

## ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of \_\_\_\_\_, 2011, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A ("**OWNER**") and **HAZEN AND SAWYER, P.S.C.** with offices located at 444 Lewis Hargett Circle, Suite 260, Lexington, Kentucky, 40503 ("**CONSULTANT**"). **OWNER** intends to proceed with the Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #28-2011 (the "**PROJECT**"). The **CONSULTANT** shall perform professional engineering services and deliverables as described in **EXHIBIT A** which include customary master planning, civil, geotechnical, electrical, 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 CMOM obligations and 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 civil, geotechnical, structural, mechanical, electrical 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 #28-2011 (Including Addendum #1).
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 #28-2011).

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 #28-2011, **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 #28-2011, 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**. 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). 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.
- 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 C** 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 delays result by reason of acts of the **OWNER** or approving agencies, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** shall immediately notify the **OWNER**, and within five (5) business days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the **PROJECT** schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5 of this Agreement (**Disputes**) shall apply in the event the parties cannot agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to **CONSULTANT** shall be subject to adjustment as agreed upon by the parties. Section 6.5 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

- 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.
- 4.5 This agreement may be renewed annually up to two (2) times, but only upon approval by the **OWNER'S** Urban County Council of the **OWNER** consistent with the terms of this Agreement. The renewal will be directly related to performance evaluations and the timely achievement of target dates. The performance evaluation criteria will be established and discussed at the beginning of the contract period. If requested by the Urban County Council, the **CONSULTANT** shall present a summary of findings and accomplishments to them near the time of renewal at no additional cost to **OWNER**.

## **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.

**5.2. 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 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**

The **CONSULTANT** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **CONSULTANT** shall be responsible for the accuracy of all work notwithstanding the **OWNER'S** acceptance and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **CONSULTANT**, without additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** certifies that the submitted information is accurate. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement and take any other appropriate legal action, as well as disqualify **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

**6.7. Security Clause**

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization without prior approval of the **OWNER**.

**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, consultants, assigns, volunteers, and successors in interest.

#### **6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION**

CONSULTANT shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) CONSULTANT'S negligent acts or intentional misconduct, or errors or omissions, in connection with the performance of this Agreement, (b) CONSULTANT'S performance or breach of the Agreement provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use; and not caused by a negligent act or omission, or the willful misconduct of the OWNER, or (c) the condition of any premises, equipment or other property being used or operated by the CONSULTANT in connection with the performance of this contract. In the event OWNER is alleged to be liable based upon the actions or inactions of CONSULTANT, CONSULTANT shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all 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. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this contract.

#### **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 claim, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per claim
Professional Liability	\$1 million per claim, \$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 Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- e. The General Liability Policy shall be maintained for a minimum of three years beyond the completion date of the project
- f. The Professional Liability Policy shall include a Pollution Liability endorsement unless it is deemed not to apply by OWNER.
- g. 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).

- h. 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.
- i. 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.
- j. 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**

**6.9.6.1. CONSULTANT** agrees to adhere to and comply with William-Steiger Act, enacted December 1970, and all other federal, state, and local safety health and environmental laws, regulations and ordinances. The **CONSULTANT** shall provide all safeguards, safety devices and protective equipment, and take any other action necessary to protect the life, health and safety and property of all persons on the job site, the public, and the **OWNER**.

**6.9.6.2.** The current Kentucky Occupational Safety and Health Standards of the Construction Industry 29 CFR Part 1926 adopted by 803 KAR 2:030 and the Kentucky Occupational Safety and Health Standard for General Industry 29 CFR Part 1910 as adopted by KAR 2:010, and as promulgated by the Kentucky Occupational Safety and Health Standards Board and as amended or modified, are hereby incorporated into and made an integral part of the Agreement with full compliance the responsibility solely of the **CONSULTANT**.

6.9.6.3. The **CONSULTANT** understands and agrees that the **OWNER** shall be permitted but not obligated, to inspect the work place, operations, machinery and equipment involved in this Agreement and review and audit any and all **CONSULTANT'S** records and documents as deemed necessary by the **OWNER** to assure compliance with any and all of the provisions of this Agreement and maximize the protection of the **OWNER**. Safety on the job, however, remains solely the responsibility of the **CONSULTANT**.

#### 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.

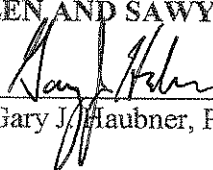
- 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, 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**  
**BY:** \_\_\_\_\_  
JIM GRAY, MAYOR

**CONSULTANT:**  
**HAZEN AND SAWYER, P.S.C.**  
**BY:**  \_\_\_\_\_  
Gary J. Haubner, P.E.

**ATTEST:**

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK     )  
COMMONWEALTH OF KENTUCKY     )  
COUNTY OF FAYETTE             )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Gary Haubner as the duly authorized representative for and on behalf of Hazen & Sawyer, on this the 7th day of November, 2011.

My commission expires: September 7th, 2015

  
NOTARY PUBLIC

# **EXHIBIT A**

**Scope of Engineering**

**Services and Related Matters**

**RFP #28-2011**



# **Lexington-Fayette Urban County Government**

## **Request For Proposal**

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The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #28-2011 - Engineering Consultant – Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services LFUCG Consent Decree Entered January 3, 2011** 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 **August 23, 2011**.

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 #28-2011 - Engineering Consultant – Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services LFUCG Consent Decree Entered January 3, 2011**

If mailed, the envelope must be addressed to:

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.

***There will be a pre-proposal conference on Wednesday August 10, 2011 at 10:00 AM, local time, at Town Branch WWTP Training Room, 301 Lisle Industrial Avenue, Lexington KY.***

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

**The Proposer must submit one (1) master (hardcopy), (1) electronic version and seven (7) duplicates (hardcopies) of their proposal for evaluation purposes.**

The Lexington-Fayette Urban County Government reserves the right to reject any or all proposals, and to waive technicalities and informalities when such waiver is determined by the Lexington-Fayette Urban County Government to be in its best interest.

Signature of this proposal by the Proposer constitutes acceptance by the Proposer of terms, conditions and requirements set forth herein.

Minor exceptions may not eliminate the proposal. Any exceptions to the specifications established herein shall be listed in detail on a separate sheet and attached hereto. The Lexington-Fayette Urban County Government shall determine whether any exception is minor.

The Lexington-Fayette Urban County Government encourages the participation of minority- and women-owned businesses in Lexington-Fayette Urban County Government contracts. This proposal is subject to Affirmative Action requirements attached hereto.

