

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 **Banks Engineering, Inc.** with offices located at **Nicholasville, 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

documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.

8.3. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.

8.4 **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

8.5. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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

OWNER:
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

CONSULTANT:
BANKS ENGINEERING, INC.

BY: Linda Gorton

BY: John B. Steinmetz

LINDA GORTON, MAYOR

ATTEST:

[Signature] Deputy
URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by John Steinmetz, as the duly authorized representative for and on behalf of Banks Engineering on this the 17 day of September, 2019.

My commission expires: 12-16-20

Michelle M. Gifford
NOTARY PUBLIC



MICHELLE M. GIFFORD
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
MY COMMISSION EXPIRES 12-16-20
NOTARY ID# 549303

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

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

Consultant Name:				
Project Category: Stormwater Quantity Management				
Selection Criteria	Notes	Score (1-5)	Total Points Possible	Weighted Score
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	
Final Technical Score			100	



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																	
Total:																	

Prepared by: _____ Date: ____/____/____

(Name and Title)

Revised 2015-Dec-15

- 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>)

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

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

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

Date

Company Representative

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.

Signature

Date

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND 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:

<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
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:

Description	Adjective	Numeric Rating
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

8.4 **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

8.5 **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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

OWNER:
LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

CONSULTANT:

BY: _____

BY: _____

LINDA GORTON, MAYOR

ATTEST:

URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by _____, as the duly authorized representative for and on behalf of _____, on this the ___ day of _____, 2016.

My commission expires: _____.

NOTARY PUBLIC

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.*

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

Mr. Slatin:

Banks Engineering is pleased to submit the enclosed proposal in response to your Request for Proposals (RFP). To facilitate your review, we have formatted this document in accordance with instructions in the RFP and included the following information:

- Firm Qualifications, with an executive summary describing our unique qualifications
- Project Team, with an organizational chart, resumes of key team members, and a risk management plan for substitute staffing
- Lists of Clients Similar Projects, and reference project descriptions
- Details related to our team's location and DBE commitments
- Statement of hourly rates
- Addenda, supporting information and required forms

Our team composition will vary based on the requirements of each project assignment, but we commit to meeting all DBE goals of the Urban County Government. Our team will include 2020 Land Surveying (veteran-owned business) for field surveys and base plans, Integrated Engineering (minority-owned) for engineering support, and/or Third Rock Consultants (women-owned) for green infrastructure and environmental services. All of these firms have worked with us on past projects for the Urban County Government.

We believe our team is the most qualified to assist the Urban County Government with the design of stormwater projects due to our experienced and hands-on project management, our extensive experience in the design and construction of stormwater management facilities, our public involvement experience, and our green infrastructure solutions for urban areas.

Thank you for considering our qualifications. If you have any questions or need additional information, please contact me at (859) 881-0020 or jsteinmetz@banksengineering.net.

Very truly yours,
Banks Engineering, Inc.



John B. Steinmetz, P.E.
Senior Engineer

FIRM QUALIFICATIONS

Banks Engineering staff members have an excellent history of providing engineering services to the Urban County Government on stormwater, sanitary sewer, and transportation projects since 1996. Our recent LFUCG stormwater experience includes the Southland Area Drainage Study, a comprehensive evaluation of flooding issues in the upper Wolf Run watershed, along with two separate design projects recommended in that study. Our capabilities will ensure the success of your projects due to our expertise in these critical elements:

- Excellent ability to analyze and understand existing stormwater infrastructure issues and provide innovative approaches to problem solutions
- Comprehensive public involvement experience
- Hydrologic and hydraulic modeling experience to assess watersheds and develop improvement alternatives
- Urban stormwater BMP and green infrastructure expertise for water quality improvements
- Context-sensitive design approach that minimizes property impacts

Banks Engineering is a Central Kentucky consulting engineering firm established in 2009 by Jason and Josh Banks, providing surveying and engineering services for a variety of public and private clients. LFUCG stormwater projects will be led by John Steinmetz and Frank Pruitt, who have worked together to provide excellent service to LFUCG and other Central Kentucky communities since 1996. Recent LFUCG projects managed by them include the Southland Area Drainage Study, two separate projects in the WGPL neighborhood, the Sanitary Sewer Remedial Measures Plans, and several transportation projects.

