

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2012, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A (“**OWNER**”) and CDP Engineers, Inc. with offices located at 3250 Blazer Parkway, Lexington, Kentucky 40509 (“**CONSULTANT**”). **OWNER** intends to proceed with the Coldstream Park Stream Corridor Restoration and Preservation Consent Decree Supplemental Environmental Project (SEP) as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #41-2011 (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 Coldstream Park Stream Corridor Restoration and Preservation Consent Decree Supplemental Environmental Project (SEP) 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 #41-2011 (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 #41-2011).
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 #41-2011, **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 #41-2011, 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** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5. After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all

appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.

- 1.3.6 Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

SECTION 2 - EXTRA WORK BY CONSULTANT

- 2.1. The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as Extra Work and shall be paid as such.
- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and provide written approval or disapproval thereof within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and decisions with respect to materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.

- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current project schedule.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
 - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.
 - 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Task Order shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.
 - 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT**/Final Task Order within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Task Order or otherwise adjusting the scope of the services or work.
 - 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1. Methods of Payment for Services of CONSULTANT.

5.1.1. For Basic Services

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

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

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

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

5.1.2. For Extra Work

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (**Disputes**).

5.2. Times of Payment

5.2.1 **CONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

5.3. Other Provisions Concerning Payments

5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for

herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

- 5.3.2. In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

- 6.1.1. **CONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.
- 6.1.2. The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, drawings and specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT**.

6.3. Legal Responsibilities and Legal Relations

- 6.3.1. The **CONSULTANT** shall familiarize itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any

legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

- 6.4.1. **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.
- 6.4.2. **In no event shall** the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.
- 6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

6.5. Disputes

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.6. Accuracy of Consultant's Work

CONSULTANT shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered. **CONSULTANT** shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to terminate this Agreement

6.7. Security Clause

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

6.8. Access to Records

The **CONSULTANT** and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future consultant engineering Agreements.

6.9. Risk Management Provisions, Insurance and Indemnification

6.9.1. DEFINITIONS

The **CONSULTANT** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **CONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**CONSULTANT**” and “**OWNER**” shall be defined as follows:

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION

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 reasonable attorney’s fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT’S** (or subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property, including the loss of use resulting therefrom; or to or from negligent acts, errors or omissions or willful misconduct; provided however, that **CONSULTANT** shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of **OWNER**. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all 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 Agreement.

6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT

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

6.9.4. FINANCIAL RESPONSIBILITY

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

6.9.5. INSURANCE REQUIREMENTS

6.9.5.1. Required Insurance Coverage

CONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to **OWNER** in order to protect **OWNER** against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by **CONSULTANT**. The cost of such insurance shall be included in any proposal:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.
- c. The General Liability Policy shall include Business Interruption coverage.
- d. The General Liability Policy shall include a 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 and/or Environmental Casualty coverage unless it is deemed not to apply by OWNER.
- f. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), for \$1 million\ \$2 million aggregate and/or a separate Professional Liability Policy shall be obtained. (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

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

6.9.7. DEFINITION OF DEFAULT

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement. CONSULTANT also agrees that OWNER may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONSULTANT for any such insurance premiums purchased, or suspending or terminating this Agreement.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

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

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

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

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

- 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S Agent**"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S Agent** or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S Agent** or his designee. The **CONSULTANT** shall look only to the **OWNER'S Agent** or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.
- 8.2. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.
- 8.4. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

EXHIBIT A

Scope of Engineering

Services and Related Matters

RFP #41-2011



Lexington-Fayette Urban County Government

Request For Proposal

The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #41-2011 - Engineering Services for Coldstream Park Stream Corridor Restoration and Preservation Consent Decree SEP** 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 **January 3, 2012**.

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 #41-2011 - Engineering Services for Coldstream Park Stream Corridor
Restoration and Preservation Consent Decree SEP**

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 Monday, December 12, 2011 at 11:00 AM, local time, at 125 Lisle Industrial Avenue, Ste 180, Lexington KY 40511.

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 in PDF format on a flashdrive or CD 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 person or firm (including a joint venture or association) with the type of service required.
2. 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(s).
4. Past record and performance on contracts with the LFUCG or other governmental agencies and private industry with respect to such factors as control of cost, quality of work and ability to meet scheduling.
5. Familiarity with the details of the project.
6. Degree of local employment to be provided by the person or firm.
7. Estimated cost of services.

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

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	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
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
859-258-3323

Commerce Lexington—

Tyrone Tyra, Minority Business Development
tyra@commercelexington.com
859-226-1625

Tri-State Minority Supplier Diversity Council

Sonya Brown
sbrown@tsmsdc.com
502-625-0137

Small Business Development Council

Dee Dee Harbut /UK SBDC
ddharbut@uky.edu

Shawn Rogers, UK SBDC
Shawn.rogers@uky.edu

Shiree Mack
smack@uky.edu

Community Ventures Corporation

James Coles
jcoles@cvckv.org
859-231-0054

Kentucky Department of Transportation

Shella Jarvis
Shella.Jarvis@ky.gov
502-564-3601

KPAP

Debbie McKnight
Debbie.McKnight@ky.gov
800-838-3266 or 502-564-4252

Bobbie Carlton
Bobbie.Carlton@ky.gov

Ohio River Valley Women's Business Council

Rea Waldon
rwaldon@gcui.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

LFUCG MBE/WBE PARTICIPATION FORM
RFP # 41-2011

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 # 41-2011

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 # 41-2011

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 #41-2011 _____

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 #41-2011

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

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

ENGINEERING SERVICES SCOPE OF WORK

Coldstream Park Stream Corridor Restoration and Preservation Consent Decree SEP

The Lexington-Fayette Urban County Government (LFUCG) is accepting proposals from engineering consulting firms interested in assisting LFUCG with the implementation of a Consent Decree deliverable. The selected proposer shall perform professional services as hereinafter stated which include project development/management, technical writing, reporting, greenway planning, stakeholder outreach, stream assessments and monitoring, surveying, engineering design, coordination with permitting agencies, bid assistance, and construction administration assistance related to implementation of the Consent Decree Appendix J-1 Supplemental Environmental Project (SEP) known as the "Coldstream Park Stream Corridor Restoration and Preservation Consent Decree SEP." Information on and copies of the Federal Consent Decree and its appendices and attachments are available at no cost on the LFUCG web page: <http://www.lexingtonky.gov>.

Consent Decree Project Requirements

This project was undertaken in connection with the settlement of an enforcement action under the Clean Water Act, *United States et al. v. Lexington-Fayette Urban County Government*, brought on behalf of the U.S. Environmental Protection Agency. This project is a Supplemental Environmental Project ("SEP") to be funded by LFUCG as part of the Consent Decree entered on January 3, 2011 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"). Through this SEP, LFUCG will provide stream and habitat restoration and greenway creation in Coldstream Park, located within the Cane Run watershed in Fayette County.

1. **Consent Decree Budget Requirements:** LFUCG shall spend at least \$1,000,000 for the implementation of this SEP, including design and construction. Programmatic and administrative costs incurred by LFUCG will not be counted against the dollar amount devoted to this project.
2. **Consent Decree Schedule Requirements:**
 - The duration of the SEP will be five (5) years from the date of entry of the Consent Decree (January 3, 2011).
 - Development of a Coldstream Park Greenway Plan through a selected design firm shall be submitted to EPA within 24 months of Effective Date (i.e. January 2, 2013). Final designs will be submitted to EPA for review and approval to ensure that the designs are consistent with EPA's Stream Mitigation Guidelines and conservation easement principles.
 - Necessary permits for the project shall be procured.
 - Construct and implement Greenway Plan within 60 months of Effective Date (i.e. January 2, 2016).
3. **Consent Decree Easement Requirement:** The SEP requires the establishment of a conservation easement, in a format substantially similar to the one attached in Scope Exhibit

1, to permanently protect the use of the greenway as designed, with exceptions for work necessary for maintenance, repair or replacement of existing utilities, and certain other activities that are consistent with the greenway purpose. The SEP requires that the Conservation Easement be deeded to the Lexington-Fayette Urban County Greenspace Trust, Inc. for future monitoring and enforcement.

4. **Consent Decree Design Consultant Requirement:** At a minimum, the design consultant selected for this SEP should be thoroughly familiar with Stream Mitigation Guidelines published by EPA and/or the KY Energy and Environment Cabinet's Department for Environmental Protection, fluvial process and channel evolution and natural channel design or alternative stream design methodologies.
5. **Consent Decree Project Component Requirements:** The SEP requires the project to include at a minimum the following components:
 - Natural stream design parameters appropriate to the Inner Bluegrass (e.g. "E") channel sinuosity, pool-riffle-run-glide ratios, bankfull heights, etc. The elevation of the baseflow will be adjusted for maximum habitat improvements and floodplain hydrology restoration.
 - Backwater areas and vernal pools to enhance amphibian habitat.
 - Infiltration basins built in the floodplain to provide additional terrestrial habitat and to enhance pollutant uptake, groundwater recharge, and restoration of healthy base flows,
 - Habitat restoration in bordering areas throughout the greenway.

A copy of Appendix J-1 of the Consent Decree detailing this SEP is attached as Scope Exhibit 1.

Project Purpose and Background

The overall purpose of this project is to develop and implement a Coldstream Park Greenway Plan. This plan shall include restoration of a section of the Cane Run, which has been degraded due to straightening, stream bank erosion, and downcutting of the stream channel resulting in disconnection from the floodplain. The stream banks of Cane Run are severely denuded due to past free grazing of cattle during the park's past history as a University of Kentucky agricultural research facility. The drainage area includes commercial, industrial and residential land uses. Runoff from this stream ultimately recharges the Royal Springs Aquifer, which is a raw water supply for the City of Georgetown municipal water system. The project serves multiple purposes related to the stream and the Park as follows:

- Stabilize the channel;
- Restore habitat;
- Reduce peak flows/pollutant loading associated with urban runoff and agricultural activities;
- Create a permanent greenway;

- Reduce flooding by removing artificial restrictions within the floodway, thus reducing potential for property damage and stream channel erosion;
- Reduce pollutant loadings entering Cane Run, which recharges the Royal Springs Aquifer, through use of green infrastructure concepts for minimizing erosion and maximizing infiltration;
- Enhance recreational and educational opportunities within the Urban Service Area by enhancing passive use land within the park system and habitat restoration;
- Assist LFUCG and other watershed stakeholders in promoting / implementing future water quality initiatives within the basin including through the creation of a greenway to permanently buffer and protect the stream. LFUCG strongly believes that increased emphasis on quality of life perceptions is critical to the success of holistic, long-range watershed planning.

This project will benefit the public and the environment by improving floodplain conditions that contribute to flood water backup and stream channel erosion and that generally impact floodplain ecosystems. This project will also benefit residents served by the City of Georgetown Royal Springs Aquifer. This area was identified as a beneficial greenway area in the conceptual 2002 Greenway Master Plan, which identifies potential generalized locations for conservation greenways.

The project site is located entirely upon an LFUCG-owned parcel PVA# 10056570 designated as "Coldstream Park", 1875 Newtown Pike, Lexington, KY. Coldstream Park consists of floodplain property owned by LFUCG that was previously part of the University of Kentucky's agricultural research farm. The stream section identified for this project is a 4,415 linear foot reach of the Cane Run (HUC-14 #05100205-280-200) within the Park, between Citation Boulevard and Interstate 75. Refer to Scope Exhibit 1 for the project boundary delineation.

Coordinates: 38.10391751 N; -84.4985777 W (downstream end of project)
38.09189968 N; -84.50138092 W (upstream end of project)

The main stem of existing stream varies in distance from the property lines, from a minimum distance of approximately 50 feet to a maximum distance of over 400 feet. The average distance from the centerline of the stream to the property line is approximately 300 feet. Currently, the land is used as a park. Existing infrastructure includes:

- A section of the Legacy Trail, constructed with permeable concrete, runs through the park parallel to the stream reach of interest. A 40 foot wide permanent trail easement is currently held by LFUCG, and is to be transferred to the Kentucky Transportation Cabinet in the future. A copy of the existing easement is attached as Scope Exhibit 2.
- A sanitary sewer main runs through the property parallel to the stream. In addition, an existing asphalt parking lot used for access to the Park is located within the project area. A permanent restroom is planned for installation in 2012 near this parking lot adjacent to

McGrathiana Parkway. The Sanitary Sewer Remedial Measures Plan for the Cane Run watershed may include future alteration to the existing sewer.