**Please do not contact any City staff member or any other person involved in the selection process other than the designated contact person(s) regarding the project contemplated under this RFP while this RFP is open and a selection has not been finalized. Any attempt to do so may result in disqualification of the firm's submittal for consideration.**

### **Laws and Regulations**

All applicable state laws, municipal ordinances and regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

### **Equal Employment Opportunity**

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from

itself and each of its subcontracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

### **Kentucky Equal Employment Opportunity Act**

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (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

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

## **Contention Process**

Vendors who respond to this invitation have the right to file a notice of contention associated with the RFP process or to file a notice of appeal of the recommendation made by the Director of Central Purchasing resulting from this invitation.

Notice of contention with the RFP process must be filed within 3 business days of the bid/proposal opening by (1) sending a written notice, including sufficient documentation to support contention, to the Director of the Division of Central Purchasing or (2) submitting a written request for a meeting with the Director of Central Purchasing to explain his/her contention with the RFP process. After consulting with the Commissioner of Finance the Chief Administrative Officer and reviewing the documentation and/or hearing the vendor, the Director of Central Purchasing shall promptly respond in writing findings as to the compliance with RFP processes. If, based on this review, a RFP process irregularity is deemed to have occurred the Director of Central Purchasing will consult with the Commissioner of Finance, the Chief Administrative Officer and the Department of Law as to the appropriate remedy.

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.

## **EVALUATION CRITERIA – see attached Evaluation Scoring Sheet**

1. Specialized experience and technical competence of the firm's proposed project team (including a joint venture or association) with the type of service requested; Project Manager and Principal Project Engineer(s) should be identified in the proposal;
2. Demonstrated capacity of the person or firm to perform the work, including any specialized services, within the time limitations;
3. Character, integrity, reputation, judgment, experience, and efficiency of the person or firm;
4. Past record and performance on contracts with the Lexington-Fayette Urban County Government or other governmental agencies and private industry with respect to such factors as control of cost, quality of work, and ability to meet schedules;
5. Familiarity with the details of the project;
6. Degree of local employment to be provided by the person or firm in the performance of the contract; and
7. Submitted schedule of hourly rates in effect for duration of contract for all employees of the firm which are reasonably expected to contribute to the final work product. Submitted hourly rates should be limited to those individuals that are expected to contribute a minimum of 10% to the overall work product

described in the scope of services. (The final contract price will be negotiated and determined after refinement of the scope in the initial scoping meetings.)

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 addressed to:**

Betty Landrum, Buyer Senior  
Division of Central Purchasing  
[bettyb@lexingtonky.gov](mailto:bettyb@lexingtonky.gov)

**Affirmative Action Plan**

All vendors must submit as a part of the proposal package the following items to the Urban County Government:

1. Affirmative Action Plan for his/her firm;
2. Current Work Force Analysis Form;

Failure to submit these items as required may result in disqualification of the submitter from award of the contract. All submissions should be directed to:

Director, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, 3rd Floor  
Lexington, Kentucky 40507

All questions regarding this proposal must be directed to the Division of Central Purchasing, (859)-258-3320.

### 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**

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 \_\_\_\_\_

COUNTY OF \_\_\_\_\_

The foregoing instrument was subscribed, sworn to and acknowledged before me by \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 2011.

My Commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE

## EQUAL OPPORTUNITY AGREEMENT

### 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

*I/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

\_\_\_\_\_  
Name of Business

# WORKFORCE ANALYSIS FORM

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

Date: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

Categories	Total	White		Latino		Black		Other		Total	
		M	F	M	F	M	F	M	F	M	F
Administrators											
Professionals											
Superintendents											
Supervisors											
Foremen											
Technicians											
Protective Service											
Para-Professionals											
Office/Clerical											
Skilled Craft											
Service/Maintenance											
Total:											

Prepared by: \_\_\_\_\_

Name & Title

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

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 MBE/WBE's. The goal for the utilization of certified MBE/WBE's as subcontractors are recommended goals. Contractors who fail to meet such goals will be expected to provide written explanations to the Director of the Division of Central 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 assistance in locating MBE/WBE Subcontractors contact Marilyn Clark at 859/258-3320 or by writing the address listed below:

Marilyn Clark, Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street – Room 338  
Lexington, Kentucky 40507



**Lexington-Fayette Urban County Government**  
**MBE/WBE Participation Goals**

**PART 1 - GENERAL**

- 1.1 The LFUCG request all potential contractors to make a concerted effort to include Minority-Owned (MBE) and Woman-Owned (WBE) Business Enterprises as subcontractors or suppliers in their proposals.
- 1.2 Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned and Woman-Owned Businesses on this contract.
- 1.3 **It is therefore a request of each Submitter to include in its proposal, the same goal (10%) or for MBE/WBE participation and other requirements as outlined in this section.**

**PART 2 - PROCEDURES**

- 2.1 The successful proposer will be required to report to the LFUCG, the dollar amounts of all purchase orders submitted to Minority-Owned or Woman-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)
- 2.2 Replacement of a Minority-Owned or Woman-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MBE/WBE Firm; this is subject to approval by the LFUCG. (See LFUCG MBE/WBE Substitution Form)
- 2.3 For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, submitters may contact:
  - A. The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 2.4 The LFUCG will make every effort to notify interested MBE/WBE subcontractors and suppliers of each RFP, including information on the scope of work, the pre-proposal meeting time and location, the proposal date, and all other pertinent information regarding the project.

**PART 3 - DEFINITIONS**

- 3.1 A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.

- 3.2 A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.

#### PART 4 - OBLIGATION OF PROPOSER

- 4.1 **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MBE/WBE 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.**
- 4.2 Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 4.3 The Form of Proposal includes a section entitled "MBE/WBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4.4 **Failure to submit this information as requested may be cause for rejection of the proposal.**

#### PART 5 - DOCUMENTATION REQUIRED

- 5.1 Proposers reaching the Goal are required to submit only the "MBE/WBE Participation Form." The form must be fully completed including names and telephone number of participating MBE/WBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Proposal Price. The form must be signed and dated, and is to be submitted with the proposal.
- 5.2 Proposers not reaching the Goal must submit the "MBE/WBE Participation Form", the "MBE Quote Summary Form" and a written statement documenting their Good Faith Effort to do so (If proposal includes no MBE/WBE participation, proposer shall enter "None" on the subcontractor / supplier form). In addition, the proposer may submit the following as proof of Good Faith Efforts to meet the Participation Goal:
- A. Advertisement by the proposer of MBE/WBE Contracting opportunities associated with this proposal in at least two (2) of the following:
    - 1. A periodical in general circulation throughout the region
    - 2. A Minority-Focused periodical in general circulation throughout the region
    - 3. A Trade periodical aimed at the MBE/WBE community in general circulation throughout the region
    - 4. Proposer shall include copies of dated advertisement with his submittal
  - B. Evidence of written notice of contracting opportunities to at least five (5) MBE/WBE firms serving the construction industry at least seven (7) days prior to the proposal opening date.
  - C. Copies of quotations submitted by MBE/WBE firms which were not used due to uncompetitive pricing or other factors and/or copies of responses from

firms that were contacted indicating that they would not be submitting a proposal.