Integrated Engineering, Inc. is a familiar partner to LFUCG having supported its infrastructure needs since it was founded in 2006. Integrated offers multidisciplinary capabilities that include specialization in stormwater, roadway, water/wastewater, and land development. Integrated has worked for Banks on many past projects for LFUCG and other communities; their participation on the team will primarily be with modeling and/or structural designs.

Third Rock Consultants is a certified woman-owned business which has served LFUCG's Division of Water Quality since it was established in 2000 by Molly Foree Cummins, and is currently assisting with LFUCG's watershed-focused monitoring program. Third Rock has been a key team member of Banks's work in the Wolf Run watershed.

2020 Land Surveying is a veteran-owned Lexington firm that has partnered with Banks on several past and current LFUCG projects and has provided surveying services for the Central Kentucky area since 2000. Norman Drury and his son Justin lead 2020's efforts and are both licensed land surveyors.

EXECUTIVE SUMMARY

The following summary highlights the primary reasons why Banks Engineering is an excellent choice for the indefinite stormwater services contract.



Current construction in the WGPL neighborhood

Experienced, Hands-on, Responsive Project Management

The two senior project managers for Banks Engineering have provided excellent service to LFUCG since the late 90s. They are both very hands-on and responsive to LFUCG and all of our clients, as has been proven repeatedly over the years extending to the current WGPL construction projects. Banks Engineering is unique in having such experienced project managers directing each project element, with a performance record of producing quality designs on schedule and within budget.

John Steinmetz, P.E. will serve as project manager and has 37 years of relevant experience. John has assisted LFUCG with improvement projects related to stormwater, sanitary sewers, and roadways for the past 23 years and recently managed the completion of the Southland Area Drainage Study and subsequent project implementations. He successfully managed other major infrastructure initiatives for LFUCG including the Sanitary Sewer Remedial Measures Plans and the Clays Mill Road Improvements. He has shown that he can coordinate comprehensive public involvement programs and provide solutions that satisfy affected property owners while accomplishing the primary project objectives. John's resume included in this proposal lists 8 similar stormwater projects in the past 5 years.



Residential flooding addressed in the Southland Area Drainage Study

Frank Pruitt, P.E. will serve as Deputy Project Manager and Task Leader. Frank has 21 years of experience working with LFUCG and other municipal clients on stormwater, transportation, and public utility projects. In recent years Frank managed the successful completion of several transportation projects for LFUCG including shared use paths and the later sections of Clays Mill Road. Frank independently manages projects as well as coordinating with John on others.

John and Frank also managed several LFUCG neighborhood drainage projects in the past such as Elkhorn Park Phases 1 and 2, and the Liberty Heights Drainage Improvements.

Past Performance for the Urban County Government

Banks Engineering has provided quality, responsive, cost-effective service to the Urban County Government since John and Frank joined the firm in late 2014. The following projects have been completed (or are in the process of being completed) in the past few years within the prescribed budgets and schedules, and with no changes orders that were not requested by the Urban County Government:

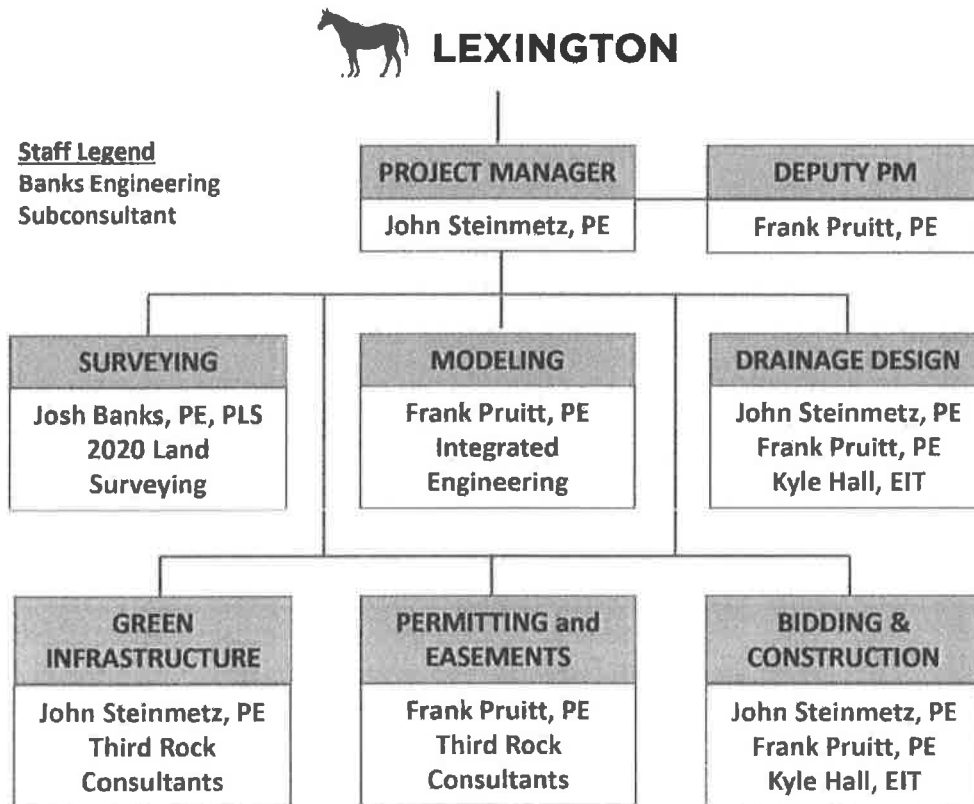
- WGPL Storm Sewer Improvements
- WGPL Green Infrastructure Project
- Southland Area Drainage Study
- Citation Trail
- West Hickman South Trail
- Euclid Avenue and Avenue of Champions Streetscape

In addition to the Banks projects listed above, John and Frank have provided excellent service to LFUCG throughout their careers while with other firms. Their work at Banks is a continuation of the excellent service proved on dozens of Urban County Government projects extending back to the late 90s.

PROJECT TEAM

Organizational Chart

The following graphic illustrates the proposed staffing for the Indefinite Stormwater Projects. Each of these personnel have excellent qualifications for their role in the project, and have confirmed that their current and anticipated workload will support giving the Urban County Government projects their highest priority.



Any geotechnical services required will be provided by Geotechnology, Inc.

Risk Management Plan

John Steinmetz will serve as the Project Manager. Frank Pruitt, Senior Engineer and Deputy Project Manager, is also a proven project manager for LFUCG and will be poised to provide project leadership, if needed for some unlikely circumstance. All significant elements of the project, including field surveys, watershed modeling, public involvement, drainage designs, and green infrastructure designs have redundancy within the team and between the firms.

The Banks Engineering Team will operate as a truly integrated team, with subconsultants operating as an extension of Banks Engineering's staff. This approach was successfully used by our Project Manager on several recent LFUCG projects – the Southland Area Drainage Study, the two WGPL improvement projects, and the Sanitary Sewer Remedial Measures Plans (while Banks' project manager was at another firm). With this approach the team has redundancy in all critical areas, including project management.

John B. Steinmetz, PE
Senior Engineer**Experience and Qualifications**

Mr. Steinmetz has 37 years of relevant experience in a variety of infrastructure projects for LFUCG and other municipal clients. He has successfully managed some of the largest and high-profile projects in recent Lexington history including the Southland Area Drainage Study, the Sanitary Sewer Remedial Measures Plans, and the Clays Mill Road Improvements. All of these projects, along with many others, included comprehensive public involvement efforts. Mr. Steinmetz also managed numerous neighborhood drainage improvement projects in Lexington, Nashville, Pittsburgh, and other communities and has served as City Engineer for several medium-sized cities in the region. These experiences provide a unique toolbox of sensitive solutions to provide assistance to local residents and businesses. Relevant experience follows (**projects in bold text were completed in the past 5 years**):