- The Cane Run sanitary sewer pump station is located downstream of the SEP area and should not conflict with the project design or activities.

Engineering Services Contract

The successful proposer will be awarded a 365 day contract for work associated with implementation of this Consent Decree SEP. Annual renewal, up to three (3) additional successive 365 day periods, but not extending past December 31, 2015, may occur upon mutual agreement by all parties.

Given the potential variability in certain task assignments associated with this work, all work shall be assigned via written Task Order. The successful firm will be required to submit draft Task Orders and a fee estimate for each Task Order to LFUCG’s Director of Water Quality or his designee. Written approval from the LFUCG’s designee must be received prior to initiating work associated with a Task Order. Under no circumstances should changes in Task Order scope or estimated fee occur without prior, written approval from the Director of the Division of Water Quality or his designee.

The Consent Decree Engineering Services Agreement will be used for the successful proposer to this RFP. As the Consent Decree includes stipulated penalties for not meeting specified deadlines, the Engineering Agreement for this project shall hold the selected proposer liable for financial penalties incurred by LFUCG as a result of a delay caused solely by reason of acts of the Consultant, including but not limited to those assessed pursuant to the Consent Decree.

Given the unique requirement of this SEP to spend \$1,000,000, LFUCG has allocated costs to various tasks. A minimum of \$750,000 has been set for costs associated with construction of the project. Therefore, a not-to-exceed budget of \$250,000 has been set for all other project-related services. It is expected that these “other project-related services”, as outlined in the Section – Draft Scope of Services, shall be completed by the selected proposer under this contract. However, it is possible that one or more individual tasks may best be completed by third party entities yet to be determined. Those decisions shall be made by LFUCG in consideration with the successful proposer.

The first task order shall be to prepare a SEP Implementation Plan for the project as listed in the Section – Draft Scope of Services, and shall be the basis for future Task Orders. Invoicing shall be on a monthly basis.

The proposed timeline for this project is outlined in the following table. This timeline may be adjusted. However, please note that the selected proposer may incur financial penalty in the event that the Consent Decree deliverable deadline is missed, as outlined in the Consent Decree Engineering Services Agreement.

Preliminary Project Schedule

TASK	FINISH
	DESIGN

Task No. 1	Within 2 weeks of NTP*
30% Design Submittal	By May 30, 2012
75% Design Submittal	By August 31, 2012
95% Design Submittal to EPA	By October 31, 2012
	CONSENT DECREE DEADLINE JANUARY 2, 2013
CONSTRUCTION	
Revisions per EPA Review	TBD
Final Permit Approvals	TBD
100% Design Submittal to LFUCG	TBD
Bid for Construction	By November 2013
Construction Start	By March 2014
Construction Completion	By May 2015
Record Drawings	TBD
FEMA LOMR Submittal	Within 6 months of construction completion
SEP Completion Submittal to EPA	CONSENT DECREE DEADLINE JANUARY 2, 2016

* Expected Notice-to-Proceed (NTP) date is February 2012.

Proposal Evaluation Criteria

There is a thirty-five (35) page limit to this proposal not including resumes as outlined below. The review of all submissions shall be performed by the Selection Workgroup, which shall recommend award to the Mayor's Senior Advisor on the basis of majority vote. In the evaluation of each submission, the Selection Workgroup will apply the following criteria:

1. Specialized experience and technical competence of the persons or firm(s) (including a joint venture or association (e.g. team)) with the type of service requested:
 - The proposal should clearly identify the following primary project team members, with their discipline(s) and office location of primary residence. At least one member of the project team must have training in fluvial geomorphology and assessment, and stream restoration design such as Rosgen methodology or other natural channel design training modules. Disciplines/Expertise may reside in one or multiple persons/firms.
 - a) Project Manager
 - b) Principal Project Engineer(s)
 - c) Geomorphologist
 - d) Hydrology/Hydraulics Modeler
 - e) Registered Land Surveyor
 - f) Botanist or Plant Specialist
 - g) Hydro-geologist (or equivalent)
 - In addition, the proposal should clearly identify any other individuals who will be providing measurable services associated with project delivery. Measurable services are generally defined as man-hours representing at least 10% of the estimated total number of hours necessary to complete the project. Include the office of primary residence (e.g. Lexington, KY) for each individual.

- The proposal should contain only those resumes of the primary project team members or those providing measurable services to project delivery. The content of those resumes should be limited to one page each per person, and only include experience directly relevant to the services requested in this proposal.
2. Capacity of the person, firm or team to perform the work, including any specialized services, within the time limitations.
 - The proposal should include descriptions of similar projects successfully completed by the proposed project team members and/or firms. Provide contacts for references on each project.
 - The proposal should include a brief but specific description of the firm's and project team's familiarity with the U.S. EPA's and Kentucky Division of Water's Stream Mitigation Guidelines.
 3. Character, integrity, reputation, judgment, experience, and efficiency of the person, firm or team.
 4. Past record and performance on contracts with the Urban County Government or other governmental agencies and private industry with respect to such factors as control of cost, quality of work, ability to meet schedules and successful submission of capital improvement action plans to regulatory agencies (USEPA, etc.).
 5. Familiarity with the details of the project. At a minimum, the proposal should cover the proposer's approach to the following aspects of this project:
 - a) Greenway and Parks planning;
 - b) Existing condition stream assessment protocols;
 - c) Pre-project and/or post-project monitoring protocols and parameters;
 - d) Site investigations;
 - e) Stream restoration designs (i.e. critical design variables, etc.);
 - f) Alternatives for addressing incoming sediment load;
 - g) Alternatives for grade control;
 - h) Incorporation of infiltration basins, vernal pools, water quality BMPs and treatment schemes into stream restoration;
 - i) Addressing karst and groundwater features in stream restoration;
 - j) Use of hydrologic, hydraulic, and/or 2-D modeling in stream restoration design;
 - k) Comments/concerns about this project as outlined.

Great variability exists among possible approaches to fulfilling the purpose and requirements of this project. Therefore, the submitting firms should consider the cost constraints in this section of their Proposal.

6. Degree of local employment to be provided by the person, firm or team in the performance of the contract.

7. The total estimated cost of services, based on the hourly rates provided for the individuals identified as providing measurable services for project delivery and the estimated total hours, based upon the production of deliverables listed in the following Section – Draft Scope of Services. Each proposal must contain a chart that lists:
 - a. The name of each individual listed as a primary project team member or as providing measurable services,
 - b. The hourly rate for each named individual,
 - c. The proposer’s estimate of the total hours LFUCG will receive from each named individual for project delivery.

(Note: Individual task order amounts will be negotiated after refinement of the scope as the project progresses.)

Draft Scope of Services

1.0 Project Management

- 1.1 The first task order shall be to prepare the *SEP Implementation Plan*, to include:
 - 1.1.1 SEP Schedule using Microsoft Project or equivalent software showing all work tasks, critical path deadlines, milestones, approvals, permits, resources required, etc.; and
 - 1.1.2 Revised Scope of Services.
 - 1.1.3 *Deliverable: SEP Implementation Plan*
- 1.2 Prepare the Risk Management Plan for the project, to include:
 - 1.2.1 List of constraints and risk factors associated with design phase and proposed methods to minimize/mitigate risk;
 - 1.2.2 Risk Mitigation Sub-Plan specifically for karst features in design, construction, and post-construction monitoring phases.
 - 1.2.3 *Deliverable: Risk Management Plan*
- 1.3 Hold meetings (assume 15) with LFUCG staff and provide minutes of each meeting.
 - 1.3.1 Coordinate with LFUCG Division of Water Quality on existing sanitary sewer lines and proposed improvements, realignments, etc. Note: The existing sanitary sewer that runs parallel to the creek may need to be replaced in the future as part of the larger Sanitary Sewer Remedial Measures plan required by the Consent Decree. Design and construction of sanitary sewer realignments/replacements/upgrades shall be handled as an additional scope item.
 - 1.3.2 Coordinate with the Divisions of Parks and Recreation, Planning, and Engineering on park amenities, future access and park usage.
 - 1.3.3 Coordinate with private utilities as necessary on utility relocates.

- 1.3.4 Meet with LFUCG staff for 30%, 75% and final design review meetings.
- 1.3.5 *Deliverable: 15 meeting agendas and minutes.*
- 1.4 Coordinate and meet (assume 4) with the Lexington-Fayette Urban County Greenspace Trust, Inc. throughout the course of the project.
 - 1.4.1 *Deliverable: 4 meeting minutes/presentations.*
- 1.5 Note: All models, reports, plans, specifications, and accompanying documents developed as part of this scope, or associated future Task Orders, are subject to review by LFUCG. The Consultant shall be responsible for incorporating the comments and requirements of all LFUCG reviewers.
- 1.6 Note: All data collection shall be compatible with existing Geographic Information System parameters used by LFUCG. GIS Data Base formats will be provided.
- 2.0 Stream Assessment and Pre-Project Monitoring
 - 2.1 Perform a review of any prior studies, calculations and project plans for this channel reach. Information to be provided by LFUCG.
 - 2.2 Prepare a Stream Assessment and Pre-project Monitoring Plan for review by LFUCG and other agencies as required. Protocols shall include at a minimum the Rapid Biohabitat Assessment and the Bank Erosion Hazard Index.
 - 2.2.1 *Deliverable: Stream Assessment and Pre-project Monitoring Plan*
 - 2.3 Perform the selected stream assessment protocols and implement the pre-project monitoring plan.
 - 2.4 Provide all monitoring data and stream assessment results to LFUCG throughout the course of the project.
 - 2.4.1 *Deliverable: Summary of Stream Assessment and Pre-project Monitoring Results*
- 3.0 Soil, Geotechnical, and Groundwater Investigations
 - 3.1 Perform geotechnical investigations as necessary for design and construction (e.g. soil, rock, and groundwater, etc.).
 - 3.2 Perform soil sampling for stream restoration design (e.g. particle size distributions for bedload, incoming sediment load, etc.).
 - 3.3 *Deliverable: Geotechnical and Stream Sediment Report*
- 4.0 Hydrologic, Hydraulic, and Shear Stress Analyses
 - 4.1 Perform hydrologic, hydraulic, and shear stress analyses necessary to design the project. Must include the 100-year, 24-hr design storm at a minimum (see Section 6.2.3.1.9).

- 4.2 Perform all hydrologic and hydraulic analyses and floodplain mapping as required to prepare FEMA CLOMR/LOMR submittals (see Section 7.1.7).

5.0 Topographic Survey & Easement Plat

- 5.1 Prepare the conservation easement plat showing all property lines and a metes and bounds description of the easement boundary signed and sealed by a Registered Land Surveyor.

5.1.1 *Deliverable: Signed/sealed Conservation Easement Plat*

- 5.2 Survey stream cross-sections, longitudinal profile, bedrock and grade controls features, and project site features etc. sufficient to develop biddable design plans and engineer's opinions of cost, including any existing infrastructure, utility crossings, or parallel lines. Survey boundary to follow stream corridor with at least the width of the 100-year floodplain valley. Use the following coordinate system: *NAD_1983_StatePlane_Kentucky_North_NFIPS_1601_Feet*. Vertical Datum shall be *NAVD 88*.

