitting, and construction-related support for various projects including roadway, neighborhood drainage, flood abatement, channel restoration, flood control and infrastructure rehabilitation, calling on all disciplines of engineering with our in-house resources. In addition, members of our Team are recognized for their innovative approaches in solving challenging stormwater problems with both structural and non-structural systems, including award winning experience on flood control dams and application of green infrastructure solutions. Our experience with LFUCG is testimony to this fact including notable accomplishments with implementation of the Meadows, Northland, Arlington Neighborhood CIP, Wellington - Stonewall and Monticello Tributary Watershed Improvements Program, and Downtown Streetscape Improvements initiative.

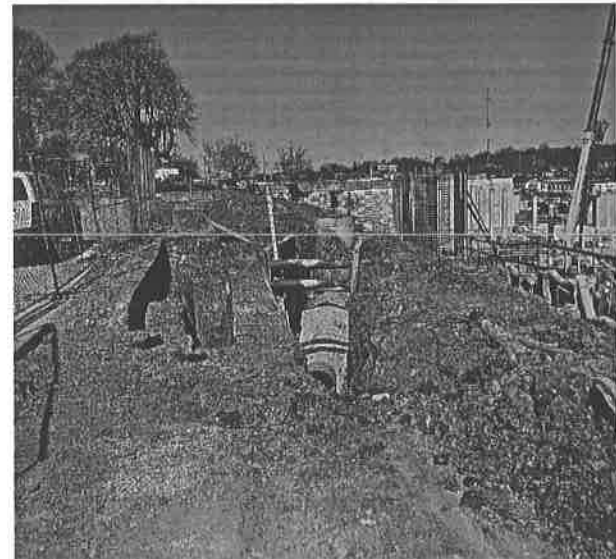
In supporting the stormwater management related needs associated with LFUCG’s Remedial Measures Plan (RMP), our Team’s capabilities and familiarity with local flooding problems are well suited to address the varied challenges and conditions that exist. Our project listing and Team’s experience includes specialized capabilities in the following key areas of consideration:

- Easements and Rights-of-Way Acquisition
- Public Involvement
- Stormwater Management Control Basins
- Open Channels and Closed Pipe Conveyance Systems
- CIP and Pre-Cast Structural Systems
- Utility Coordination, Avoidance, and Relocations
- FEMA CLOMR/LOMR
- Environmental Permitting (401/404)
- Aesthetics and Local Context

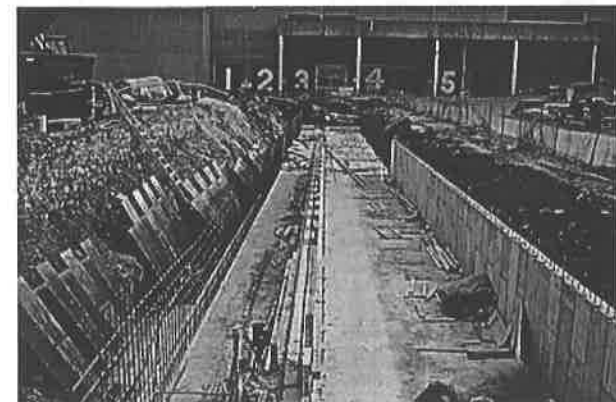
Our Project Team includes individuals who not only bring working knowledge of LFUCG’s drainage infrastructure realm, but professionals who also possess rare skills in administering to construction contracts with high public expectations. The table on the following page outlines a select listing of stormwater-related projects that highlight our credentials to serve LFUCG’s needs for this important RMP service area component.



Appomattox Road Culvert Replacement - Double 12-foot x 6-foot R.C. Box Culvert.



Lexington Convention Center Expansion High Street – 30” Storm Sewer Relocation.



Heritage Hall Expansion - Chambered 12-foot x 6-foot storm and 5-foot x 4-foot sanitary R.C. Box Culvert - Upstream Town Branch Creek.