- **Southland Area Storm Drainage Study** – Lexington Fayette Urban County Government
- **WGPL Storm Sewer Project** – LFUCG
- **WGPL Green Infrastructure Project** – LFUCG
- **South Cumberland – Hughes Avenue Drainage Improvements** – Berea, KY
- **Lakewood Stormwater Improvements** – Nashville Metro Water Services
- **Town Fork Stream Restoration** – Nicholasville, Kentucky
- **Cherry Road Stormwater Improvements** – Berea, KY
- Goetz Road Drainage Improvements – Owensboro, KY
- Elkhorn Park Drainage Improvements – LFUCG
- Downtown Storm Sewer Project – Georgetown, KY
- East Main Street Storm Sewer Project – Georgetown, KY
- **Athens Alley Stormwater Improvements** – Dormont, PA
- Storm Water Master Plan – Owensboro, KY
- Liberty Heights Drainage Improvements – LFUCG
- Stormwater Master Plan – Danville, KY
- Cane Run Watershed SWMM Modeling – LFUCG
- Ft. Sumter Stream Restoration Project – LFUCG
- LCC (BCTC) Detention Basin – University of Kentucky
- Gainesway Pond Restoration Project – LFUCG
- Furrows Detention Basin – LFUCG
- Louisville and Jefferson County MSD Drainage Improvements – Louisville, KY
- SSSA Reports and Remedial Measures Plans – LFUCG

Education - University of Kentucky, Bachelor of Science Civil Engineering, 1982

Professional Registrations - Professional Engineer, KY #14730; OH #E-56661

Frank Pruitt, PE
Senior Engineer**Experience and Qualifications**

Mr. Pruitt has worked on a variety of civil engineering projects throughout his 21-year career. He has extensive experience in the design of infrastructure projects involving roadway design, stormwater management, water distribution, sanitary sewer, and site development, projects. Relevant experience includes serving as project manager or project engineer on the following projects:

Southland Area Storm Drainage Study – Lexington-Fayette Urban County Government

Project Engineer for the surveys, modeling, public involvement, and improvements for the upper Wolf Run watershed to address structure and major street flooding.

WGPL Storm Sewer Project – Lexington-Fayette Urban County Government

Project Engineer for the surveys, plan development, and storm sewer designs for approximately 5,100 linear feet of storm sewers to improve surface drainage and provide sump pump discharge piping.

Town Fork Stream Restoration - Nicholasville, Kentucky

Reconstruction of approximately 900 LF of deteriorated and failing concrete stream bank for the major drainage system of downtown Nicholasville.

Liberty Heights Storm Sewer Improvements - Lexington-Fayette Urban County Government

Project involved the design and construction services for a rehabilitation of an existing storm drain system. Construction involved approximately 1,100 feet of storm sewer pipes and associated inlets.

Elkhorn Park Drainage Improvements - Lexington-Fayette Urban County Government

Upgrades to the existing drainage systems in two adjoining neighborhoods, involving approximately 2,000 feet of storm sewer pipes, 3 reinforced concrete box culverts, inlets, and two detention ponds.

Cherry Road Stormwater Improvements – Berea, KY

Stormwater improvements to reduce flooding in a residential section of Berea, involving approximately 1,300 linear feet of 15-inch through 36-inch storm sewers and a stormwater detention basin

Transportation Stormwater Management

Project Manager or Project Engineer for stormwater management designs on many miles of roadway construction projects in Lexington, Berea, and other communities including:

- Clays Mill Road, Lexington
- Berea Bypass
- US 25 Reconstruction, Berea
- Mason Headley Road, Lexington
- Parkers Mill Road, Lexington
- Saron Drive Extension, Lexington
- Bratcher Lane, Berea
- US 60, Rowan County
- Cigar Lane, Kentucky Horse Park

Education - University of Kentucky, Bachelor of Science Civil Engineering, 1998

Professional Registration - Professional Engineer, KY #22891

Kyle J. Hall, EIT
Staff Engineer**Experience and Qualifications**

Mr. Hall has 2 years of experience in the civil engineering field and has completed stormwater management designs on numerous Central Kentucky projects. These designs included watershed modeling and the design of storm sewers, detention basins, and water quality BMPs. Education relating to stormwater management includes training in multiple stormwater modeling programs, ASCE hydraulics short courses, and hydraulics training at the University of Wisconsin. Relevant experience as Project Engineer includes:

Southland Area Storm Drainage Study – Lexington, KY

Project Engineer for the modeling and improvements (budgeted at \$10 million) for the upper Wolf Run watershed to address structure and major street flooding.