5.2.1 *Deliverable: 3 hard copies of existing conditions survey, 1"=20' scale.*

5.2.2 *Deliverable: 1 digital copy of survey in .pdf format.*

6.0 Engineering Design Plans, Specifications and Project Cost Estimates

- 6.1 Design Considerations must include, but are not limited to:

- All EPA Project Component Requirements, including consistency with EPA's Stream Mitigation Guidelines;
- The existing Legacy Trail is an elevation site constraint on this project. A minimum buffer may be established between the relocated stream channel and the trail. Relocation of the existing trail may not be feasible due to cost;
- The existing Coldstream Park parking lot off of McGrathiana Drive is an existing constraint on this project. Per the Conservation Easement, the restored stream (i.e. low flow channel) should have a buffer of 100 feet from the parking lot;
- Karst risks;
- Connection to and raising of groundwater. Increasing the amount of time the stream has flow;
- Incorporation of constructed wetlands, infiltration basins, vernal pools, water quality BMPs and treatment schemes into stream restoration;
- Evaluation of sediment load sources. Design project elements to eliminate and/or store sources larger than the restoration design's sediment load;
- Grade control structures shall be designed to extend across the entire 100-year floodplain valley wherever possible;
- Materials supply sources for grade control features;

- A 50 foot riparian zone along both banks (e.g. 100 foot total) shall be planted in native vegetation; and
 - Proposed improvements shall be designed to provide stability of the low-flow channel bottom and bank, and 100-year floodplain for the velocities and forces expected for the range of flow regimes up to the 100-year, 24-hr design storm.
- 6.2 Prepare design plans and specifications suitable for bidding following LFUCG protocols for all selected project elements. Where applicable, plans and specifications shall meet the requirements of the LFUCG Stormwater Manual 2009 and the LFUCG Engineering Standard Drawings, updated 2008. The bid documents produced for this project shall include a list of at least three (3) stand-alone elements to be bid as alternates. That will allow for the full \$1,000,000 project cost to be realized at the completion of the project while minimizing overruns.

6.2.1 Provide 30% Design Submittal for LFUCG review.

6.2.1.1 *Deliverable: 30% Design Submittal (5 copies)* shall include at a minimum:

6.2.1.1.1 22"x34" sized plan sheets (1"=20' scale) showing existing features and proposed features

6.2.1.1.2 Profile sheets (1"=20' H: 1"=2'V)

6.2.2 Provide 75% Design Submittal for LFUCG review.

6.2.2.1 *Deliverable: 75% Design Submittal (5 copies)* shall include at a minimum:

6.2.2.1.1 22"x34" sized plan sheets (1"=20' scale) showing existing features and proposed features including utility relocations if necessary

6.2.2.1.2 Profile sheets (1"=20' H: 1"=2'V)

6.2.2.1.3 Cross-sections (1"=5')

6.2.2.1.4 Preliminary Detail sheets

6.2.2.1.5 Preliminary Erosion Control and Stormwater Pollution Prevention sheets

6.2.2.1.6 Preliminary Technical Specifications

6.2.2.1.7 Preliminary Opinion of Cost

6.2.2.1.8 Preliminary Hydrology/Hydraulics Analyses Results

6.2.3 Provide 95% Design Submittal for EPA and LFUCG review.

6.2.3.1 *Deliverable: 95% Design Submittal (10 copies)* shall include at a minimum:

- 6.2.3.1.1 22"x34" sized plan sheets (1"=20' scale) showing existing features and proposed features including utility relocations if necessary
- 6.2.3.1.2 Profile sheets (1"=20' H: 1"=2'V)
- 6.2.3.1.3 Cross-sections (1"=5')
- 6.2.3.1.4 Detail sheets
- 6.2.3.1.5 Erosion Control and Stormwater Pollution Prevention Plan sheets
- 6.2.3.1.6 Technical Specifications
- 6.2.3.1.7 Engineer's pre-bid Opinion of Project Costs
- 6.2.3.1.8 All sheets and documents shall be signed and sealed by a Professional Engineer and Registered Land Surveyor for submittal to EPA for review.
- 6.2.3.1.9 Final Hydrology/Hydraulics Design Report

6.2.4 Prepare responses to EPA comments (assume 1 memorandum).

6.2.5 Provide 100% Design Submittal for Bid Contract Documents.

6.2.5.1 *Deliverable: Final Design Submittal (12 hard copies)* shall include:

- 6.2.5.1.1 22"x34" sized plan sheets (1"=20' scale)
- 6.2.5.1.2 Profile sheets (1"=20' H: 1"=2'V)
- 6.2.5.1.3 Cross-sections (1"=5')
- 6.2.5.1.4 Detail sheets
- 6.2.5.1.5 Erosion Control and Stormwater Pollution Prevention Plan sheets
- 6.2.5.1.6 Technical Specifications
- 6.2.5.1.7 Engineer's pre-bid Opinion of Project Costs
- 6.2.5.1.8 Executed Permits in separate binder (see 7.1.9)
- 6.2.5.1.9 All sheets and documents shall be signed and sealed by a Professional Engineer and Registered Land Surveyor and stamped "For Construction."

6.2.5.2 Deliverable: Electronic spread sheet (Excel) of the Engineer's pre-bid Opinion of Project Costs

7.0 Permits

7.1 Prepare all permit applications (i.e. maps, calculations, application forms, public notices, responses, etc.) and perform all work necessary to obtain all permits and approvals required for the project (other than the LFUCG Land Disturbance Permit, and the Notice of Intent to KDOW for KYR10 to be obtained by the Contractor). Permits and approvals may include, but are not limited to:

7.1.1 KDOW Stream Construction/401 Water Quality Certification Permit

7.1.2 U.S. Army Corps of Engineers 404 Permit

7.1.3 State Historic Preservation Office Section 106 of National Historic Preservation Act

7.1.4 U.S. Fish & Wildlife Section 7 Endangered Species Act

7.1.5 Utility easement encroachment agreements/Memorandums of Understanding

7.1.6 LFUCG Floodplain Special Use Permit

7.1.7 FEMA CLOMR/LOMR

7.1.8 Deliverables: Hard copies of submittal applications for each required permit.

7.1.9 Deliverable: Originals of Executed Permits in a separate binder with the 100% bid contract documents.

8.0 Bid Services

8.1 Deliverable: Reproducible digital version of the construction plans, specifications and contract documents to LFUCG's official bid document distributor prior to bid advertisement.

8.2 Coordinate with LFUCG Division of Purchasing for advertisement and distribution of bid documents and any addendums. Maintain an up to date List of Plan Holders.

8.3 Attend pre-bid conference.

8.4 Respond to questions and issue addenda as necessary. During the bidding phase, address bidder's questions and coordinate responses with the LFUCG Project Manager and Division of Purchasing. LFUCG Division of Central Purchasing will issue any addenda.

8.5 Attend bid opening, obtain copies of all bids, prepare a tabulation of bid prices, and submit a recommendation of award.

8.6 Deliverable: Two (2) CD's of the drawings, specifications, and addendum(s) in ".pdf" format.

8.7 Provide electronic versions of plans to coordinating utilities as needed.

9.0 Construction Administration Assistance

9.1 Participate in pre-construction conference as directed.

9.2 Review all shop drawings

RFP Scoring Sheet

RFP #41-2011 - Engineering Services for Coldstream Park Stream Corridor Restoration & Preservation Consent Decree SEP						
Consultant Name:						
Selection Criteria	Notes	Total Points	Score(1-5)	Weighted Score	Comment	
Specialized experience and technical competence of the persons or firm(s) (including a joint venture or association (e.g. team) with the type of service requested as stated in section #1 on Pg 5 and 6 of the Proposal Evaluation Criteria section.		15			Weighted Score= (Total Points/5)xScore	
Capacity of the person, firm or team to perform the work, including any specialized services, within the time limitations as stated in #2 on page 6 of the Proposal Evaluation Criteria section.		15			Weighted Score= (Total Points/5)xScore	
Character, integrity, reputation, judgment, experience, and efficiency of the person, firm or team.		5			Weighted Score= (Total Points/5)xScore	
Past record and performance on contracts with the Urban County Government or other governmental agencies and private industry with respect to such factors as control of cost, quality of work, ability to meet schedules and successful submission of capital improvement action plans to regulatory agencies (USEPA, etc.).		15			Weighted Score= (Total Points/5)xScore	
Familiarity with the details of the project as stated in #5 on Pg. 6 of the Proposal Evaluation Criteria section.		30			Weighted Score= (Total Points/5)xScore	
Degree of local employment to be provided by the person, firm or team in the performance of the contract.		10			Weighted Score= (Total Points/5)xScore	

- 9.2.1 *Deliverables: Approved shop drawings.*
- 9.3 Site Progress Meetings and Resident Observation – part-time on-site (assume 600 staff hours).
- 9.4 Attend final inspection and assist in compiling final punch list.
- 9.5 Prepare Record Drawings in hard-copy and electronic format compatible with LFUCG software.
 - 9.5.1 *Deliverable: 1 hard copy set of signed and sealed record drawings of project improvements.*
 - 9.5.2 *Deliverable: 1 digital set of signed and sealed record drawings in .pdf format.*
- 9.6 Prepare a Project Certification for LFUCG. (Note: Submittal to EPA shall be prepared by LFUCG.)
 - 9.6.1 *Deliverable: Project Certification memorandum*

RFP Scoring Sheet

RFP #41-2011 - Engineering Services for Coldstream Park Stream Corridor Restoration & Preservation Consent Decree SEP			
The total estimated cost of services, based on the hourly rates provided for the individuals identified as providing measurable services for project delivery and the estimated total hours, based upon the production of deliverables listed in the Section – Draft Scope of Services. Each proposal must contain a chart that lists information as stated in #7 on page 7 of the Proposal Evaluation Criteria section.			Weighted Score= (Total Points/5) xScore
		10	
Final Technical Score		100	

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

Comments:

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

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of _____, 2012, 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 Coldstream Park Stream Corridor Restoration and Preservation Consent Decree Supplemental Environmental Project (SEP) as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #41-2011 (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 Coldstream Park Stream Corridor Restoration and Preservation Consent Decree Supplemental Environmental Project (SEP) 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 #41-2011 (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 #41-2011).
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 #41-2011, **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 #41-2011, 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** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5. After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.

- 1.3.6 Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

SECTION 2 - EXTRA WORK BY CONSULTANT

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

be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as Extra Work and shall be paid as such.
- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and provide written approval or disapproval thereof within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and decisions with respect to materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current project schedule.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
 - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to **OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.
 - 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Task Order shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.
 - 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT/Final Task Order** within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT/Final Task Order** or otherwise adjusting the scope of the services or work.
 - 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under "DISPUTES" of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, including but not limited to those assessed pursuant to the **CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

SECTION 5 - PAYMENTS TO CONSULTANT

- 5.1. **Methods of Payment for Services of CONSULTANT.**
 - 5.1.1. **For Basic Services**

OWNER shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order

shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

- 5.1.1.a Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.
- 5.1.1.b Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.
- 5.1.1.c Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER's** designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

5.1.2. For Extra Work

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER** determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (**Disputes**).

5.2. Times of Payment

- 5.2.1 **CONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

5.3. Other Provisions Concerning Payments

- 5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.
- 5.3.2. In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

- 6.1.1. **CONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.
- 6.1.2. The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, drawings and specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT**.

6.3. Legal Responsibilities and Legal Relations

- 6.3.1. The **CONSULTANT** shall familiarize itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.
- 6.3.2. In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

- 6.4.1. **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.
- 6.4.2. **In no event shall** the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.
- 6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

6.5. Disputes

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.6. Accuracy of Consultant's Work

CONSULTANT shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered. **CONSULTANT** shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to terminate this Agreement

6.7. Security Clause

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

6.8. Access to Records

The **CONSULTANT** and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested.

Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future consultant engineering Agreements.

6.9. Risk Management Provisions, Insurance and Indemnification

6.9.1. DEFINITIONS

The **CONSULTANT** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **CONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms "**CONSULTANT**" and "**OWNER**" shall be defined as follows:

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION

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 reasonable attorney's fees, that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT'S** (or subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property, including the loss of use resulting therefrom; or to or from negligent acts, errors or omissions or willful misconduct; provided however, that **CONSULTANT** shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of **OWNER**. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all 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 Agreement.

6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT

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

delay or nonperformance, CONSULTANT shall be solely liable to OWNER for any and all such damages, including any costs and attorney's fees.

6.9.4. FINANCIAL RESPONSIBILITY

The CONSULTANT understands and agrees that the CONSULTANT shall, prior to final acceptance of the CONSULTANT'S proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

6.9.5. INSURANCE REQUIREMENTS

6.9.5.1. Required Insurance Coverage

CONSULTANT shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to OWNER in order to protect OWNER against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT. The cost of such insurance shall be included in any proposal:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.
- c. The General Liability Policy shall include Business Interruption coverage.
- d. The General Liability Policy shall include a 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 and/or Environmental Casualty coverage unless it is deemed not to apply by OWNER.
- f. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), for \$1 million\ \$2 million aggregate and/or a separate Professional Liability Policy shall be obtained. (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

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

6.9.7. DEFINITION OF DEFAULT

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement. **CONSULTANT** also agrees that **OWNER** may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging **CONSULTANT** for any such insurance premiums purchased, or suspending or terminating this Agreement.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

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

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

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES

- 8.1. This Agreement is subject to the following provisions.
 - 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.