- D. Documentation of Proposer's utilization of the agencies identified to help locate potential MBE/WBE firms for inclusion on the contract including responses from agencies.
- E. Failure to submit any of the documentation requested in this section may be cause for rejection of the proposal. Proposers may include any other documentation deemed relevant to this requirement. "Record of MBE/WBE Solicitation" and other required documentation of Good Faith Efforts are to be submitted with the proposal, if participation Goal is not met.



## MINORITY BUSINESS ENTERPRISE PROGRAM

Marilyn Clark  
Minority Business Enterprise Liaison  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507  
[mclark@lexingtonky.gov](mailto:mclark@lexingtonky.gov)  
859-258-3323

OUR MISSION: The mission of the Minority Business Enterprise Program is to facilitate the full participation of minority and women owned businesses in the procurement process and to promote economic inclusion as a business imperative essential to the long term economic viability of Lexington-Fayette Urban County Government.

To that end the city council adopted and implemented resolution 167-91—Disadvantaged Business Enterprise (DBE) 10% Goal Plan in July of 1991. The resolution states in part (a full copy is available in Central Purchasing):

*"A Resolution supporting adoption of the administrative plan for a ten percent (10%) Minimum goal for disadvantaged business enterprise participation in Lexington-Fayette Urban County Government construction and professional services contracts; Providing that as part of their bids on LFUCG construction contracts, general Contractors shall make a good faith effort to award at least ten percent (10%) of All subcontracts to disadvantaged business enterprises; providing that divisions of LFUCG shall make a good faith effort to award at least ten percent of their Professional services and other contracts to disadvantaged business enterprises..."*

A Disadvantaged Business Enterprise is defined as a business at least 51% owned, operated and managed by a U.S. Citizen of the following groups:

- African-American
- Hispanic-American
- Asian/Pacific Islander
- Native American/Native Alaskan
- Non-Minority Female

We are very happy that you have decided to bid for a contract, request for proposal, submitted a quote or are interested in learning more about how to do business with Lexington-Fayette Urban County Government. We have compiled the list below to help you locate certified minority vendors.

**LFUCG—Economic Engine Listings**

Marilyn Clark

[mclark@lexingtonky.gov](mailto:mclark@lexingtonky.gov)

859-258-3323

**Commerce Lexington—**

Tyrone Tyra, Minority Business Development

[tyra@commercelexington.com](mailto:tyra@commercelexington.com)

859-226-1625

**Tri-State Minority Supplier Diversity Council**

Sonya Brown

[sbrown@tsmsdc.com](mailto:sbrown@tsmsdc.com)

502-625-0137

**Small Business Development Council**

Dee Dee Harbut /UK SBDC

[ddharbut@uky.edu](mailto:ddharbut@uky.edu)

Shawn Rogers, UK SBDC

[Shawn.rogers@uky.edu](mailto:Shawn.rogers@uky.edu)

Shiree Mack

[smack@uky.edu](mailto:smack@uky.edu)

**Community Ventures Corporation**

James Coles

[jcoles@cvckv.org](mailto:jcoles@cvckv.org)

859-231-0054

**Kentucky Department of Transportation**

Shella Jarvis

[Shella.jarvis@ky.gov](mailto:Shella.jarvis@ky.gov)

502-564-3601

**KPAP**

Debbie McKnight

[Debbie.McKnight@ky.gov](mailto:Debbie.McKnight@ky.gov)

800-838-3266 or 502-564-4252

Bobbie Carlton

[Bobbie.Carlton@ky.gov](mailto:Bobbie.Carlton@ky.gov)

**Ohio River Valley Women's Business Council**

Rea Waldon

[rwaldon@orcw.org](mailto:rwaldon@orcw.org)

513-487-6534

**Kentucky Small Business Connect**

Tom Back

800-626-2250 or 502-564-2064

<https://secure.kentucky.gov/sbc>

**National Minority Supplier Development Council, Inc.  
(NMSDC)**

[www.nmsdc.org](http://www.nmsdc.org)

**LFUCG MBE/WBE PARTICIPATION FORM**  
**RFP # 28-2011**

The MBE/WBE 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.

MBE/WBE Company, Name, Address, Phone, Email	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1.			
2.			
3.			
4.			

The undersigned company representative submits the above list of MBE/WBE 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.

\_\_\_\_\_  
Company

\_\_\_\_\_  
By

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**LFUCG MBE/WBE SUBSTITUTION FORM**RFP # 28-2011

The substituted MBE/WBE 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 MBE/WBE Company Name, Address, Phone, Email	MBE/WBE 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

---

Date

---

Company Representative

---

Title



# MBE QUOTE SUMMARY FORM

RFP # 28-2011

The undersigned acknowledges that the minority subcontractors listed on this form did submit a quote to participate on this project.

Company Name	Contact Person
Address/Phone/Email	RFP Package / RFP Date

MBE/WBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

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

\_\_\_\_\_  
Company

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title





## 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. In order to measure that goal LFUCG will track spending with MBE/WBE vendors 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.

RFP # 28-2011

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

**LFUCG STATEMENT OF GOOD FAITH EFFORTS**

**RFP # 28-2011**\_\_\_\_\_

By the signature below of an authorized company representative, we certify that we have utilized the following methods to obtain the maximum practicable participation by minority and women owned business enterprises on the project. Please indicate which methods you used by placing an X in the appropriate place.