WGPL Stormwater Improvements – Lexington, KY

Project Engineer for nearly one mile of new storm sewers to reduce street and structure flooding, and to provide a discharge system for redirected sump pumps. A second project phase included a bioretention basin and bioswale to provide water quality improvements.

Cherry Road Stormwater Improvements – Berea, KY

Project Engineer for the drainage system and detention designs, permitting, and preparation of construction documents for a new drainage system to reduce residential structure and street flooding.

Clays Mill Baptist Church Stormwater Design – Nicholasville, KY

Project Engineer for the drainage system, detention design, and preparation of construction documents.

Hillenmeyer East Subdivision Stormwater Design – Lexington, KY

Project Engineer for the stormwater drainage system and preparation of construction documents for a 40-acre residential subdivision.

Capstone Drive Light Industrial Stormwater Design – Lexington, KY

Project Engineer for the stormwater drainage system, water quality design, and preparation of construction documents for a 2-acre private development site.

Greyson on 27 Water Quality Design – Nicholasville, KY

Project Engineer for the water quality design for a 61-acre apartment and single-family subdivision located near Brannon Crossing.

Macedonia Christian Church Detention Study – Lexington, KY

Project Engineer for the detention basin and water quality design for a parking lot re-development.

DC Elevator Stormwater and Detention Design – Lexington, KY

Project Engineer for the detention basin and water quality design for a light industrial re-development project located in Lexington.

Education - University of Kentucky, Bachelor of Science Mining Engineering, 2017

Professional Registrations - Engineer-In-Training (EIT) – Kentucky

LIST OF CLIENTS FOR SIMILAR WORK

Lexington-Fayette Urban County Government
 Division of Water Quality
 Mr. Charles Martin, P.E., Director
 (859) 425-2455
chmartin@lexingtonky.gov

City of Berea, KY
 Mr. Randy Stone, City Administrator
 (859) 986-8528
rstone@bereaky.gov

City of Nicholasville, KY
 Mr. Tim Cross, City Engineer
 (859) 885-1121
tim.cross@nicholasville.org

City of Owensboro, KY
 Mr. Joseph Schepers, P.E.
 (270) 687-8440
schepersjg@rwra.org

<i>The projects listed below are a partial listing of relevant experience of Banks Engineering staff for the clients listed above as well as other municipal clients.</i>	SWMM/2D MODELING	GREEN INFRASTRUCTURE	STREAM RESTORATION	SURVEYING / GIS	FLOOD REDUCTION	FLOODPLAIN MAPPING	CIP PLANNING	401/404/FEMA PERMITTING
	SIMILAR DESIGN SERVICES							
	RELEVANT SERVICES							
Southland Area Drainage Study – LFUCG	✓	✓	✓	✓	✓	✓	✓	✓
WGPL Storm Sewer Improvements – LFUCG	✓			✓	✓			✓
WGPL Green Infrastructure Project – LFUCG		✓	✓	✓				✓
Town Fork Stream Restoration – Nicholasville, KY			✓	✓				✓
Cherry Road Drainage Improvements – Berea, KY	✓	✓	✓	✓	✓			✓
South Cumberland Drainage Improvements – Berea, KY				✓	✓			
Lakewood Stormwater Improvements – Nashville, TN	✓			✓	✓		✓	✓
Ft. Sumter Stream Restoration – LFUCG			✓	✓				
Elkhorn Park Drainage Improvements – LFUCG	✓	✓	✓	✓	✓			✓
Goetz Ditch Improvements – Owensboro, KY	✓	✓	✓	✓	✓	✓	✓	✓
Stormwater Master Plan – Owensboro, KY	✓			✓	✓	✓	✓	
Stormwater Master Plan – Danville, KY	✓			✓	✓	✓	✓	
Athens Alley Stormwater Improvements – Dormont, PA				✓	✓			
South Limestone Storm Sewer – LFUCG				✓	✓			
Furrows Detention Basin – LFUCG	✓			✓	✓			
Liberty Heights Drainage Improvements – LFUCG				✓	✓			