EXHIBIT A

Scope of Engineering

Services and Related Matters

RFP #41-2011

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



Lexington-Fayette Urban County Government
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray
Mayor

Jane C. Driskell
Commissioner

ADDENDUM #1

RFP Number: **41-2011**

Date: December 16, 2011

Subject: **Engineering Services for Coldstream Park Stream Corridor
Restoration & Preservation Consent Decree SEP**

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:

For submitting Proposals, deadline has been changed to January 4, 2012 @ 2:00 PM local time

Questions	Answers
Can the submittal date be moved to January 4 th ? The week between Christmas and New Year is a time that many people have planned vacations. Additionally, most offices are closed January 2 nd for the holiday. A due date of January 3 rd does not seem in the best interest of LFUCG for quality proposals.	Deadline has been changed to January 4, 2012 @ 2:00 PM local time.
Page 2 – What specific EPA Stream Mitigation Guidelines are you referring to? EPA has numerous documents on the subject.	The Consent Decree mentions both the EPA’s and the State’s Stream Mitigation Guidelines. If no specific document is available, reference whatever available documentation they have provided or endorsed that you utilize.
Page 4 – Please state the fines the selected consultant would be subject to if a deadline was missed. From reviewing the Consent Decree, it was not clear what fines would apply to this project.	See paragraph 46. of the Consent Decree.
There are some concerns regarding the insurability of certain clauses highlighted therein. These include among others the Indemnification clause (Article 6.9.2) and the Safety and Loss Control clause (Article 6.9.6). Recognizing the importance of insurability to all parties bound by the agreement has there been any discussion with hopes of modifying these Articles in a mutually acceptable fashion?	This is currently under review and may be revised.

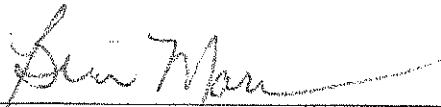
<p>What is the concrete structure at the downstream end of the project just upstream of the Legends Trail bridge? Can this structure be removed or lowered? If so, how much can it be lower?</p>	<p>Please refer to the map in Scope Exhibit 1 that shows the hatched SEP area. It appears the crossing in question is downstream of the SEP area and therefore would not be altered by this project.</p>
<p>Where does the sewer line run in relation to Cane Run and the bike trail? Is there a map available?</p>	<p>A map is provided for download with the aerial photography showing the Legacy Trail and the stream, with the existing sanitary sewer and storm sewer locations and parcel lines shown.</p>
<p>What are the limits along the left descending and right side that the channel can be potentially moved to?</p>	<p>The sanitary sewer, Legacy Trail, and Coldstream Park parking lot are the known existing constraints to channel movement.</p> <p>There is a plan to extend the Legacy Trail up to Citation Blvd. The selected consultant, LFUCG staff, and the trail design consultant will coordinate on future trail locations to ensure it does not conflict with the stream design.</p>
<p>What is the 3-inch steel pipe that crosses Cane Run near the downstream end of the project? Is this an active line that needs to be left? Or can it be removed?</p>	<p>LFUCG has not made a determination on this pipe. This will need to be investigated by the selected consultant.</p>
<p>Does the existing concrete bridge near the upstream end of the project need to be removed, protected or left?</p>	<p>The existing crossing at its current location does not have to be maintained. It is in disrepair and a decision on its removal will be made in consultation with the selected consultant. See answer further below in this document for more information on a replacement for this crossing.</p>
<p>There appears to be an old cattle crossing at the downstream end of the project. Does this crossing need to be removed or left?</p>	<p>Please refer to the map in Scope Exhibit 1 that shows the hatched SEP area. It appears the crossing in question is downstream of the SEP area and therefore would not be altered by this project.</p>
<p>Are there any trees or other structures along the project that need to be left alone or given special treatment?</p>	<p>Other than the existing Legacy Trail, Coldstream Park parking lot, and the sanitary and storm sewers, LFUCG currently is unaware of other items needing special treatment in the SEP area. The park area is utilized for various functions and the selected consultant will be responsible to coordinate with LFUCG staff on other possible areas for special treatment.</p>
<p>Does LFUCG have any restrictions on the maximum constant head on the sewer outlet structure at the downstream end of the project?</p>	<p>The project should not alter the water surface elevation profile at the existing pump station vault overflow structure downstream of the SEP area.</p>
<p>Does LFUCG have current flood maps and hydraulic (HEC RAS) runs for Cane Run?</p>	<p>Yes - A LOMR is currently under review by FEMA for the Legacy Trail, which includes this project area. The effective HEC-RAS models from the LOMR should be obtained from FEMA. If that is not possible, the models can be provided, but the consultant must verify that the data is the effective data.</p>
<p>Will the consultant be responsible to revise FEMA runs or will LFUCG do that?</p>	<p>Yes - see Section 4.2 of the Draft Scope of Services which includes all modeling required to submit for the CLOMR and LOMR submittals.</p>

<p>Will the consultant be responsible for weekly construction oversight?</p> <p>Or post-construction monitoring?</p>	<p>LFUCG shall be the lead in construction inspection. The 600 hours listed under Section 9.3 of the Draft Scope of Services is primarily for on-site construction inspection in support of LFUCG staff.</p> <p><u>In the fee estimate portion of the proposal, please be sure to include the hourly rate for the staff that would be performing inspection services.</u></p> <p>Post-construction monitoring, such as that required for stream mitigation projects, is not included in the Scope of Services. Since this is not a mitigation project, the State Division of Water has stated that 5-year post-construction monitoring will not be required.</p>
<p>The RFP states that 600 hours will be needed for meetings. Is this correct? Otherwise, what is the 600 hours for?</p>	<p>The 600 hours is for Site Progress Meetings and Resident Observation. This would include providing on-site assistance with construction inspection.</p>
<p>Can excess fill be placed outside of the project area?</p>	<p>LFUCG has not made a definitive determination, but given some areas of open space within the parcel it is anticipated that space will be available on-site for permanent placement of some if not all of excess material.</p>
<p>Does the 35 page proposal limit include the forms to be signed and dated? Or are these forms in addition to the 35 page limit?</p>	<p>No. The required forms and attachments will not be counted as part of the 35 pages. They are in addition to the 35 pages.</p>
<p>Will LFUCG consider delaying the proposal submittal date two weeks? RFP Questions were not allowed during the pre-proposal meeting, written responses to RFP questions will not be addressed until December 16th and the remaining time includes the week of Christmas and New Year's.</p>	<p>The submittal has been moved to January 4, 2012. Further movement of this date would jeopardize approval by Urban County Council in February.</p>
<p>When does LFUCG anticipate completing the selection process?</p>	<p>Mid to late January, 2012.</p>
<p>When does LFUCG anticipate notifying submitters of the selected firm?</p>	<p>Mid to late January, 2012.</p>
<p>When does LFUCG anticipate having a signed contract in place?</p>	<p>Early February 2012.</p>
<p>When does LFUCG anticipate issuing a Notice to Proceed to begin work (this is critical for time of year surveying costs)?</p>	<p>Late February 2012.</p>
<p>Is it the desire of LFUCG to remove the old farm bridge crossing of Cane Run located approximately 1,000 feet downstream of Citation Boulevard?</p> <p>a. Does LFUCG desire to replace the farm</p>	<p>LFUCG does not need to keep the existing bridge crossing.</p> <p>a. LFUCG does desire to maintain an access crossing at some location that would accept pickup truck loading and allow for vehicular and pedestrian trail access to the other side of</p>

<p>bridge with any other type of crossing (pedestrian bridge, culvert, ford)?</p>	<p>the creek. <u>For purposes of the RFP, the proposers can assume design of a box culvert crossing at some undetermined location.</u></p>
<p>Scope of Work Section Pg 2 (bottom of page) last bullet - Create a permanent greenway</p> <ul style="list-style-type: none"> b. What is the desired greenway alignment (point A to point B) c. Does proposed greenway cross Cane Run and how does it relate to the existing legacy trail? <ul style="list-style-type: none"> i. If so, does LFUCG desire a pedestrian bridge, vehicle bridge or culvert? ii. What is desired design loading of bridge crossing? iii. What is minimum desired access width of bridge/culvert crossing? iv. Above is needed to determine design efforts and therefore design fee 	<p>The “greenway” is the SEP Area denoted in Scope Exhibit 1. The crossing described above would serve as pedestrian and vehicular access. Future alignment of the Legacy Trail extension has not been determined.</p>
<p>Pg 3 (bottom of page) sanitary sewer</p> <ul style="list-style-type: none"> d. Need existing sewer size/depth/material/location information? <ul style="list-style-type: none"> i. Needed to determine design efforts and therefore design fee e. Does LFUCG have As-Built sewer or utility Plans? f. Does LFCUG have information in GIS or CAD format? g. Sanitary Sewer is located within the 100 Year floodplain, page 9 requires grade control across the 100 year floodplain and, by default, the sewer line. Does the sewer owner agree to the construction of boulders (or other structural measures) above the sewer line and within the sewer easement? 	<ul style="list-style-type: none"> d. As-builts for the existing 36” HDPE sanitary sewer are provided on downloadable maps. However, please note that the draft Remedial Measures plan for this area shows this trunk sewer being replaced in the future. <p>Point of clarification: Sanitary sewer design is not proposed as part of this project.</p> <ul style="list-style-type: none"> e. Yes – see provided downloadable file. f. LFUCG has a GIS layer for the sanitary and storm sewer structure and pipe inventory. g. The LFUCG DWQ is the sewer owner and has the authority to approve installation of materials. Stone can be placed across the sewer easement and line.
<p>Pg 7 (section 1.3.3)</p> <ul style="list-style-type: none"> h. In addition to the sewer line, what other known private or public utilities exist at the project site? 	<ul style="list-style-type: none"> h. LFUCG has not performed a utility locate on this property and can not provide this information at this time. See Section 1.3.3 of the Draft Scope of Services.
<p>Pg 8 (section 2.1)</p> <ul style="list-style-type: none"> i. What is the name and purpose of other prior studies, calculations and project plans for this channel reach have been prepared and will be made available? j. Who prepared the other prior studies? 	<ul style="list-style-type: none"> i. & j. LFUCG DWQ is in the process of obtaining this information. At a minimum it will include the FEMA LOMR submittal prepared by Strand Associates. <u>For purposes of this RFP assume 10 staff hours for review of these items.</u>

<p>Pg 8 (section 3.0) Geotechnical</p> <p>k. If we do not include geotechnical soil borings within the fee at this time (and state such within the proposal) and it is later determined that geotechnical soil borings are needed.... Will the LFUCG allow that work and fee to be supplemented at a later date?</p> <p>l. What is LFUCG's desired number of soil borings or is it the consultants responsibility to determine necessity and number of soil borings?</p>	<p>k. <u>In the fee estimate portion of the proposal, please include a lump sum fee and description of anticipated work for all tasks listed in Section 3 of the Draft Scope of Services – Soil, Geotechnical, and Groundwater Investigations, as well as list the unit costs for each individual item (e.g. soil boring and analysis, rock probe, etc.).</u></p> <p>l. It will be the selected consultant's responsibility to determine the number of soil borings.</p>
<p>Pg 9 (section 4.2 and 7.1.7) FEMA CLOMR/LOMR</p> <p>m. Does LFCUG have HEC2 or HEC-RAS data files?</p> <p>n. Is the data in HEC2 or HEC-RAS format?</p> <p>o. Who will be responsible for the CLOMR/LOMR review fees?</p> <p>p. Who will be responsible for obtaining the as-built DTM survey such that the LOMR can be prepared, Designer or Contractor?</p>	<p>m. The effective HEC-RAS models from the LOMR should be obtained from FEMA. If that is not possible, the models can be provided, but the consultant must verify that the data is the effective data.</p> <p>n. HEC-RAS</p> <p>o. <u>For purposes of this RFP, do not include permit fees in your proposal or fee estimate.</u></p> <p>p. Per Section 7.1 of the Draft Scope of Services includes all work required to complete the LOMR submittal. This would include preparing any as-built surveys.</p>
<p>Pg 9 (section 6.0) Design Plans</p> <p>q. Will LFUCG provide all available GIS/CAD data to the designer (per agreement section 3.3) or is it the designer's responsibility to purchase the data?</p>	<p>q. LFUCG GIS/CAD data needed to perform the work will be provided to the selected consultant free of charge.</p>
<p>Pg 9 (section 6.1, 8th bullet) Grade control structures across 100-year floodplain</p> <p>r. What is purpose of extending grade control across the 100-year floodplain, well beyond the bankfull channel?</p> <p>i. FEMA FIRM panel XXXXXX shows the floodplain as being xxx-xxx feet in width. This appears to be an unnecessary increase in project construction costs.</p>	<p>r. Section 6.1, 8th bullet in the Draft Scope of Services refers to using grade control structures across the entire 100-year floodplain <u>wherever possible</u>. This criterion is supportive of the design objective that the channel and floodplain valley be able to remain stable for a 100-year design storm.</p>
<p>Pg 13 (section 9.5) Record Drawings</p> <p>s. Who is responsible for Redline Markups during construction, Designer or Contractor?</p>	<p>s. Per Section 9.5, the Draft Scope of Services includes this task, and thus fee estimates should include this task.</p>
<p>The RFP scoring sheet indicates a checklist item for</p>	