- \_\_\_\_ Attended LFUCG Central Purchasing Economic Inclusion Outreach Event
- \_\_\_\_ Sponsored Economic Inclusion event to provide networking opportunities
- \_\_\_\_ Requested a list of MBE/WBE subcontractors or suppliers from LFUCG Economic Engine
- \_\_\_\_ Advertised for MBE/WBE subcontractors or suppliers in local or regional newspapers
- \_\_\_\_ Showed evidence of written notice of contracting and/or supplier opportunities to MBE/WBE firms at least seven days prior to the proposal opening date
- \_\_\_\_ Provided copies of quotations submitted by MBE/WBE firms which were not used and/or responses from firms indicating they would not be submitting a quote
- \_\_\_\_ Provided plans, specifications, and requirements to interested MBE/WBE subcontractors
- \_\_\_\_ Other  
Please list any other methods utilized that aren't covered above.
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

## 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, 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.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**Annual Sanitary Sewer Capacity, Management, Operations and  
Maintenance (CMOM) Implementation Services  
LFUCG Consent Decree Entered January 3, 2011**

**General Information**

In order to provide a clear and consistent understanding of the project scope, the Division of Water Quality will host a pre-proposal workshop on August 10, 2011, at 10:00 AM EDT. The pre-proposal workshop will be held at the Division of Water Quality, Town Branch Wastewater Treatment Plant Training Room, 301 Lisle Industrial Avenue, Lexington, Kentucky. Post workshop questions must be submitted, via email, to [bettyb@lexingtonky.gov](mailto:bettyb@lexingtonky.gov) no later than August 12, 2011, at 5:00 PM EDT. Written responses to the questions will be posted by August 16, 2011, at 5:00 PM EDT.

All questions and inquiries related to this Request for Qualifications / Scope of Services must be directed to the Division of Central Purchasing. The failure to follow this provision may result in disqualification of the proposer.

Information on the sanitary sewer CMOM provisions contained in the Consent Decree between LFUCG, the US Environmental Protection Agency (USEPA) and Kentucky Division of Water is available at no cost on the Lexington-Fayette Urban County Government Web Page: <http://www.lexingtonky.gov>. The following draft plans/reports are available for inspection on the Economic Engine:

1. CMOM Self Assessment
2. Sewer Overflow Response Plan (SORP)
3. Fats, Oils and Grease (FOG) Plan
4. Pump Station Backup Power Plan
5. Gravity Line Preventative Maintenance Plan

Each draft report has been prepared for LFUCG by a previously selected vendor. USEPA and the Kentucky Division of Water have provided informal comments to each of these draft reports. Each previously selected vendor is charged with edit / re-submittal of their respective plan / reports. The vendor selected for Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services will be responsible for assisting and directing LFUCG in the implementation of requirements / schedules contained in the approved plans. This vendor will not be responsible for securing approval for any of these plans.



**Annual Sanitary Sewer Capacity, Management, Operations and  
Maintenance (CMOM) Implementation Services**  
**LFUCG Consent Decree Entered January 3, 2011**

**SCOPE OF SERVICES**

The Lexington-Fayette Urban County Government (LFUCG) is accepting statements of qualifications from consulting firms interested in assisting LFUCG with the implementation of portions of the Consent Decree related to sanitary sewers. Information on and copies of the Federal Consent Decree, its appendices/attachments are available at no cost on the LFUCG web page: <http://www.lexingtonky.gov>.

**1. General Project Description**

The selected vendor shall perform professional services as hereinafter stated which include technical writing, reporting, utility services program development/management, civil/sanitary engineering, and scheduling/planning to meet the obligations and deadlines associated with the Capacity, Management, Operations and Maintenance (CMOM) deliverables contained in the Consent Decree (excluding Paragraph 16.b Capacity Assurance). The successful proposer will be awarded a 365 day contract for work associated with implementation of the applicable CMOM provisions. Annual renewal, up to two additional (2) successive 365 day periods, may occur upon mutual agreement by all parties.

The primary goal of this project is to provide LFUCG with the technical support necessary to successfully implement the requirements of the following plans:

- A. CMOM Self Assessment
- B. Sewer Overflow Response Plan (SORP)
- C. Fats, Oils and Grease (FOG) Plan
- D. Pump Station Backup Power Plan
- E. Gravity Line Preventative Maintenance Plan

**2. Specific Scope of Services**

- A. In order to meet the implementation requirements of the approved CMOM plans, the following efforts will be required:
  - 1) The selected vendor must provide LFUCG with a single, dedicated staff person (Contract Employee) to provide on-site CMOM implementation services for a minimum of 40 hours per month. The Contract Employee must be qualified and capable of providing all required services either by completing the assignments individually or by directing vendor supplied support staff located off-site. LFUCG, at its cost, will provide office space located at Town Branch WWTP, including typical office supplies, landline phone service and LFUCG IMS system access (hardware provided) for the Contract Employee. The

Contract Employee will report directly to the LFUCG Collection and Conveyance Manager or their designee.

- 2) The proficient understanding of requirements of all approved CMOM plans.
- 3) A replicable system for tracking / scheduling overall progress towards meeting the deadlines associated the approved CMOM plan requirements.
- 4) The development of written CMOM specific procedures to ensure that LFUCG staff and outside contractors / vendors clearly understand what's required for a specific set of CMOM standards.
- 5) The development of a long-term CMOM implementation training program that is applied to in-house CMOM implementation staff. The vendor selected under this RFQ will be responsible for developing all training materials, conducting all training programs, and administering post-training evaluations to determine the effectiveness of the training.
- 6) Analysis and refinement of existing reports generated by LFUCG's Information Management System (IMS). LFUCG must be certain that all performance goals established by the approved CMOM plans are being continuously met. The vendor(s) selected under this RFQ will be expected to continuously review data to validate and document LFUCG's compliance with performance measures established by an approved CMOM plan. The vendor must also work with :
  - ✓ LFUCG operations staff to ensure accurate and timely data entry into the IMS.
  - ✓ LFUCG management staff to allow for timely resource allocation in the event that performance goals have been / are suspected to be compromised, and
  - ✓ LFUCG information technology staff to re-format / re-configure, as necessary, present and future IMS applications so that over a long-term, LFUCG has the IMS capabilities to continuously demonstrate compliance with the Consent Decree and its KPDES permit. The vendor selected under this RFQ will not be asked to perform computer programming tasks but may be asked to assist LFUCG in developing needs assessment documents and specifications for potential software vendors along with supplying project management services in software development projects.
- 7) Development of a detailed five year annual budget for continued implementation of a compliant CMOM program.
- 8) Preparation of all required CMOM inputs/submittals for quarterly / annual reports or any other reports as required by the Consent Decree. All reports must be delivered in a Word or Excel format submitted directly to a different, designated LFUCG vendor. These formats will allow LFUCG's vendor to reformat the submitted information so that it can be seamlessly inserted into the full report.
- 9) Establishment and management of a shared project documentation data base readily accessible for all team members.