FIRM REFERENCE PROJECTS

WGPL STORMWATER SYSTEM IMPROVEMENTS - Lexington, KY

Banks Engineering served as prime consultant for this project to install a new drainage system in an older residential neighborhood in Lexington. This project, the initial effort resulting from Banks' Southland Area Storm Drainage Study, involves the design of over 5,100 linear feet of storm sewers to improve surface drainage, reduce street and structure flooding, and provide discharge piping for the redirection of approximately 80 sump pumps from the sanitary sewer to the new storm sewer. The sump pump disconnections are an important part of Lexington's efforts to reduce the incidence of sanitary sewer overflows.

Project Status:
Construction in 2019
Total Cost: \$1,400,000

SOUTHLAND AREA STORM DRAINAGE STUDY - Lexington, KY

Banks Engineering served as prime consultant for this study of the upper Wolf Run Watershed to develop recommended improvements to reduce flooding of structures and roadways. Numerous previous studies assessed flooding, stream stability, and water quality issues in the Wolf Run Watershed, and this project was intended to incorporate existing information with new watershed modeling of the 1,830-acre study area and develop a capital improvement plan to be constructed within a 4-year window. The budgeted \$10 million in improvements are part of the Urban County Government's EPA Consent Decree requirements.

Project Status:
Study completed in 2018
Study Cost: \$305,000
Recommended projects: 8 with estimated costs of \$9 million

LAKWOOD STORMWATER IMPROVEMENTS - Nashville, TN

Nashville Metro Water Services (MWS) initiated upgrades to potable water and sanitary sewer facilities in a 75-acre neighborhood in Lakewood after that city was annexed. Prior to bidding the utility work, MWS decided to include stormwater improvements to provide a more complete infrastructure upgrade to the community. While with another firm, Banks Engineering's Senior Engineer served as project manager for the design of over 10,000 linear feet of storm sewers and open channels to convey the 10-year, 24-hour storm event, ensuring that no structural damage would be expected for a 100-year storm event.

Project Status:
Constructed in 2016
Project Cost: \$1,600,000

CHERRY ROAD STORMWATER IMPROVEMENTS - Berea, KY

The east end of Cherry Road experiences significant flooding of the street and residences during major rainfall events due to a bottleneck caused by a downstream culvert under the railroad. If additional capacity was provided by a new railroad culvert, downstream properties would be impacted. Other watershed issues include a failing pipe draining Chestnut Court and a failing pavement structure for Chestnut Court. Banks Engineering designed a new storm sewer system for Chestnut Court, and a diversion of runoff from approximately 32 acres of urbanized watershed from Cherry Road to a tributary of Brushy Fork. The designs included approximately 1,300 linear feet of 15-inch through 36-inch storm sewers and a stormwater detention basin.

Project Status:
Designed in 2018-2019
Estimated Cost: \$500,000

LOCAL OFFICE (Attachment 1)

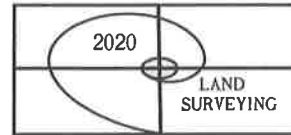
Prime Consultant	Location (City, State)	Date Office Established	Total Number of Employees	No. of Employees expected to work on DWQ projects
Headquarters	Nicholasville, KY	2009	13	6
Local Office	Nicholasville, KY	2009	13	6
PM Location	Nicholasville, KY			
Subconsultants:				
Integrated Engineering	Watershed Modeling, Structural Designs			
Headquarters	Lexington, KY	2006	38	4
Local Office	Lexington, KY	2006	31	4
Third Rock Consultants	Green Solutions, Permitting			
Headquarters	Lexington, KY	2000	17	5
Local Office	Lexington, KY	2000	17	5
2020 Land Surveying	Surveying			
Headquarters	Lexington, KY	2000	2	2
Local Office	Lexington, KY	2000	2	2

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.