<p>insurance. However the RFP doesn't request certificate of insurance. Do we need to submit an insurance certificate with the proposal?</p>	<p>It is not required at time of submittal but if selected, must provide before recommendation to Council.</p>
<p>Does the 35-page limit include the required forms / attachments?</p>	<p>No. The required forms and attachments will not be counted as part of the 35 pages.</p>
<p>Does the 35-page limit include proposal covers, letter, table of contents, and tabs?</p>	<p>No. The covers, letter, table of contents and tabs will not be counted as part of the 35 pages.</p>
<p>We understand that the Consent Decree SEP requires the expenditure of \$1,000,000. From this total amount, LFUCG has allocated \$750,000 for construction and \$250,000 for design. We also understand that stand-alone elements shall be included in the bid documents to allow the full \$1,000,000 to be realized while minimizing overruns. Is there any additional flexibility in the allocation between construction and design monies? Are there some elements in the design scope of work that could be add-alternatives (or optional) to focus design efforts within the stated budget of \$250,000?</p>	<p>From page 4 of the Engineering Services Scope of Work, "Given the unique requirement of this SEP to spend \$1,000,000, LFUCG has allocated costs to various tasks. A minimum of \$750,000 has been set for costs associated with construction of the project. Therefore, a not-to-exceed budget of \$250,000 has been set for all other project-related services. It is expected that these "other project-related services", as outlined in the Section – Draft Scope of Services, shall be completed by the selected proposer under this contract. However, it is possible that one or more individual tasks may best be completed by third party entities yet to be determined. Those decisions shall be made by LFUCG in consideration with the successful proposer."</p> <p>For purposes of the fee estimate in the RFP, assume that all tasks listed in the Draft Scope of Services would be performed under a single contract. LFUCG provided the \$250,000 budget figure to assist the proposers in understanding the financial project constraints, realizing that stream restoration design features and resulting costs can be highly variable with numerous options and varying levels of enhancement/restoration.</p>



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: _____



Lexington-Fayette Urban County Government
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray
Mayor

Jane C. Driskell
Commissioner

CLARIFICATION #1

RFP Number: 41-2011

Date: December 20, 2011

Subject: **Engineering Services for Coldstream Park Stream Corridor
Restoration & Preservation Consent Decree SEP**

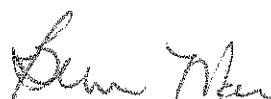
Please address inquiries to:
Betty Landrum (859) 258-3320

TO ALL PROSPECTIVE BIDDERS:

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

Questions	Answers
The term "work" is included throughout the ESA, which may imply or infer that there is an expectation on the part of LFUCG that construction-type services and/or standards are being provided or will apply. Will LFUCG consider eliminating the term "work" or otherwise clarifying this issue?	LFUCG will consider this request but may not necessarily change or clarify this issue as part of a final ESA.
Section 6.2, page 6. Consultant wishes to clarify that if LFUCG reuses documents related to the ESA for another purpose not related to the services in the RFP that it will not be held responsible. Will LFUCG consider adding the following or a substantially similar statement to the end of this section "Any reuse of documents for any purpose other than the intended use shall be at OWNER's sole risk and without liability to CONSULTANT"?	LFUCG is agreeable to including additional language which would clarify that the Consultant is not liable should LFUCG use nonstandard components of drawings/plans on other LFUCG projects. However, there are components of this project and documentation that will be provided by the Consultant which the LFUCG anticipates using in future projects and for which LFUCG reasonably expects the Consultant to stand behind. For example, if LFUCG is requesting a feasibility assessment or flow numbers from the Consultant, LFUCG will be relying on that information in addressing future work/services and will not waive or release related rights or claims it has against the Consultant.
Section 6.7, page 7. Consultant indicates that there is a possibility that it may be subject to a Freedom of Information Act or Open Records Act request regarding the services. Will LFUCG consider adding a statement to this section clarifying that a consultant may release information if required by law?	LFUCG is agreeable to including language similar to the above in any final ESA, but will also require clarification language requiring notification of any such document requests.

Section 6.9.2, page 8. Consultant believes that the language is too broad and may be interpreted in a manner under which the underlying insurance would not cover the claim. Will LFUCG consider clarifying and/or amending this language?	LFUCG will consider this request but may not necessarily change the provision as part of a final ESA and would only do so if it believed it was ultimately obtaining sufficient protection.
6.9.5.1. Required insurance coverage. Is there a limitation on the type of professional liability insurance requested (i.e., may it be either occurrence based or claims made)?	As long as LFUCG retains the additional provisions pertaining to professional liability insurance included in the ESA it will accept either type of insurance.
Section 6.9.6. Consultant is concerned that it may be held liable for the actions of persons outside of its control under this provision. Will LFUCG consider amending or clarifying the language within this provision to address this concern?	LFUCG will consider this request but may not necessarily change the provision as part of a final ESA and would only do so if it believed it was ultimately obtaining sufficient protection.



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: _____

Appendix J-1

**SUPPLEMENTAL ENVIRONMENTAL PROJECT
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

This Appendix contains a description of the proposed Supplemental Environmental Project ("SEP") to be funded by the Lexington-Fayette Urban County Government ("LFUCG") as part of the Consent Decree resolving alleged violations of the Federal Water Pollution Control Act, also known as the Clean Water Act. LFUCG will dedicate a minimum of \$1,000,000 to this SEP.

Through this SEP, LFUCG will provide stream bank stabilization, habitat restoration and greenway creation in Coldstream Park, located within the Cane Run watershed in Fayette County, and is known as the "Coldstream Park Stream Corridor Restoration and Preservation SEP."

SEP PURPOSE

The SEP would provide funds for stream and habitat restoration work and greenway creation along an approximate 0.8 mile stretch of Cane Run, located in Coldstream Park between Citation Boulevard and Interstate 75. Coldstream Park consists of floodplain property owned by LFUCG that previously constituted a component of the University of Kentucky's agricultural research farm. LFUCG owns approximately 56 acres of land along the 4,415 linear foot stretch of Cane Run proposed for this SEP. The existing stream varies in distance from the property lines, from a minimum distance of approximately 50 feet to a maximum distance of over 400 feet. The average distance from the centerline of the stream to the property line is approximately 300 feet. Currently, the area adjacent to the proposed greenway is undeveloped, and portions are still utilized for agricultural purposes. Surrounding land uses consist of urban development (commercial and residential) and agricultural. See attached map, Exhibit 1.

The stream banks of Cane Run are severely denuded due to past free grazing of cattle during the park's past history as a University of Kentucky agricultural research facility. Due to erosion in some locations, the incised stream channel is disconnected from the floodplain. Funds for this project will be used to stabilize the channel, restore habitat, reduce peak flows / pollutant loading associated with urban runoff and agricultural activities, and create a permanent greenway. Runoff entering the stream ultimately recharges the Royal Springs Aquifer, which is the raw water supply for the City of Georgetown municipal water system.

The SEP will serve multiple purposes:

- Reduce flooding by removing artificial restrictions within the floodway, thus reducing potential for property damage and stream channel erosion;
- Reduce pollutant loadings entering Cane Run, which recharges the Royal Springs Aquifer, through use of green infrastructure concepts for minimizing erosion and maximizing infiltration;
- Enhance recreational and educational opportunities within the Urban Service Area by enhancing passive use land within the park system and habitat restoration;

- Assist LFUCG and other watershed stakeholders in promoting / implementing future water quality initiatives within the basin including through the creation of a greenway to permanently buffer and protect the stream. LFUCG strongly believes that increased emphasis on quality of life perceptions is critical to the success of holistic, long-range watershed planning.

The SEP will benefit the public and the environment by improving floodplain conditions that contribute to flood water backup and stream channel erosion and that generally impact floodplain ecosystems. The SEP will also benefit residents served by the neighboring City of Georgetown public water system by reducing pollutant loads discharging into Cane Run, which recharges the Royal Springs Aquifer, which is the raw water source for that city. This area was identified as a beneficial greenway area in the conceptual 2002 Greenway Master Plan, which identifies potential generalized locations for conservation greenways. This proposed greenway has not been funded and there are no funds dedicated to its implementation.

SEP SCOPE

The scope of this SEP is to create and implement a new Coldstream Park Greenway Plan for the property owned by LFUCG along Cane Run in Coldstream Park. The approximate limits of the work and greenway SEP are as shown on the attached map in Exhibit 1.

This project will provide for reconnecting the stream channel to the floodplain, reestablishing a stable channel pattern and geometry, stabilizing of the channel banks with vegetation, restoring natural riparian habitat along the banks, and restoring habitat in bordering areas.

Project components and requirements include the following:

- Natural stream design parameters appropriate to the Inner Bluegrass – e.g. “E” Channel sinuosity, pool-riffle-run-glide ratios, bankfull heights, etc. The elevation of the baseflow will be adjusted for maximum habitat improvements and floodplain hydrology restoration.
- Backwater areas and vernal pools to enhance amphibian habitat.
- Infiltration basins built in the floodplain to provide additional terrestrial habitat and to enhance pollutant uptake, groundwater recharge, and restoration of healthy base flows.
- Habitat restoration in bordering areas throughout the greenway.
- Establishment of a conservation easement, in a format substantially similar to the attached form (Exhibit 2), to permanently protect the use of the greenway as designed, with exceptions for work necessary for maintenance, repair or replacement of existing utilities and certain other activities that are consistent with the greenway purpose.
- At a minimum, the design consultant selected for this SEP should be thoroughly familiar with Stream Mitigation Guidelines published by EPA and/or EPPC, fluvial process and channel evolution and natural channel design or alternative stream design methodologies.
- Final designs will be submitted to EPA for review and approval to ensure that the designs are consistent with EPA's Stream Mitigation Guidelines and conservation easement principles.

SCOPE EXHIBIT 1

SEP Costs

LFUCG shall spend at least \$1,000,000 for the implementation of this SEP. Programmatic and administrative costs incurred by LFUCG will not be counted against the dollar amount devoted to this project.

SEP Schedule

The duration of this SEP will be five (5) years from the date of entry of the Consent Decree.

Project tasks and associated deadlines include:

- Development of the Coldstream Park Greenway Plan through a selected design firm for submittal to EPA within 24 months of Effective Date;
- Procure necessary state and federal permits for the project;
- Construct and implement Greenway Plan within 60 months of Effective Date.