B. In order to meet the implementation requirements of the approved CMOM plans, LFUCG believes that significant effort will be required in the following areas:

- 1) The specification and procurement of specialized services and equipment. Specialized services may well include the use of other vendors (examples: emergency equipment / rapid response procurement plan, industrial grade electrical contracting, sewer cleaning and CCTC inspection services, flow meters / monitoring and remote notification systems, etc.).
- 2) Field level performance evaluations of LFUCG and vendor provided services in all aspects of CMOM implementation.
- 3) The development of written recommendations for potential efficiency opportunities within the overall CMOM program.
- 4) Assistance to LFUCG in improving:
  - The communication between work units that provide mutual support systems and outputs;
  - The reliability and continuity of workflows;
  - Root cause analysis for service interruptions;
  - Long-term continuity of processes, protocols and procedures.

Due to the uncertainty associated with implementing a comprehensive CMOM program, all work associated with this RFQ will be assigned via written Task Order. The successful vendor will be required to submit task-specific draft Task Orders and a fee estimate for each Task Order to LFUCG's Collection and Conveyance Manager (or their designee). Written approval from the Collection and Conveyance Manager (or their designee) must be received prior to initiating work associated with a Task Order. Written Task Order approval will include the assignment of a specific LFUCG Project Manager that will act as the primary LFUCG contact for completing the Task Order. Under no circumstances should changes in Task Order scope or estimated fee occur without prior, written approval from the Collection and Conveyance Manager (or their designee). A copy of Task Order format is attached in Exhibit D of the Consent Decree Engineering Services Agreement.

LFUCG is currently completing an initial, critical path scheduling activity for overall CMOM implementation. This critical path document will likely serve as the basis for future Task Orders.

The selected vendor may incur financial penalty in the event that deliverable deadlines contained in a written Task Order are missed as outlined in the attached Consent Decree Engineering Services Agreement. The Consent Decree Engineering Services Agreement will be used for the successful proposer to this RFQ.

### 3. Attendance at Frequent Master Planning/Progress/Implementation Meetings

In addition to the work time allocated for the Contract Employee as described in Section 2.A.1 of this document, the selected vendor should allow for monthly progress meetings with LFUCG staff and other Consent Decree implementation vendors / consultants. LFUCG will be responsible for scheduling the monthly progress meetings and preparing the agendas. The purpose of the monthly progress meetings will be to:

- A. Share individual project status with a broad audience.
- B. Identify strengths and weaknesses in overall Consent Decree implementation.

The selected vendor should allocate a total of 2 hours per month for attending the monthly meetings along with providing a written summary for work completed in the previous month and work proposed for the following month. The vendor can be represented by a maximum of two employees at these meetings. Other meetings, as necessary, requiring vendor representation beyond the Contract Employee will be addressed via specific Task Orders.

4. Project Scheduling

The selected vendor will be responsible for developing and maintaining all task completion schedules. Task completion schedules, in Microsoft @ Project format or approved equal, should be updated monthly and assessable via the document management system required in Section 2.A.9 above

5. Schedule and Completion

The proposed timeline for this project is outlined in the following schedule. This timeline may be adjusted. The Division of Water Quality shall arrange the exact time and location of meetings.

Meeting to Negotiate Contract

September 15, 2011

NOTE: The selected vendor should review LFUCG's Federal Consent Decree and its associated attachments/appendices to fully understand the significance of deliverable deadlines contained in the Consent Decree.

6. Method of Invoice and Payment

The selected vendor may submit monthly invoices for basic services or work rendered, based upon the selected vendor's estimate of the portion of the specific Task Order actually completed during the billing cycle. Each invoice shall be accompanied by a breakdown of hours attributed to each sub-task for both the billing cycle and the cumulative project period. The Task Order assigned LFUCG Project Manager shall respond to the invoice within thirty days, either denying or approving payment. Specific project time sheets and other payroll information may be subject to reviews and audits by the Lexington-Fayette Urban County Government.

7. Miscellaneous

Any data collection shall be compatible with existing Geographic Information System parameters used by the Urban County Government. Access Data Base formats will be provided.

RFP Scoring Sheet

RFP #28-2011 - Engineering Consultant-Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services LFUCG Consent Decree Entered January 3, 2011						
Consultant Name:						
Selection Criteria	Notes	Total Points	Score(1-5)	Weighted Score	Comment	
Specialized experienced and technical competence of the firm's proposed project team (including a joint venture or association) with the type of service requested; Project Manager and Principal Project Engineer(s) should be identified in the proposal;		15			Weighted Score= (Total Points/5) xScore	
Demonstrated capacity of the person or firm to perform the work, including any specialized services, within the time limitations;		15			Weighted Score= (Total Points/5) xScore	
Character, integrity, reputation, judgment, experience, and efficiency of the person or firm;		5			Weighted Score= (Total Points/5) xScore	
Past record and performance on contracts with the Lexington-Fayette Urban County Government or other governmental agencies and private industry with respect to such factors as control of cost, quality of work, and ability to meet schedules;		15			Weighted Score= (Total Points/5) xScore	

RFP Scoring Sheet

RFP #28-2011 - Engineering Consultant-Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services LFUCG Consent Decree Entered January 3, 2011					
Familiarity with the details of the project.		20			Weighted Score= (Total Points/5) xScore
Degree of local employment to be provided by the person or firm in the performance of the contract; and		15			Weighted Score= (Total Points/5) xScore
Submitted schedule of hourly rates in effect for duration of contract for all employees of the firm which are reasonably expected to contribute to the final work product. Submitted hourly rates should be limited to those individuals that are expected to		15			Weighted Score= (Total Points/5) xScore
Final Technical Score		100			

DBE Participation(Name)  
 DBE Portion(Percentage)  
 Affidavit  
 Affirmative Action Plan  
 EEO Agreement  
 Workforce Analysis  
 Insurance

Comments:

Description	Adjective	Numeric Rating
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RFP Scoring Sheet

RFP #28-2011 - Engineering Consultant-Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services LFUCG				
Consent Decree Entered January 3, 2011				
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		

## ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of \_\_\_\_\_, 2011, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A ("**OWNER**") and \_\_\_\_\_ with offices located at \_\_\_\_\_ ("**CONSULTANT**"). **OWNER** intends to proceed with the \_\_\_\_\_ as described in the attached **EXHIBIT A, Scope of Engineering Services and Related Matters RFP #28-2011 (Engineering Consultant – Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services)**. The **CONSULTANT** shall perform professional engineering services and deliverables as described in **EXHIBIT A** which include customary master planning, civil, geotechnical, electrical, 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 **CMOM obligations and 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 civil, geotechnical, structural, mechanical, electrical 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 #28-2011** (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 #28-2011).