7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

Joseph M. Bunker

STATE OF Wisconsin

COUNTY OF Dane

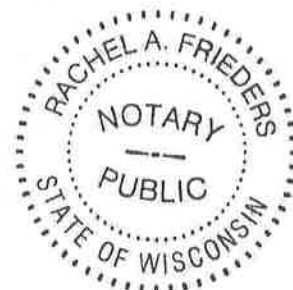
The foregoing instrument was subscribed, sworn to and acknowledged before me

by Joseph M. Bunker on this the 3rd day

of June, 2019

My Commission expires: March 21, 2021

Rachel A. Frieders  
NOTARY PUBLIC, STATE AT LARGE



bribe an officer or employee of the LFUCG.

9. **Additional Information:** While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. **Ambiguity, Conflict or other Errors in RFP:** If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. **Agreement to Bid Terms:** In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. **Cancellation:** If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

#### A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.
- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:

other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.
20. Contractor [or Vendor or Vendor's Employees] will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Contractor agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

Signature



Date





**Strand Associates, Inc.®**

1525 Bull Lea Road, Suite 100

Lexington, KY 40511

(P) 859-225-8500

(F) 859-225-8501

### **Equal Employment Opportunity Policy Statement**

Strand Associates, Inc.® is committed to a policy of equal opportunity for all employees. It is our policy to seek and employ the best qualified personnel in all positions, to provide equal opportunity for advancement to all employees, including upgrading, promotion and training, and to administer these activities in a manner which will not discriminate against or give preference to any person because of race, color, religion, age, sex, national origin, handicap, marital status, or any other discriminatory basis prohibited by state or federal law.

Strand is further committed to providing a work environment in which employees are treated with courtesy, respect, and dignity. As part of this commitment, we will not tolerate any form of harassment, verbal or physical, with regard to an individual's race, sex, national origin, or any other protected characteristics. Therefore, all employees are encouraged to bring forth any concerns or complaints in this regard to the attention of management by contacting Human Resources, Shawn Cannon, or Matthew Richards.

All complaints of sexual harassment, or harassment of any kind, will be investigated promptly and, where necessary, immediate and appropriate action will be taken to stop and remedy any such conduct. Any employee found in violation of this policy will be subject to disciplinary action which could include discharge.

## LFUCG STATEMENT OF GOOD FAITH EFFORTS

Bid/RFP/Quote # REP #21-2019 Engineering Services for Stormwater Indefinite Services

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE and Veteran-Owned business enterprises on the project and can supply the appropriate documentation.

       Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.

       Included documentation of advertising in the above publications with the bidders good faith efforts package

       Attended LFUCG Central Purchasing Economic Inclusion Outreach event

Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs and/or Veteran-Owned Businesses of subcontracting opportunities

       Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms and Veteran-Owned businesses

Requested a list of MWDBE and/or Veteran subcontractors or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).

Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms and Veteran-Owned businesses to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

       Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

Followed up initial solicitations by contacting MWDBEs and Veteran-Owned businesses to determine their level of interest.

Provided the interested MWDBE firm and/or Veteran-Owned business with adequate and timely information about the plans, specifications, and requirements of the contract.

Selected portions of the work to be performed by MWDBE firms and/or Veteran-Owned businesses in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work

**WORKFORCE ANALYSIS FORM**

Name of Organization: Strand Associates, Inc.

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators	11	9	1						1							9	2
Professionals	282	219	49	5		1				7				1	232	50	
Superintendents	-														-	-	
Supervisors	-														-	-	
Foremen	-														-	-	
Technicians	61	47	8	4		2									53	8	
Protective Service	-														-	-	
Para-Professionals	-														-	-	
Office/Clerical	51	9	36	1	1		2		1	1					11	40	
Skilled Craft	-														-	-	
Service/Maintenance	4	1				3									4	-	
<b>Total:</b>	<b>409</b>	<b>285</b>	<b>94</b>	<b>10</b>	<b>1</b>	<b>6</b>	<b>2</b>	<b>-</b>	<b>2</b>	<b>8</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>1</b>	<b>309</b>	<b>100</b>

Prepared By: Audra Wells, H/R Coordinator  
(Name and Title)

Date: 06/06/19  
Revised 2015-Dec-15