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SCOPE EXHIBIT 1

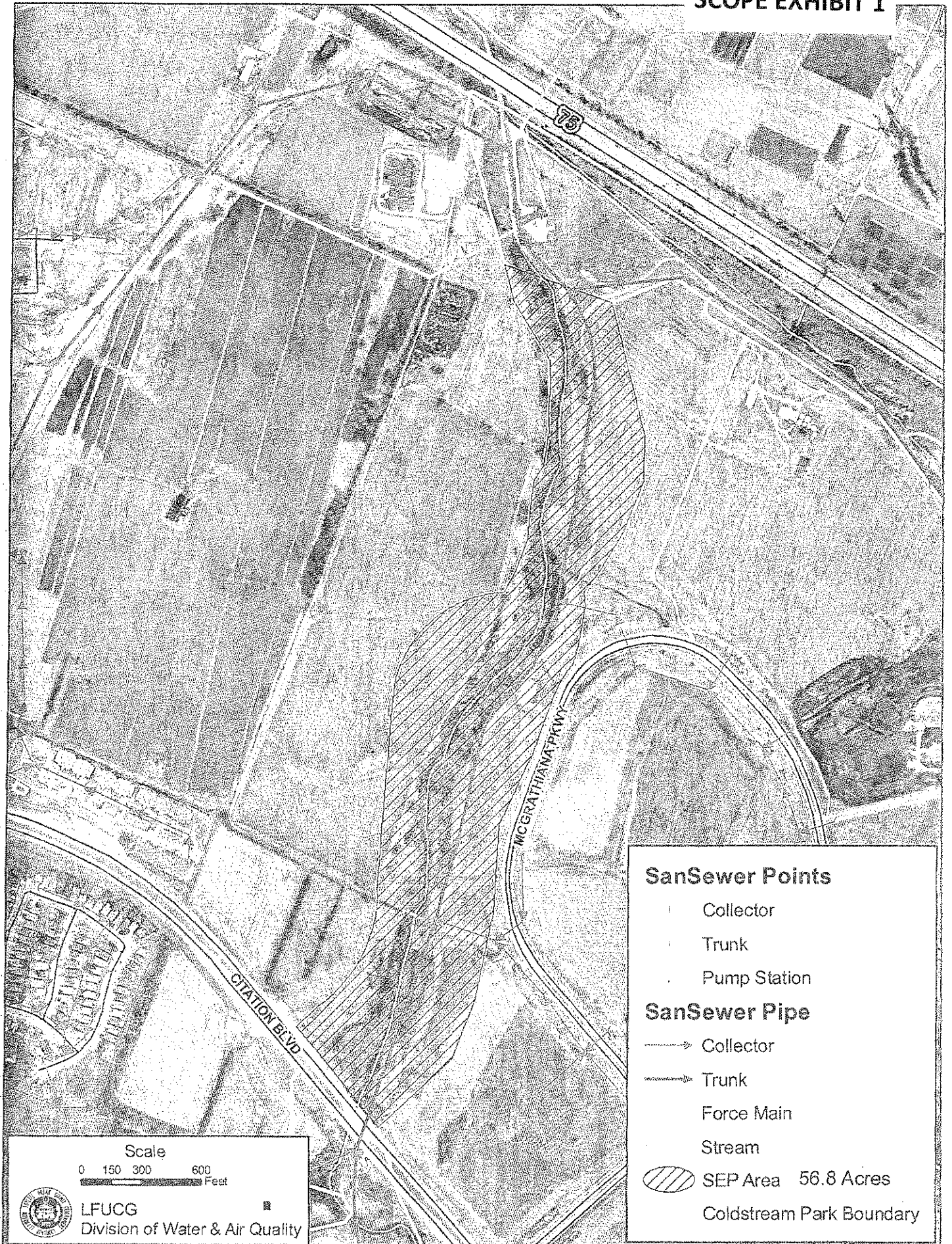


EXHIBIT 1

DEED OF CONSERVATION EASEMENT

THIS DEED OF CONSERVATION EASEMENT is made this ___ day of _____, 2008, by LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, having a principal office address of 200 East Main Street, Lexington, Kentucky 40507 ("Grantor"), in favor of LEXINGTON FAYETTE URBAN COUNTY GREENSPACE TRUST, INC., a Kentucky corporation, having a principal address at 200 East Main Street, 6th Floor, Lexington, Kentucky 40507 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Fayette County, Kentucky, more particularly described in the aerial photo attached as Exhibit A hereto, and shown on the survey attached as Exhibit B hereto, both of which are incorporated herein by this reference (the "Property");

WHEREAS, the Property possesses conservation values of importance to Grantor, the people of Fayette County and Scott County, and the people of the Commonwealth of Kentucky, which, if preserved, will yield significant public benefits, including the restoration and preservation of a section of Cane Run stream (collectively, "Conservation Values");

WHEREAS, Grantee is authorized to accept conservation easements as required to retain and protect natural, scenic, or open-space values of real property, assuring its availability for agricultural, forest or open-space use, protecting natural resources, and to preserve the historical, architectural, archaeological, or cultural aspects of real property in Kentucky and is qualified to accept such easements under Section 170(h) of the Internal Revenue Code;

WHEREAS, the grant of a conservation easement by Grantor to Grantee on the Property will assist in preserving and maintaining the Property and the Conservation Values and significance of the Property;

WHEREAS, the grant of a conservation easement on the Property by Grantor to Grantee shall assure, in particular, conservation of the Property consistent with the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project criteria set forth in Appendix J to the Consent Decree in Civil Action No. 5:06-cv-386 in the United States District Court for the Eastern District of Kentucky (hereinafter the "Consent Decree");

WHEREAS, the preservation of the Conservation Values of the Property will assist in the accomplishment of the conceptual Greenway Master Plan, adopted and approved by Lexington Fayette Urban County Planning Commission in June 2002, all of which are of great importance to Grantor, Grantee, the people of Fayette County, Kentucky and the people of the Commonwealth of Kentucky in that it will, among other things:

SCOPE EXHIBIT 1

- (a) Minimize the impact of changing land use on natural features and ecosystems;
- (b) Protect a section of Cane Run and its adjacent floodway, which recharges Royal Spring Aquifer;
- (c) Restore and preserve the riparian corridor of Cane Run within the Greenway Project area, and reestablish habitat in bordering areas;
- (d) Preserve and enhance significant habitat for wildlife species;

WHEREAS, Grantor intends the Conservation Values of the Property to be preserved and maintained by this Easement, in perpetuity, and that the continuation of land use patterns, existing at the time of this Easement shall not be permitted to impair or interfere with those values;

WHEREAS, Grantor desires to grant to Grantee, and Grantee desires to accept from Grantor, a conservation easement on the Property, pursuant to the terms herein;

WHEREAS, Grantee agrees by accepting this Easement, that Grantee shall endeavor to honor the intentions of Grantor stated herein and endeavor to preserve and protect in perpetuity the Conservation Values of the Property;

WHEREAS, Grantor further intends as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity; and

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants and conveys to Grantee a conservation easement in perpetuity over the Property, together with all unreserved development rights associated with the Property, of the nature and character and to the extent hereinafter set forth ("Easement").

1. **Purpose.** It is the purpose of this Easement to assure that the Property will be retained forever as a greenway consistent with the requirements of the Coldstream Park Stream Corridor Restoration and Preservation Supplemental Environmental Project ("Project") in Appendix J to the Consent Decree, and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property. Grantor intends that this Easement will confine the use of the Property to such activities as are not inconsistent with the purpose of this Easement.

2. **Rights of Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee by this Easement:

- (a) To preserve and protect the Conservation Values of Property;

SCOPE EXHIBIT 1

(b) To enter upon the Property at reasonable times, at least once per year, in order to monitor compliance with and otherwise enforce the terms of this Easement; provided that, except in cases where Grantee determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not in any case unreasonably interfere with Grantor's use and quiet enjoyment of the Property;

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use. For example, to the extent that hiking and biking trails or parking or other recreational areas are added to the greenway, the Grantee shall ensure that appropriate construction techniques and controls are utilized to protect the conservation goals of the Project consistent with the conditions on Express Reservations, below.

(d) To ensure that any activities undertaken to replace, repair, or maintain utilities located within the Property are conducted in a manner to minimize temporary impacts to the Property and are reclaimed to restore the Greenway.

(e) To prevent the following prohibited activities on or uses of the Property, each of which is inconsistent with the purpose of this Easement, and to require the restoration of such areas or features of the Property that may be damaged by such activities or uses:

1. Construction or installation of structures or buildings except for small sheds or portable restroom facilities, with the approval of the Grantee;
2. Industrial, commercial or residential use;
3. Use by motorized vehicles, except as needed for maintenance of the Greenway or sanitary sewer infrastructure, and within the parking area described in Section 3(e);
4. Installation of utility structures except to perform necessary maintenance, repairs, replacements or upgrades of existing utilities infrastructure;
5. Dumping or other disposal of refuse, trash, or hazardous materials, except within receptacles installed for disposal of small amounts of trash by recreational users;

SCOPE EXHIBIT 1

6. Agricultural use or grazing;
7. Use of agricultural chemicals such as pesticides or herbicides except for limited uses in response to public health threats or invasive species that cannot otherwise be practically controlled, with approval of the Grantee;
8. Display of billboards, signs or advertisements, except for signs informing users of the conservation and recreational values of the Project and of prohibited uses of the Project;
9. Mining, drilling, removing or exploring for or extracting materials on or below the surface of the Property; and
10. Any other uses or activities inconsistent with the purpose of this Easement.

3. **Reserved Rights.** Grantor reserves all rights accruing from its ownership of the Property, including the right to engage in, or permit or invite others to engage in, all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Express Reservations includes the following:

- (a) Rights to maintain, upgrade, replace, or repair all utilities existing on the property, contingent upon development and implementation of a plan, reviewed and approved by the Grantee, to minimize disturbance and to restore the greenway to its approximate pre-disturbance condition;
- (b) Rights to construct a shared use trail within the greenway, contingent upon:
 - i. creation of a minimum buffer distance from the trail to the stream of thirty (30) feet and an average distance of at least fifty (50) feet;
 - ii. use of pervious materials for construction;
 - iii. alignment of the trail to follow existing utility lines to the extent practicable; and
 - iv. development of a design plan to be reviewed and approved by the Grantee;
- (c) Rights to use legal non-chemical methods to control predatory and problem animals as permitted by state and federal law; and

(d) Rights to construct a single parking area of a size no larger than necessary to accommodate anticipated visitors to the greenway, contingent upon:

- i. use of pervious materials for construction; and
- ii. installation of appropriate runoff controls; and
- iii. development of a design plan to be reviewed and approved by the Grantee; and
- iv. creation of a minimum buffer distance from the parking area to the stream of one hundred (100) feet; and

(e) Rights to maintain the greenway vegetation and habitat.

4. Existing Encumbrances. Anything to the contrary herein notwithstanding, the Property is subject to all existing encumbrances of record prior to the date this Easement is recorded and Grantor represents that is in compliance with the terms and conditions of all of the same.

5. Notice and Approval. The purpose of requiring Grantor to notify Grantee prior to undertaking certain permitted activities is to afford Grantee an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, Grantor shall notify Grantee in writing not less than 2 business days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to its consistency with the purpose of this Easement. Approval may be withheld only upon a reasonable determination by Grantee that the action as proposed would be inconsistent with the purpose of this Easement.

6. Grantee's Remedies.

6.1 Notice of Violation; Corrective Action. If Grantee determines that a violation of the terms of this Easement has occurred or is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

6.2 Injunctive Relief. If Grantor fails to cure the violation within 30 days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot reasonably be cured within a 30 day period, fails to begin curing such violation within the said period, or fails to continue diligently to cure such violation until finally cured, Grantee may bring

an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require the restoration of the Property to the condition that existed prior to any such injury.

6.3 Damages. Grantee shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values. Without limiting Grantor's liability therefore, Grantee, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

6.4 Emergency Enforcement. If Grantee, in good faith, determines that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values of the Property, Grantee may pursue its remedies under this Section 6 without prior notice to Grantor or without waiting for the period provided for cure to expire.

6.5 Scope of Relief. Grantee's rights under this Section 6 apply equally in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in Section 6.2, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement. Grantee's remedies described in this Section 6 shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6.6 Costs of Enforcement. All reasonable costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor.

6.7 Forbearance. Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

6.8 Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

6.9 Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against

Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes.