DBE INVOLVEMENT

Banks Engineering is fully committed to meeting or exceeding the DBE goals of the Urban County Government, as proven in past and current projects. For the Indefinite Stormwater Project we will work with Integrated Engineering (a certified minority-owned firm), and/or Third Rock Consultants (a certified woman-owned business) who will participate in various project elements depending on the specific scope of the assignment. We expect their involvement to exceed the desired 10 percent minimum contribution. We will also contract with 2020 Land Surveying, a veteran-owned business, for field surveys and easement descriptions. Their participation is also expected to exceed the desired minimum of 3 percent.



STATEMENT OF HOURLY RATES

Hourly Rate Schedule for Banks Engineering

STAFF POSITION	HOURLY RATE
Principal	\$180
Project Manager	\$175
Senior Engineer	\$165
Professional Engineer / Land Surveyor	\$140
Project Engineer (EIT)	\$120
Senior Technician	\$120
Technician/CAD	\$100
Survey Crew	\$150
Clerical	\$60

Reimbursable expenses will be the direct costs of printing / duplication services, with no markup, and postage for mailings to residents.

NOTE: Rates shown are valid through 2021 and may be adjusted every 3 years thereafter.

MAYOR LINDA GORTON



LEXINGTON

TODD SLATIN
DIRECTOR
CENTRAL PURCHASING

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





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: Banks Engineering, Inc.

ADDRESS: 1211 Jessamine Station, Nicholasville, KY 40356

SIGNATURE OF BIDDER:  _____



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: Banks Engineering, Inc.

ADDRESS: 1211 Jessamine Station, Nicholasville, KY 40356

SIGNATURE OF BIDDER:



AFFIDAVIT

Comes the Affiant, Banks Engineering, Inc., and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Jason D. Banks, PE, PLS and he/she is the individual submitting the proposal or is the authorized representative of Banks Engineering, Inc., 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

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.

STATE OF Kentucky
COUNTY OF Jessamine

The foregoing instrument was subscribed, sworn to and acknowledged before me
by Jason D. Banks, PE, PLS on this the 6th day
of June, 2019.

My Commission expires: 1-26-20



MICHELLE M. GIFFORD
NOTARY PUBLIC
STATE AT LARGE
KENTUCKY
MY COMMISSION EXPIRES 1-26-20
NOTARY ID# 549303

Michelle M. Gifford
NOTARY PUBLIC, STATE AT LARGE

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.

Bidders

We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.



Signature

Banks Engineering, Inc.

Name of Business

WORKFORCE ANALYSIS FORM

Name of Organization: Banks Engineering, 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	1		1														1
Professionals	7	7															7
Superintendents																	
Supervisors																	
Foremen																	
Technicians	5	5															5
Protective																	
Para-																	
Office/Clerical																	
Skilled Craft																	
Service/Maintena																	
Total:	13	12	1														12 1

Prepared by: Jason D. Banks, PE, PLS Date: 6 / 7 / 19

(Name and Title)

Revised 2015-Dec-15

**DIRECTOR, DIVISION OF CENTRAL PURCHASING
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 EAST MAIN STREET
LEXINGTON, KENTUCKY 40507**

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

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE) and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The Lexington Fayette Urban County Government also has set a goal that not less than three percent (3%) of the total value of this Contract be subcontracted to Veteran-owned Small Businesses. The goal for the utilization of Disadvantaged Business Enterprises as well Veteran –owned Small Businesses as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process. Depending on the funding source, other DBE goals may apply.

For assistance in locating Disadvantaged Business Enterprises Subcontractors contact:

Sherita Miller, MPA, Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, 3rd Floor, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov

Firm Submitting Proposal: Banks Engineering, Inc.

