

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of Sept. 24, 2015 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (OWNER) and CMW Architects & Engineers, Inc. (CONSULTANT). OWNER intends to proceed with the Old Frankfort Pike Scenic Byway Viewing Area - 2450 Old Frankfort Pike, as described in the attached Scope of Services document. The services include a design and preparation of complete construction plans and specifications to construct an access road connecting Old Frankfort Pike to the site; construct a stormwater collection and conveyance system using both open ditches and piping where necessary; conduct an evaluation of the existing detention basin and structures for both water quantity and quality; detail all site work including re-grading and other elements on the site (as shown on *SITE PLAN* in the *SCOPE OF SERVICES* Attachment A); provide a layout for vehicular movement and adequate parking and a cost estimates. The services are hereinafter referred to as the "Project".

OWNER and CONSULTANT in consideration of their mutual covenants herein agree with respect to 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 planning and civil engineering services, and customary surveying services incidental thereto.

1.2. Design Phase

After written authorization to proceed with the design, CONSULTANT shall:

- 1.2.1. On the basis of the "Scope of Services" per attached Exhibit A, conduct field surveys and gather other necessary data or information, prepare final design documents consisting of final design drawings, specifications and estimate of probable cost.
- 1.2.2. Prepare such documents, design data and permit applications as may be required to obtain approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, or jurisdiction over existing natural elements that will be impacted by construction and assist the OWNER in obtaining such approvals by negotiations with appropriate authorities.

- 1.2.3. Furnish copies of the design documents to **OWNER** and to any utilities that could potentially be impacted, at approximately 60 percent completion (60 Days) and again at 90 percent complete (90 Days). After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.
- 1.2.4. Advise **OWNER** of any adjustments to the latest estimate of probable Project cost caused by changes in extent or design requirements of the Project or construction costs and furnish a revised estimate of probable Project cost based on the Drawings and Specifications.
- 1.2.5. Prepare for review and approval by **OWNER**, required Local Public Agency (LPA) documents, contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid, instructions to bidders, addenda and other related documents.
- 1.2.6. Furnish copies as indicated in the Scope of Services of the above documents and present them in person to **OWNER**. After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.

NOTE: The duties and responsibilities of **CONSULTANT** during Right of Way and Final Design phases are amended and supplemented as indicated in Exhibit A "SCOPE OF SERVICES"

1.3. Bidding Phase

After written authorization to proceed with the Bidding Phase, **CONSULTANT** shall:

- 1.3.1. Finalize all documents, including addenda, in a format suitable for reproduction and distribution to bidders and deliver originals to the location directed by **OWNER**.
- 1.3.2. Assist **OWNER** in evaluating bids or proposals by prime contractors.
- 1.3.3. Consult with and advise **OWNER** as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractors (hereinafter called "Contractors") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.3.4. Consult with and advise **OWNER** as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.4. Construction Phase

During the Construction Phase, **CONSULTANT** shall:

- 1.4.1. Consult with and advise **OWNER** as requested.
- 1.4.2. When requested by **OWNER**, make visits to the site as an experienced and qualified design professional to determine that work is proceeding in accordance with the Contract Documents. **CONSULTANT** shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work.

- 1.4.3. Review and approve (or take other appropriate action in respect of) Shop Drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incidental thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s).
- 1.4.4. Conduct an inspection, with **OWNER**, to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder.

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 render in writing decisions pertaining thereto 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 with respect to the services to be rendered under this Agreement. 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 Contractor(s).
- 3.6. Furnish, or direct **CONSULTANT** to provide, necessary 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.
- 4.2. The provisions of this Section Four 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.

If delays result by reason of acts of the **OWNER** or approving agencies, which are beyond the control of the **CONSULTANT**, an extension of time for such delay will be considered. If delays occur, the **CONSULTANT** shall within 30 days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5, under DISPUTES, of this Agreement, shall apply in the event the parties cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee or fees shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the parties cannot mutually agree upon an adjustment of fee.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1 Methods of Payment for Services of CONSULTANT

5.1.1 For Basic Services

OWNER shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding **\$48,500**.

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 as set forth in Section 6.5, "DISPUTES" of this Agreement.

5.2. Times of Payment

5.2.1. CONSULTANT shall submit 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 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, and the amount to be paid shall be determined by the **OWNER**.

5.3.3. In the event the **CONSULTANT** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **CONSULTANT** shall be paid as set forth in Section 5.3.1 above.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

6.1.2. The **OWNER** reserves the right to terminate the Agreement at any time upon seven (7) days written notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including 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 himself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which 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. 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 Kentucky law, and venue shall lie in a court of competent jurisdiction in Fayette County, Kentucky.

6.4. Successors and Assigns

- 6.4.1.** **CONSULTANT** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.
- 6.4.2.** The **CONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **CONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.
- 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 concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Engineer's Office and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Planning, Preservation and Development, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

6.6. Accuracy of CONSULTANT'S Work

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

The **CONSULTANT** shall be responsible for the accuracy of all work, within the limits of the paragraph above, even though Drawings and Specifications have been accepted by the **OWNER**, and upon notice to the **CONSULTANT**, shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **CONSULTANT**, without additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** has made a representation that the information is accurate within the limits of the paragraph above. Failure on the part of **CONSULTANT** to provide the expected level of accuracy, as described above, may be grounds for the **OWNER** to disqualify **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

It is not the intent of this contract to have the **CONSULTANT** size or evaluate the capacity of the Sanitary Sewer Piping System or the Storm Sewer Piping System.