7. Costs, Liabilities, Taxes, and Environmental Compliance.

7.1 Costs, Legal Requirements, and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate liability insurance coverage. Grantor remains solely responsible for obtaining any applicable governmental permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction or other activity or use shall be undertaken in accordance with all applicable federal, state, and local laws, regulations, and requirements. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

7.2 Representations and Warranties. Grantor represents and warrants that, after reasonable investigation and to the best of its knowledge:

(a) Grantor and the Property are in compliance with all federal, state, and local laws, regulations, and requirements applicable to the Property and its use;

(b) There is no pending or threatened litigation in any way affecting, involving, or relating to the Property; and

(c) No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failure to comply with, any federal, state, or local law, regulation, or requirement applicable to the Property or its use, nor do there exist any facts or circumstances that Grantor might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders;

(d) There are not now any underground storage tanks located on the Property, whether presently in service or closed, abandoned or decommissioned, and no underground storage tanks have been removed from the Property in a manner not in compliance with applicable federal, state and local laws, regulations and requirements.

7.3 Remediation. If, at any time, there occurs, or has occurred, a release in, on, or about the Property of any substance now or hereafter defined,

listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, Grantor agrees to take all steps necessary to assure its containment and remediation, including any cleanup that may be required.

7.4 Control. Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in Grantee to exercise physical or managerial control over the day-to-day operations of the Property, or any of Grantor's activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), and KRS 224.01-010 *et seq.*

7.5 Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments, or administrative actions, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA and KRS 224.01-010 *et seq.*, by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property, at any time, or any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties; and, (3) the obligations, covenants, representation, and warranties of Sections 7.1 through 7.3. In no event shall Grantor's indemnification act as a waiver or defense to any immunity or damage limitation Grantor may otherwise have available to third parties.

8. Extinguishment and Condemnation.

8.1 Extinguishment. Grantor and Grantee hereby recognize that an unexpected change in the conditions of the Property may make impossible the continued ownership or use of the Property for conservation purposes and necessitate a partial or full extinguishment of this Easement. Any such extinguishment must comply with the following requirements:

(a) The extinguishment must be the result of a final judicial proceeding in a court of competent jurisdiction, and it shall be the burden of any party seeking extinguishment to demonstrate that the continued use of the Property for conservation purposes has been made impossible by an unexpected change in conditions.

(b) Grantee shall be entitled to share in the net proceeds resulting from the extinguishment in an amount equal to the percentage interest of the fair market value of Grantee's interest in the Property created pursuant to this Easement.

8.2 Condemnation. If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, Grantor and Grantee shall act jointly to recover the full value of the interests in the Property subject to the taking or in lieu purchase and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by Grantor and Grantee in connection with the taking or in lieu purchase shall be paid out of the amount recovered. Grantor and Grantee shall share the balance of the amount recovered as their interests appear.

8.3 Application of Proceeds. Grantee and Grantor agree to apply the entire portion of the net proceeds they receive from or following the extinguishment of the Easement or Condemnation to the conservation of other real property having cultural, natural, scenic, agricultural or open-space value and significance to the people of Fayette County, Kentucky.

8.4 Net Proceeds. Net proceeds shall include, without limitation, insurance proceeds, condemnation proceeds or awards, proceeds from a sale in lieu of condemnation, and proceeds from the sale or exchange by Grantor of any portion of the Property after the extinguishment, but shall specifically exclude the outstanding balance of any superior mortgage.

9. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to jointly amend this Easement in writing, with prior approval of the parties to the Consent Decree; provided that no amendment shall be allowed that will affect the qualification of this Easement and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Clerk of Fayette County, Kentucky.

10. Assignment. This Easement is transferable, but Grantee may assign all or any portion of its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer under Section 170(h) of the Internal Revenue Code (or any successor provision then applicable), and authorized to acquire and hold conservation easements under applicable laws of the Commonwealth of

Kentucky or the laws of the United States. As a condition of such transfer, Grantee shall require that the conservation purpose that this grant is intended to advance continue to be carried out. Grantee agrees to give written notice to Grantor, and to the parties to the Consent Decree, of an assignment at least thirty (30) days prior to the date of such assignment. The failure of Grantee to give such notice shall not affect the validity of such assignment nor shall it impair the validity of this Easement or limit its enforceability in any way.

11. **Subsequent Transfers.** Grantor agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee, and to the parties to the Consent Decree, of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

12. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

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

To Grantee:

President
Lexington-Fayette Urban County Government Greenspace Trust, Inc.
200 East Main Street, 6th Floor
Lexington, KY 40507

or to such other address as either party from time to time shall designate by written notice to the other. Mailed notices shall not be deemed given or served until three business days after the date of mailing thereof or if delivery is by nationwide commercial courier, service of notice shall be deemed given one business day after the date of delivery thereof to said courier. Rejection or refusal to accept, or inability to deliver because of changed addresses or because no notice of changed address was given, shall be deemed a receipt of such notice.

13. **Recordation.** Grantee shall record this instrument in timely fashion in the Office of the Clerk of Fayette County, Kentucky, and may re-record it at any time as may be required to preserve its rights in this Easement.

14. **Existing Liens.** Grantor warrants that to the best of its knowledge and belief there are no liens or mortgages on the Property. Grantor shall immediately cause to be satisfied or released any lien or claim of lien that may hereafter come to exist against the Property which would have priority over any of the rights, title or interest hereunder of Grantee, provided however, Grantor may contest in good faith the assertion of any tax lien, mechanics' lien or other lien on the Property through any administrative or judicial remedies available to Grantor, but Grantor shall promptly satisfy any such lien finally adjudged to be valid.

15. **Leases.** Grantor warrants that there are currently no lease agreements (whether written, oral, for a fixed term or month-to-month) in effect conveying any interest in the Property for use or occupation by any person.

16. **Grantee's Interest.** Grantor acknowledges that upon execution and recording of this Easement, Grantee shall be immediately vested with a real property interest in the Property.

17. **General Provisions.**

17.1 **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Kentucky.

17.2 **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to affect the purpose of this Easement. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. The rule of construction resolving ambiguities against the drafting party shall not be employed in the interpretation of this Easement.

17.3 **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

17.4 **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section 9.

17.5 **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

17.6 Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The terms "Grantor" and "Grantee," wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantors and their personal representatives, heirs, successors, and assigns, and the above-named Grantee and its successors and assigns.

17.7 Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

17.8 Approval. Whenever in this Easement Grantee's approval or consent is required, said approval or consent shall not be unreasonably withheld, delayed or denied.

17.9 Enforceability. The invalidity of any applicable statute or any part thereof shall not affect the validity and enforceability of this Easement according to its terms, it being the intent of the parties to agree and to bind themselves, their respective successors, heirs and assigns in perpetuity to each term of this Easement whether this Easement be enforceable by reason of any statute, common law or private agreement either in existence now or at any time subsequent hereto. This Easement may be re-recorded at any time by any person if the effect of such re-recording is to make more certain the enforcement of this Easement or any part thereof. The invalidity or unenforceability of any provision of this Easement shall not affect the validity or enforceability of any other provision of this Easement or any ancillary or supplementary agreement relating to the subject matter hereof.

17.10 Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument, and shall have no effect upon construction or interpretation.

17.11 Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the record counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

GRANTOR:
LEXINGTON-FAYETTE URBAN

COUNTY GOVERNMENT

BY:

Jim Newberry, Mayor

GRANTEE:

LEXINGTON FAYETTE URBAN
COUNTY GREENSPACE TRUST, INC.

BY:

Mariana H. Moore, President

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by Jim Newberry, Mayor, on behalf of the Lexington-Fayette Urban County Government this ___ day of _____, 2008.

My commission expires: _____

Notary Public, State at Large
Kentucky

COMMONWEALTH OF KENTUCKY)
) SS.
COUNTY OF _____)

Subscribed, sworn to, and acknowledged before me by Mariana H. Moore, President, on behalf of the Lexington Fayette Urban County Greenspace Trust, Inc. a Kentucky corporation, this ___ day of _____, 2008.

My commission expires: _____

Notary Public, State at Large
Kentucky

This instrument prepared by:

Lexington-Fayette Urban County

SCOPE EXHIBIT 1

Government
Department of Law
200 East Main Street, 11th Floor
PO Box 34028
Lexington, Kentucky 40588-4028

SCHEDULE OF EXHIBITS

- A. Aerial photograph
- B. Survey

GRANT OF EASEMENT

THIS EASEMENT is made and entered into this 6th day of February, 2010, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, 200 East Main Street, Lexington, Kentucky 40507, ("Grantor"), which is the in-care-of mailing address for the current tax year, and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, 200 East Main Street, Lexington, Kentucky 40507 ("Grantee").

WHEREAS, Grantee is acquiring easements over several tracts of land on which it is constructing a shared use path known as the Legacy Trail (the "Path"); and

WHEREAS, this Easement also contains covenants on the part of the Grantors and the Grantee to do or refrain from doing various acts as set forth below. It is hereby acknowledged that this Easement constitutes a servitude upon the land and runs with the land; and

WHEREAS, the parties understand and agree that certain conditions and restrictions are necessary to accommodate the implementation of the Path.

NOW, THEREFORE, the parties hereby covenant and agree as follows:

WITNESSETH:

That for and inconsideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Grantor has bargained and sold and does hereby give, grant and convey unto the Grantee, its successors and assigns, in perpetuity, the exclusive and permanent right to install, construct, inspect, maintain, operate, rebuild and/or repair a Shared Use Path known as Legacy Trail. The grant of the easement and the exercise of the rights and privileges herein granted, are subject to and expressly include the following:

SCOPE EXHIBIT 2

1. Grantee shall have the right, but not the obligation, at Grantee's expense, to construct, manage, use, repair and maintain a Shared use Path, including the right to install, maintain, and repair the Shared use Path. Grantor shall not damage or otherwise harm the final paving of the Path at any time after the completion of the Path.
2. Grantor acknowledges that this Path is for non-motorized vehicles with the exception of emergency and/or maintenance vehicles. Additionally, Grantee may permit motor-driven wheelchairs for the use of handicapped persons.
3. It is understood by the parties that Grantee reserves the right to make minor modifications to the location of the easement granted herein as reasonably necessary because of field conditions and alignment of the Path. No rights-of-way, easements of ingress or egress, driveways, roads, utility lines or other easements shall be constructed, developed or maintained into, on, over, under, or across the Path, without the prior written permission of the Grantee.
4. Grantee shall have the right to erect reasonable signs, blazing and/or public art within the path features. Grantors shall not erect fences, barriers or signs that impede access to or use of the Path.
5. No use shall be made of the Path, and no activity shall be permitted in the Path which, in the reasonable opinion of Grantee, is or may possess the potential to become inconsistent with the purposes of this Easement.
6. Grantor and Grantee have the right to cross said Path to repair any damage to said Path.

The tracts or parcels of land on which the easement will be located are within the confines of Lexington, Fayette County, Kentucky and are more particularly described as follows:

PERMANENT EASEMENTS: Legal Descriptions, See Exhibit A

Being a portion of the property conveyed to Lexington-Fayette Urban County Government, by deed dated December 9, 1991, of record in Deed Book 1744, Page 630, in the Fayette County Clerk's Office.

Together with the right to use an additional ten feet (10') of land on either side of the above-described easement for installation, operation, inspection, maintenance, repair, and reconstruction. Grantor further grants and conveys to the Grantee the right to trim or remove any and all trees, structures, and other obstacles located on said land that might interfere with the operation and maintenance of said Path.

TO HAVE AND TO HOLD the above-described easements together with all rights, privileges, appurtenances and improvements thereunto belonging unto Grantee, its successors and assigns forever, for the purposes and uses herein designated.

And the Grantor does hereby covenant to and with said Grantee, its successors and assigns forever, that it is lawfully seized in fee simple of said property and has good right to sell and convey the easements conveyed herein, and that it will **WARRANT GENERALLY** said title.