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 #28-2011, **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 #28-2011, 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**. 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). 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.
- 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 C** 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 delays result by reason of acts of the **OWNER** or approving agencies, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** shall immediately notify the **OWNER**, and within five (5) business days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the **PROJECT** schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5 of this Agreement (**Disputes**) shall apply in the event the parties cannot agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to **CONSULTANT** shall be subject to adjustment as agreed upon by the parties. Section 6.5 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

- 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.

**5.2. 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 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**

The **CONSULTANT** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered.

The **CONSULTANT** shall be responsible for the accuracy of all work notwithstanding the **OWNER'S** acceptance and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **CONSULTANT**, without additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** certifies that the submitted information is accurate. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement and take any other appropriate legal action, as well as disqualify **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

**6.7. Security Clause**

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization without prior approval of the **OWNER**.

**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, consultants, assigns, volunteers, and successors in interest.

#### **6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION**

CONSULTANT shall defend, indemnify, and hold harmless OWNER from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, in whole or in part, from or by: (a) CONSULTANT'S negligent acts or intentional misconduct, or errors or omissions, in connection with the performance of this Agreement, (b) CONSULTANT'S performance or breach of the Agreement provided the claim or loss is attributable to death, illness, personal injury, or property loss or damage or loss of use, and not caused by a negligent act or omission, or the willful misconduct of the OWNER, or (c) the condition of any premises, equipment or other property being used or operated by the CONSULTANT in connection with the performance of this contract. In the event OWNER is alleged to be liable based upon the actions or inactions of CONSULTANT, CONSULTANT shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all 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. This Indemnification and Hold Harmless Provision shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this contract.

#### **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:

Coverage

Limits

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 Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by OWNER.
- e. The General Liability Policy shall include a Pollution Liability endorsement unless it is deemed not to apply by OWNER.
- f. 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).
- g. 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.
- h. 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.

- i. 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**

6.9.6.1. CONSULTANT agrees to adhere to and comply with William-Steiger Act, enacted December 1970, and all other federal, state, and local safety health and environmental laws, regulations and ordinances. The CONSULTANT shall provide all safeguards, safety devices and protective equipment, and take any other action necessary to protect the life, health and safety and property of all persons on the job site, the public, and the OWNER.

6.9.6.2. The current Kentucky Occupational Safety and Health Standards of the Construction Industry 29 CFR Part 1926 adopted by 803 KAR 2:030 and the Kentucky Occupational Safety and Health Standard for General Industry 29 CFR Part 1910 as adopted by KAR 2:010, and as promulgated by the Kentucky Occupational Safety and Health Standards Board and as amended or modified, are hereby incorporated into and made an integral part of the Agreement with full compliance the responsibility solely of the CONSULTANT.

6.9.6.3. The CONSULTANT understands and agrees that the OWNER shall be permitted but not obligated, to inspect the work place, operations, machinery and equipment involved in this Agreement and review and audit any and all CONSULTANT'S records and documents as deemed necessary by the OWNER to assure compliance with any and all of the provisions of this Agreement and maximize the protection of the OWNER. Safety on the job, however, remains solely the responsibility of the CONSULTANT.

### **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

- 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:

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

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

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 \_\_\_\_\_, 2011.

My commission expires: \_\_\_\_\_

NOTARY PUBLIC

## **EXHIBIT A**

### **Scope of Engineering**

### **Services and Related Matters**

**RFP #28-2011**

**EXHIBIT B**  
**Certificate of Insurance**  
**and**  
**Evidence of Insurability**

## **EXHIBIT C**

**Proposal of Engineering Services**

**and**

**Related Matters**

## **EXHIBIT D**

**Further Description of Basic Engineering Services**

**and**

**Related Services**

LFUCG TASK ORDER NO. \_\_\_\_\_  
UNDER LFUCG AGREEMENT WITH \_\_\_\_\_ FOR  
ENGINEERING CONSULTANT – ANNUAL SANITARY SEWER CAPACITY,  
MANAGEMENT, OPERATIONS AND MAINTENANCE (CMOM)  
IMPLEMENTATION SERVICES  
CONSULTANT OWNER

Name	_____	Lexington Fayette Urban County Government
Street Address	_____	200 East Main Street
City, State, Zip	_____	Lexington, KY 40507
Contact Person	_____	Charles Martin or Designee Susan Plueger
Telephone	_____	859-425-2400
Fax	_____	859-254-7787
E-Mail	_____	<a href="mailto:chmartin@lexingtonky.gov">chmartin@lexingtonky.gov</a>

Task Order Date: \_\_\_\_\_

Task Name: \_\_\_\_\_

Task ID: \_\_\_\_\_

**SCOPE OF WORK/DELIVERABLES**

--

**SCHEDULE OF WORK**

--

**FEE**

--

**ACCEPTED BY:**

**AUTHORIZED BY:**

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

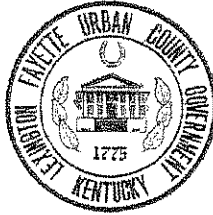
\_\_\_\_\_  
Owner's Authorized Signature

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

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

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





Lexington-Fayette Urban County Government  
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray  
Mayor

Jane C. Driskell  
Commissioner

**ADDENDUM #1**

RFP Number: **28-2011**

Date: August 15, 2011

Subject: Engineering Consultant – Annual Sanitary Sewer Capacity  
Management Operations & Maintenance (CMOM) Implementation  
Services LFUCG Consent Decree Entered January 3, 2011

Please address inquiries to:  
Betty Landrum (859) 258-3320

**TO ALL PROSPECTIVE BIDDERS:**

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

- 1) See attached Q & A Summary of Pre-Proposal Meeting held on August 10, 2011.
- 2) On the RFP Scoring Sheet, the statement for hourly rates has been revised as follows:
  - Submitted schedule of hourly rates in effect for duration of contract for all employees of the firm which are reasonably expected to contribute to the final work product. Submitted hourly rates should be limited to those individuals that are expected to contribute a minimum of 10% to the overall work product described in the scope of services. (The final contract price will be negotiated and determined after refinement of the scope in the initial scoping meetings.)
- 3) Page 24 of 26, (c) – typo – should state – Late payment or nonpayment of bills *for* .....

Questions	Answers
Who is the current Industrial Pretreatment Manager?	Sanitary sewer industrial pretreatment functions are administered by the Division of Water Quality's Compliance and Monitoring section. Richard Lamey is the section manager.