Complete Address: 1211 Jessamine Station Nicholasville, KY 40356
Street City Zip

Contact Name: Jason D. Banks Title: President

Telephone Number: (859) 881-0020 Fax Number: _____

Email address: jasonbanks@banksengineering.net



LFUCG MWDBE PARTICIPATION FORM
Bid/RFP/Quote Reference # 21-2019

The MWDBE and/or veteran subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately. **Failure to submit a completed form may cause rejection of the bid.**

MWDBE Company, Name, Address, Phone, Email	MBE WBE or DBE	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1. Integrated Engineering 166 Prosperous Place Lexington, KY 40509 (859) 368-0145 eddie@int-engineering.com	MBE	Modeling, structural designs	TBD	TBD
2. Third Rock Consultants 2526 Regency Road Lexington, KY 40503 (859) 977-2000 mforee@thirdrockconsultants.com	WBE	Green infrastructure, permitting	TBD	TBD
3. 2020 Land Surveying 2216 Young Drive Lexington, KY 40505 (859) 268-1044 jdd75@msn.com	Veteran-owned	Surveying	TBD	TBD
4.				

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Banks Engineering, Inc.
Company
June 6, 2019
Date

Jason D. Banks, PE, PLS
Company Representative
President
Title

GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda and IonWave Q&A, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted to 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:
 - (a) Failure to perform the contract according to its terms, conditions and specifications;
 - (b) Failure to make delivery within the time specified or according

- to a delivery schedule fixed by the contract;
- (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
 - (d) Failure to diligently advance the work under a contract for construction services;
 - (e) The filing of a bankruptcy petition by or against the contractor; or
 - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. **Assignment of Contract:** The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. **No Waiver:** No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. **Authority to do Business:** The Respondent must be a duly organized and authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or 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

6-6-19

Date



**2019 Affirmative Action Program
for Women and Minorities**

**Banks Engineering
1211 Jessamine Station
Nicholasville, KY 40356**

KEY PERSONNEL

Jason Banks, President

Josh Banks, Vice President

FACILITY DATA

EIN 01-0925655

EEO-1 Number A123456

Dun and Bradstreet

831786863

NAICS 541330

SIC 8711

**EQUAL EMPLOYMENT OPPORTUNITY / AFFIRMATIVE ACTION POLICY
STATEMENT**

It is the policy of Banks Engineering to consider all qualified applicants for available positions without regard to race, color, sex, religion, age, national origin, disability, or veteran status. Advancement to positions of greater responsibility is based on an individual's demonstrated performance.

Banks Engineering is committed to the EQUAL EMPLOYMENT OPPORTUNITY POLICY and as part of the Affirmative Action plan will:

- recruit, hire, upgrade, train, and promote in all job classifications without regard to race, color, sex, religion, age, national origin, disability, or veteran status;
- base employment decisions on the principles of Equal Employment Opportunity and with the intent to further the company's commitment to affirmative action and workplace diversity;
- ensure that all other personnel actions such as compensation benefits, company-sponsored training, educational tuition assistance, social and recreational programs, shall be administered without regard to race, color, sex, religion, age, national origin, veteran status, or disability;
- take affirmative action to ensure that minority group individuals, women, veterans of the Vietnam Era, qualified persons with a disability, and disabled veterans are introduced into the workforce and that these employees are encouraged to aspire for promotion and are considered, as promotional opportunities arise; and
- ensure that employees and applicants are not subjected to intimidation and/or harassment, threats, coercion, or discrimination because they have filed a complaint, assisted or participated in an investigation or any other activity, or opposed any act or practice made unlawful by VEVRAA 503. 60-741.44 (a) and 503. 60-250.44 (a).

In keeping with the above commitments and policy, Banks Engineering will analyze its personnel transactions once a year to ensure equal opportunity for all individuals. As with any other company goals, management's performance regarding the Affirmative Action Program will be evaluated.

Banks Engineering will ensure that the intent and practice of this policy is carried out. The ultimate responsibility for fulfilling the intent of this policy, however, lies with every department head and supervisor.



Signature

6-6-19

Date

President

Title