The parties do hereby certify pursuant to KRS 382.135 that the consideration stated herein is the full actual consideration paid for the property transferred herein, and that the estimated fair cash value of the property conveyed is \$2,200.00. Grantee joins this Deed for the sole purpose of certifying the consideration, as authorized by Resolution No. 607-2009 passed by the Lexington-Fayette Urban County Council on

SCOPE EXHIBIT 2

PREPARED BY:



Michael Keith Horn, Attorney Senior
Lexington-Fayette Urban County Government
Department of Law
200 East Main Street
Lexington, Kentucky 40507
(859) 258-3500
X:\Cases\ENGINEER\09-RE0597\PE\00246941.DOC

PERMANENT EASEMENT #1

Being a 40 foot wide permanent trail easement, twenty (20) feet on both sides of the following described centerline:

BEGINNING at a common corner of the Lexington-Fayette Urban County Government (LFUCG)(DB 1744, Pg 630) and the University of Kentucky Research Foundation (DB 913, Pg 31), said point being in the Interstate 64 and 75 south right of way and having NAD 83 Kentucky State Plane North Zone Coordinates of North 220,851.19 and East 1,568,618.63; thence with said University of Kentucky Research Foundation, South 13°02'48" West, 41.69 feet to the TRUE POINT OF BEGINNING, said point being in the line with the Commonwealth of Kentucky (DB 2121, Pg 575, Tract 1) and being at the beginning of a non-tangent curve to the right, having a radius of 250.00 feet: thence leaving said Commonwealth of Kentucky for forty-four (44) new lines through the lands of said LFUCG along the Legacy Trail centerline:

- 1) Along said curve for an arc distance of 30.49 feet and a chord South 35°51'19" East, 30.47 feet,
- 2) South 32°21'40" East, 52.56 feet to a point of curvature,
- 3) Along a curve to the left having a radius of 100.00 feet, an arc distance of 65.09 feet and a chord South 51°00'30" East, 63.95 feet to a point,
- 4) South 69°39'21" East, 110.08 feet to a point of curvature,
- 5) Along a curve to the right having a radius of 250.00 feet, an arc distance of 69.31 feet and a chord South 61°42'49" East, 69.09 feet to a point,
- 6) South 53°46'17" East, 190.05 feet to a point of curvature,
- 7) Along a curve to the right having a radius of 100.00 feet, an arc distance of 91.53 feet and a chord South 27°33'00" East, 88.37 feet to a point,
- 8) South 01°19'42" East, 34.65 feet to a point of curvature,
- 9) Along a curve to the left having a radius of 300.00 feet, an arc distance of 98.87 feet and a chord South 10°46'12" East, 98.43 feet to a point of reverse curvature,
- 10) Along a curve to the right having a radius of 300.00 feet, an arc distance of 131.33 feet and a chord South 07°40'14" East, 130.29 feet to a point,
- 11) South 04°52'15" West, 33.27 feet to a point of curvature,
- 12) Along a curve to the left having a radius of 300.00 feet, an arc distance of 137.59 feet and a chord South 08°16'04" East, 136.39 feet to a point,
- 13) South 21°24'23" East, 46.95 feet to a point of curvature,
- 14) Along a curve to the right having a radius of 250.00 feet, an arc distance of 107.51 feet and a chord South 09°05'13" East, 106.68 feet to a point of reverse curvature,
- 15) Along a curve to the left having a radius of 300.00 feet, an arc distance of 153.84 feet and a chord South 11°27'31" East, 152.16 feet to a point of reverse curvature,
- 16) Along a curve to the right having a radius of 480.00 feet, an arc distance of 188.88 feet and a chord South 14°52'36" East, 187.66 feet to a point of reverse curvature,
- 17) Along a curve to the left having a radius of 300.00 feet, an arc distance of 136.62 feet and a chord South 16°39'01" East, 135.44 feet to a point of reverse curvature,
- 18) Along a curve to the right having a radius of 180.00 feet, an arc distance of 186.02 feet and a chord South 00°05'25" East, 177.85 feet to a point,
- 19) South 29°30'59" West, 37.14 feet to a point of curvature,
- 20) Along a curve to the left having a radius of 394.00 feet, an arc distance of 272.41 feet and a chord South 09°42'33" West, 267.02 feet to a point,
- 21) South 10°05'52" East, 146.33 feet to a point of curvature,
- 22) Along a curve to the right having a radius of 466.00 feet, an arc distance of 283.93 feet and a chord South 07°21'25" West, 279.56 feet to a point,
- 23) South 24°48'42" West, 221.63 feet to a point of curvature,
- 24) Along a curve to the left having a radius of 194.00 feet, an arc distance of 40.37 feet and a

SCOPE EXHIBIT 2

- chord South 18°51'56" West, 40.30 feet to a point,
- 25) South 12°53'22" West, 106.60 feet to a point of curvature,
 - 26) Along a curve to the right having a radius of 300.00 feet, an arc distance of 149.10 feet and a chord South 27°07'39" West, 147.57 feet to a point,
 - 27) South 41°21'56" West, 181.76 feet to a point of curvature,
 - 28) Along a curve to the left having a radius of 200.00 feet, an arc distance of 125.21 feet and a chord South 23°25'49" West, 123.18 feet to a point of reverse curvature,
 - 29) Along a curve to the right having a radius of 200.00 feet, an arc distance of 123.33 feet and a chord South 23°09'37" West, 121.39 feet to a point,
 - 30) South 40°49'34" West, 71.95 feet to a point of curvature,
 - 31) Along a curve to the left having a radius of 500.00 feet, an arc distance of 250.59 feet and a chord South 26°28'05" West, 247.98 feet to a point,
 - 32) South 12°06'36" West, 451.47 feet to a point of curvature,
 - 33) Along a curve to the left having a radius of 500.00 feet, an arc distance of 97.89 feet and a chord South 06°30'05" West, 97.74 feet to a point of reverse curvature,
 - 34) Along a curve to the right having a radius of 500.00 feet, an arc distance of 123.87 feet and a chord South 07°59'24" West, 123.56 feet to a point,
 - 35) South 15°05'14" West, 170.77 feet to a point of curvature,
 - 36) Along a curve to the left having a radius of 500.00 feet, an arc distance of 138.63 feet and a chord South 07°08'41" West, 138.18 feet to a point of reverse curvature,
 - 37) Along a curve to the right having a radius of 600.00 feet, an arc distance of 302.96 feet and a chord South 13°40'03" West, 299.76 feet to a point,
 - 38) South 28°07'58" West, 62.41 feet to a point of curvature,
 - 39) Along a curve to the left having a radius of 200.00 feet, an arc distance of 57.02 feet and a chord South 19°57'54" West, 56.83 feet to a point of reverse curvature,
 - 40) Along a curve to the right having a radius of 200.00 feet, an arc distance of 107.04 feet and a chord South 27°07'46" West, 105.77 feet to a point of reverse curvature,
 - 41) Along a curve to the left having a radius of 200.00 feet, an arc distance of 81.48 feet and a chord South 30°47'27" West, 80.92 feet to a point of compound curvature,
 - 42) Along a curve to the left having a radius of 500.00 feet, an arc distance of 27.29 feet and a chord South 17°33'22" West, 27.29 feet to a point of reverse curvature,
 - 43) Along a curve to the right having a radius of 250.00 feet, an arc distance of 126.35 feet and a chord South 30°28'15" West, 125.01 feet to a point of reverse curvature,
 - 44) Along a curve to the left having a radius of 300.00 feet, an arc distance of 66.22 feet and a chord South 38°37'35" West, 66.08 feet to the **POINT OF ENDING**, containing 227,531 square feet or 5.22 acres, more or less.

PERMANENT EASEMENT #2

BEGINNING at a common corner of the Lexington-Fayette Urban County Government (LFUCG)(DB 1744, Pg 630) and the Commonwealth of Kentucky (DB 2121, Pg 575, Tract 2), said point being in the Citation Boulevard south right of way and having NAD 83 Kentucky State Plane North Zone Coordinates of North 215,259.93 and East 1,568,280.86; thence with said Citation Boulevard south right of way, North 40°31'30" West, 31.83 feet to the **TRUE POINT OF BEGINNING**; thence leaving said Citation Boulevard south right of way for three (3) new lines through the lands of said LFUCG:

- 1) North 76°40'34" West, 153.28 feet to a point of curvature,
- 2) Along a curve to the right having a radius of 120.00 feet, an arc distance of 185.30 feet and a chord North 32°26'18" West, 167.43 feet to a point,
- 3) North 11°47'57" East, 84.48 feet to a point in said Citation Boulevard south right of way;

Thence with said Citation Boulevard south right of way, South 40°31'30" East, 341.17 feet to the **TRUE POINT OF BEGINNING**, containing 24,279 square feet or 0.56 acres, more or less.

I, Donald W Blevins Jr, County Court Clerk
of Fayette County, Kentucky, hereby
certify that the foregoing instrument
has been duly recorded in my office.



By: DOUG BRADLEY ,dc

201002110013

February 11, 2010 9:10:57 AM

Fees	\$25.00	Tax	\$.00
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Total Paid	\$25.00
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THIS IS THE LAST PAGE OF THE DOCUMENT

8 Pages

564 - 571

EXHIBIT B

Certificate of Insurance

and

Evidence of Insurability



CERTIFICATE OF LIABILITY INSURANCE

OP ID: SHLA

DATE (MM/DD/YYYY)

02/01/12

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 Neace Lukens - Lexington Assured NL Insurance Agcy Inc 2416 Sir Barton Way, Suite 300 Lexington, KY 40509 Christopher P. Ice	859-543-1716	CONTACT NAME: Laura Shaw	
	859-543-1987	PHONE (A/C, No, Ext): 859-685-6516 FAX (A/C, No): 859-543-1987	
E-MAIL ADDRESS: laura.shaw@neacelukens.com			
PRODUCER CUSTOMER ID #: CDPEN-1			
INSURED MapSync Company CDP Engineers Inc 3250 Blazer Parkway Lexington, KY 40509	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:	Selective Insurance Company	12572
	INSURER B:	Bridgefield Casualty Insurance	
	INSURER C:	American States Insurance Co.	
	INSURER D:	CNA Insurance Companies	02186
	INSURER E:		
INSURER F:			

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
A	GENERAL LIABILITY			S1853822	08/01/11	08/07/12	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 10,000
	<input checked="" type="checkbox"/> BIkt Addtl Insd						PERSONAL & ADV INJURY \$ 1,000,000
A	<input checked="" type="checkbox"/> Ohio Stop Gap			S1853822	08/01/11	08/07/12	GENERAL AGGREGATE \$ 3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							
A	AUTOMOBILE LIABILITY			S1853822	08/01/11	08/07/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	<input checked="" type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS						BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
	<input checked="" type="checkbox"/> HIRED AUTOS						
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS			S1853822	08/01/11	08/07/12	
A	<input checked="" type="checkbox"/> BIkt Addtl Insd			CA7735 FORM			
A	<input checked="" type="checkbox"/> UMBRELLA LIAB	<input checked="" type="checkbox"/> OCCUR		S1853822	08/01/11	08/07/12	EACH OCCURRENCE \$ 5,000,000
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 5,000,000
	<input type="checkbox"/> DEDUCTIBLE						
A	<input checked="" type="checkbox"/> RETENTION \$ 0						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC296690 (IN) 19610622 (KY, TN)	08/07/11	08/07/12	WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	<input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A				E.L. EACH ACCIDENT \$ 1,000,000
	<input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE \$ 1,000,000
							E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Equipment Floater			S1853822	08/01/11	08/07/12	\$500 ded 88,000
D	Prof Liab			AEH06092226	08/07/11	08/07/12	Max/item 10,000

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

CERTIFICATE HOLDER**CANCELLATION**

Lexington Fayette Urban County
Government
Div of Water Quality Ste 180
125 Lisle Industrial Ave.
Lexington, KY 40511

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

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EXHIBIT C

Proposal of Engineering Services

and

Related Matters

Original with Clerk's Copy

EXHIBIT D

Further Description of Basic Engineering Services

and

Related Services

LFUCG TASK ORDER NO. _____
UNDER LFUCG AGREEMENT WITH CDP ENGINEERS, INC. FOR
FEDERAL CONSENT DECREE
COLDSTREAM PARK STREAM CORRIDOR
SUPPLEMENTAL ENVIRONMENTAL PROJECT

CONSULTANT

OWNER

Name	CDP Engineers, Inc.	Lexington Fayette Urban County Government
Street Address	3250 Blazer Parkway	200 East Main Street
City, State, Zip	Lexington, KY 40509	Lexington, KY 40507
Contact Person	Sandy Camargo, President	Charles Martin
Telephone	859-264-7500	859-425-2400
Fax	859-264-7501	859-254-7787
E-Mail	scamargo@cdpengineers.com	chmartin@lexingtonky.gov

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.