Brian Marcum, 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 RFP.

COMPANY: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

SIGNATURE OF PROPOSER: \_\_\_\_\_

**Pre-Proposal Meeting for RFP 28-2011  
Q & A Session**

- 1) Question: Can you expand on what Accela is or what it is similar to?  
(Don't know name of the guy who asked, second row)**

**CM Answer:** It is similar to Hanson and CityWorks. It is a GIS based work order/asset management system. Division of Water Quality staff have been working in the program, and in the process of mastering Accela—have already input 700 work orders. Accela is a tool that must be embraced and utilized by whoever is selected for CMOM. We are still working on reporting functions, and the consultant selected will likely be asked to review and comment on that.

- 2) Question: Will the Scope of Services for this contract involve all of the requirements/program elements included in the CMOM report? (John Steinmetz)**

**CM Answer:** Everything but the Capacity Assurance component.

**Follow up question from John Steinmetz:** Does the Scope of Services include all requirements/recommendations in CMOM, not just operations—like financial control requirements.

**CM Answer:** Yes, for example CMOM recommends specific financial controls be implemented by LFUCG. The consultant could be asked to help formulate a strategy to help make the case to the Commissioner of Finance or Council why we need to do this to satisfy the Consent Decree/EPA.

- 3) Question: The Scope of Services requires a single, dedicated staff person, can you expand on how that would work or what that means? (George Woolwine)**

**CM Answer:** What it does not mean is a consultant that just shows up for meetings and works off site. The Division staff needs to work with the consultant on a regular basis—the staff buy in is critical. Staff will know if the consultant really knows the ropes. The ideal consultant is someone with sewer line maintenance/operation field experience and post educational skills—someone who is very organized, keeps track of outcomes/requirements, but not afraid to get dirt under his fingernails.

**Follow up Question from George 'Woolwine:** You may have a key individual on site, but can they use other resources?

**CM Answer:** The key individual on site is in charge of mapping the plan and making sure things are implemented per the Consent Decree requirements so there are no fines, but they can have other staff off site from the firm contribute within the framework of the approved Task Order.

- 4) Question: Is there any page limit on the proposal? (Joe Herman)**

**CM Answer:** No (verified by Betty Landrum), and the consultant should be creative—this is a huge step for LFUCG, and we don't have all the answers. Every municipality/utility utilizes a different approach to collection and conveyance and LFUCG is opened to insight from other success stories. Advice is to be creative in your proposal as to how you think LFUCG can implement their CMOM programs.

**5) Question:** Do we have to use Microsoft Project for the schedule—what about Primavera?  
(Don't know the person who asked this on far side of room)

**CM Answer:** LFUCG is in the process of installing and training people on Microsoft Project, and while our Division has been busy with Accela implementation—the Division will continue training and working in Microsoft Project. Rod Chervus added that at this time, Primavera is a program that is more robust than what we need, and not what LFUCG is utilizing for all staff.

**6) Question:** Will there be a short list and interviews? (John Steinmetz)

**CM Answer:** Probably, we want to pick the best to do the work and help us get the job done so there are no stipulated penalties.

**7) Question:** If a firm is awarded this work will it disqualify applying for capital work?  
(Again, I don't know the name of this guy in the second row who also asked Question 1)

**CM Answer:** There is no prohibition under this contract as this work involves operations. Other contracts involved preparation of documents used in advertising for capital construction projects, and this contract will not.

**EXHIBIT B**

**Certificate of Insurance**

**and**

**Evidence of Insurability**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/1/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Ames & Gough 8300 Greensboro Drive Suite 980 McLean, VA 22102	CONTACT NAME: PHONE (A/C, No, Ext): (703) 827-2277 FAX (A/C, No): (703) 827-2279 E-MAIL ADDRESS: PRODUCER CUSTOMER ID #: 00001664
INSURED Hazen & Sawyer, P.C. 498 Seventh Avenue New York NY 10018	INSURER(S) AFFORDING COVERAGE INSURER A: Continental Casualty Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F: NAIC # 20443

## COVERAGES

## CERTIFICATE NUMBER:

## REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY						EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>						MED EXP (Any one person) \$
							PERSONAL & ADV INJURY \$
							GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$
	POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/>						\$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$
	ANY AUTO						BODILY INJURY (Per person) \$
	ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	HIRED AUTOS						\$
	NON-OWNED AUTOS						\$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/>						EACH OCCURRENCE \$
	CLAIMS-MADE <input type="checkbox"/>						AGGREGATE \$
	DEDUCTIBLE						\$
	RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$
A	PROFESSIONAL LIABILITY			AEH 00 823 14 89	3/29/2011	3/29/2012	PER CLAIM 2,000,000
							AGGREGATE 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: Annual Sanitary Sewer Capacity, Management, Operations and Maintenance (CMOM) Implementation Services

## CERTIFICATE HOLDER

## CANCELLATION

Lexington Fayette Urban County Government  
200 East Main Street  
Lexington, KY 40507

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Dan Knise/BHARRI



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/01/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> MARSH USA, INC. 1166 AVENUE OF THE AMERICAS NEW YORK, NY 10036 Attn: NewYork.certs@Marsh.com Fax: (212) 948-0500	<b>CONTACT</b> NAME: PHONE (A/C, No. Ext): E-MAIL: ADDRESS:	<b>FAX</b> (A/C, No):
700402--CAUWP-11-12	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> HAZEN & SAWYER, P.C. ATTN: WILLIAM CRAYON 498 SEVENTH AVENUE NEW YORK, NY 10018	<b>INSURER A:</b> Hartford Fire Insurance Co	19682
	<b>INSURER B:</b> Hartford Casualty Ins Co	29424
	<b>INSURER C:</b> N/A	N/A
	<b>INSURER D:</b> Twin City Fire Insurance Co	29459
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES****CERTIFICATE NUMBER:**

NYC-006293951-01

**REVISION NUMBER:** 3

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC			10 UUN UU0890	03/29/2011	03/29/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 0 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			10UENUU0960	03/29/2011	03/29/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ Comp./Coll. Deductible \$ 1,000
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
D	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	10WENV0686	03/29/2011	03/29/2012	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

RE: ANNUAL SANITARY SEWER CAPACITY, MANAGEMENT, OPERATIONS AND MAINTENANCE (CMOM) IMPLEMENTATION SERVICES.

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT IS INCLUDED AS ADDITIONAL INSURED (EXCEPT WORKERS COMPENSATION) WHERE REQUIRED BY WRITTEN CONTRACT.

**CERTIFICATE HOLDER****CANCELLATION**LEXINGTON FAYETTE URBAN  
COUNTY GOVERNMENT  
200 EAST MAIN STREET  
LEXINGTON, KY 40507

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE  
of Marsh USA Inc.

Kevin J. Michel

**EXHIBIT C**

**Proposal of Engineering Services**

**and**

**Related Matters**

## **EXHIBIT D**

**Further Description of Basic Engineering Services**

**and**

**Related Services**



November 4, 2011

Mr. Charles H. Martin, P.E.  
Director  
Division of Water Quality  
Lexington-Fayette Urban County Government  
125 Lisle Industrial Ave., Suite 180  
Lexington, KY 40511

Re: Related Matters for CMOM Implementation

Mr. Martin:

A scoping meeting was held on October 31, 2011 to discuss CMOM Implementation. In attendance were Charlie Martin and Rod Chervus with LFUCG and John Steinmetz and Jon Schubarth with Hazen and Sawyer. The following items were noted:

Hazen and Sawyer shall submit the following contractual items to LFUCG to expedite the contractual process:

- An electronic copy of Hazen and Sawyer's proposal and presentation.
- Three (3) signed copies of the engineering services contract (the initial contract would be for 1 year, but may be renewed annually up to two (2) times).
- Hazen and Sawyer's insurance certificates in accordance with the engineering services contract.
- A fee estimate for the engineering services through August 31, 2012.
- Minutes from this meeting.

The scope of services for Task Order No. 1 shall include:

- Review current reports previously submitted to EPA, i.e. CMOM Programs Self-Assessment, Sewer Overflow Response Plan (SORP), and Pump Station Operation Plan for Power Outages (PSOPPO) reports.
- Review and comment on Fats, Oils, and Grease (FOG) Control Program and Gravity Line Preventative Maintenance Program (GLPMP) reports. These reports are due to EPA on January 3, 2012; however, they need to be complete by December 21, 2011.
- Establishing SharePoint access for select DWQ personnel and developing a working knowledge of LFUCG's Accela software package. LFUCG will provide a list of personnel requiring SharePoint access.

Mr. Charles H. Martin, P.E.  
November 4, 2011  
Page 2

- Preliminary integration of key Hazen and Sawyer staff with key DWQ maintenance personnel staff.
- Initial CMOM Implementation workshop.
- Procurement assistance including, but not limited to the following:
  - Hauling services related to pump station power failures
  - Quick connect generator installation at pump stations
  - Bypass pumping connections at pump stations
  - TVSS installation at pump stations
  - Gravity line cleaning
  - CCTV services
  - SSO monitoring equipment (DP-cells) for SORP implementation
- Refine the existing CMOM implementation schedule and enhance for both near term (first 12 months) and long term:
  - Include DWQ “owner” for each initiative
  - Include “pseudo” dates and actual dates (EPA mandated dates)
- Develop an outward looking implementation strategy which shall include CMOM procedures and implementability ratings – especially for other divisions outside DWQ.
- Implementation of select CMOM-related components in accordance with the implementation schedule and strategy (regardless of EPA report approvals) including training of DWQ maintenance personnel and select procurement assistance.
- Provide all sanitary sewer annual program management services including, but not limited to:
  - Provision of all sanitary sewer content for Consent Decree quarterly and annual reports to Tetra Tech, including:
    - 4<sup>th</sup> Quarter 2011 Report due by the end of January 2012, then all following quarterly reports in accordance with the Consent Decree
    - 2011 Annual Report due by the end of January 2012, then all following annual reports in accordance with the Consent Decree

There was general discussion regarding the office space for Hazen and Sawyer’s Contract Employee, Roy Burgher, as well as thoughts regarding integration of Roy into the DWQ maintenance staff. The exact location of Roy’s office is yet to be determined; however, there was a consensus that it should be on the second floor of the Sewer Line Maintenance building near the maintenance personnel. LFUCG will supply Roy’s computer which will be connected to LFUCG’s network system. An office for Roy shall be available in early January 2012.

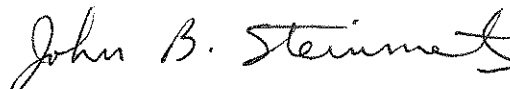
# HAZEN AND SAWYER

Mr. Charles H. Martin, P.E.  
November 4, 2011  
Page 3

All invoicing for this project will be routed through Rod Chervus. Rod requested that Hazen and Sawyer submit a draft invoice for approval and then upon approval, submission of the final signed invoice. Invoicing should be formatted to indicate the percentage of invoice allocated to the DBE subconsultant.

It is projected that the work anticipated under Task Order No. 1 will extend through August 30, 2012. Based on the information discussed at the scoping meeting and presented in this letter, our estimated fee for engineering services for Task Order No. 1 is \$600,000. In accordance with the agreement, actual costs will be based on the actual time and materials required. We look forward to working with the Urban County Government on this project. If we can provide any additional information at this time please contact me at 859-219-1126.

Very truly yours,  
**HAZEN AND SAWYER, P.S.C.**

A handwritten signature in cursive script that reads "John B. Steinmetz".

John Steinmetz, P.E.  
Senior Associate

**LFUCG TASK ORDER NO. \_\_\_\_\_**  
**UNDER LFUCG AGREEMENT WITH HAZEN AND SAWYER, P.S.C. FOR**  
**ANNUAL SANITARY SEWER CAPACITY, MANAGEMENT, OPERATIONS AND**  
**MAINTENANCE (CMOM) IMPLEMENTATION SERVICES**

**CONSULTANT**

**OWNER**

<b>Name</b>	Hazen and Sawyer, P.S.C.	Lexington Fayette Urban County Government
<b>Street Address</b>	444 Lewis Hargett Circle, Suite 260	200 East Main Street
<b>City, State, Zip</b>	Lexington, KY 40503	Lexington, KY 40507
<b>Contact Person</b>	Gary J. Haubner, P.E.	Charles Martin or Designee Susan Plueger
<b>Telephone</b>		859-425-2400
<b>Fax</b>		859-254-7787
<b>E-Mail</b>		<a href="mailto:chmartin@lexingtonky.gov">chmartin@lexingtonky.gov</a>

**Task Order Date:** \_\_\_\_\_

**Task Name:** \_\_\_\_\_

**Task ID:** \_\_\_\_\_

**SCOPE OF WORK/DELIVERABLES**

--

**SCHEDULE OF WORK**

--

**FEE**

--

**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 Owner and returned to \_\_\_\_\_. A fully executed copy will be returned to the Owner.*