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 except the **OWNER** without prior approval of the **OWNER**.

6.8. Access to Records

The **CONSULTANT** and any subconsultant shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the contract period and for three years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

6.9. Resident Services During Construction.

The **OWNER** will furnish a Resident Project Inspector.

6.10. Required Risk Management Provisions.

6.10.1 GENERAL

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

As used in these Risk Management Provisions, the terms "**CONSULTANT**" and "**ENTITY**" 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. **ENTITY** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

6.10.2 INDEMNITY

- 6.10.2.1** It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "**CONSULTANT**") under or in connection with this agreement and/or the provision of goods or services and the performance

or failure to perform any work required thereby. **CONSULTANT** shall indemnify, save, hold harmless and defend **ENTITY** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.

- 6.10.2.2** Prior to and including the contract commencement date, owner shall have the right to examine and inspect the job sites, at any time during reasonable business hours. **ENTITY** reserves the right to have its own engineers inspect the job sites for environmental compliance, but such right shall in no event relieve **CONSULTANT** of its obligations hereunder.

6.10.3 FINANCIAL RESPONSIBILITY

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

6.10.4 INSURANCE REQUIREMENTS

6.10.4.1 Required Insurance Coverages

CONSULTANT shall procure and maintain for the duration of the Contract, insurance 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 the **CONSULTANT**. Any/all insurance shall be written on an "occurrence form" for limits not less than those specified below or as required by law, whichever is greater. Below are minimum insurance requirements set to protect the **ENTITY** interest in this agreement. However, it does not limit the **CONSULTANT'S** liability and necessary additional limits of coverage are at the **CONSULTANT'S** discretion. SEE "EVIDENCE OF INSURABILITY" FORM FOR SUBMISSION OF BID.

- 6.10.4.1.1** Professional Liability providing coverage of at least \$1 million per occurrence, \$2 million aggregate.

- a. Endorsement naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials,

employees, agents, boards, consultants, assigns, volunteers and successors in interest".

- b. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

6.10.4.1.2 Commercial General Liability Insurance providing coverage at least as broad as Insurance Services Office Form CG-0001 (10/01) with:

- a. Combination of primary and umbrella coverage limits of not less than \$1,000,000 per occurrence for bodily injury and property damage.
- b. Business Interruption Coverage must be included.
- c. Endorsements naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
- d. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky

6.10.4.1.3 ~~40507~~ Comprehensive Automobile Liability Insurance providing coverage at least as broad as Insurance Service Office Form Number CA 0001 (10/01), code 1 "any auto" with:

- a. Combined Single Limits not less than \$1,000,000 per occurrence.
- b. Endorsement naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, Boards, consultants, assigns, volunteers and successors in interest."
- c. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

6.10.4.1.4 Worker's Compensation Insurance as required by the Kentucky Revised Statutes, and Employer Liability Coverage with:

- a. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior notice by certified mail, return receipt requested to

Lexington-Fayette Urban County Government, 200 East Main Street,
Lexington, Kentucky 40507.

6.10.4.2 Acceptability of Insurers

Insurance is to be placed with insurers with a rating classification of no less than Excellent (A or better) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide.

6.10.4.3. Notice of Coverage Renewals for Expiration

After insurance has been approved by **ENTITY**, evidence of renewal of an expiring policy must be submitted to **ENTITY**, at the Division of Law, 200 East Main Street Lexington, Kentucky 40507 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.

6.10.4.4. Self-Insured Programs

IF CONSULTANT INTENDS TO SUBMIT SELF-INSURANCE PLAN FOR BID, THIS MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, Suite 925, 200 East Main Street, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO BID OPENING DATE. Self-insurance programs, deductibles, and self-insured retention in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government, upon review of evidence of **CONSULTANT'S** financial capacity to respond to claims. Any such programs or retention must provide **ENTITY** with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverages. If **CONSULTANT** satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retention, **CONSULTANT** agrees to provide Lexington-Fayette Urban County Government, the following data prior to the final acceptance of bid and the commencement of any work:

- a. **CONSULTANT'S** latest audited financial statement, including auditor's notes;
- b. Any records of any self-insured trust fund plan or policy related accounting statements;
- c. Actuarial funding reports or retained losses;
- d. **CONSULTANT'S** Risk Management Manual or a description of **CONSULTANT'S** self-insurance and risk management program;
- e. A claim loss run summary for the previous five (5) years.
- f. Self Insured Associations will be considered.

6.10.4.5. Verification of Coverage

Within thirty (30) days following signing of Contract, **CONSULTANT** agrees to furnish **ENTITY** with all applicable Certificates of Insurance; and **CONSULTANT** shall provide **ENTITY** copies of all bonds and make available for review upon request any insurance policies, including all endorsements.

6.10.4.6. Right to Review, Audit and Inspect

CONSULTANT understands and agrees that **ENTITY** may review, audit and inspect any and all of **CONSULTANT'S** records and operations to insure compliance with these Insurance Requirements in addition to any other proof of insurance required to obtain a license to perform the job stated herein.

6.10.5 SAFETY AND LOSS CONTROL

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

6.10..5.2 The current Kentucky Occupational Safety and Health Standards of the Construction Industry 29 CFR Part 1926 adopted by 803 KAR 2:400 and the Kentucky Occupational Safety and Health Standard for General Industry 29 CFR Part 1910 as adopted by KAR 2:300, and as promulgated by the Kentucky Occupational Safety and Health Standards Board and as amended or modified, are hereby incorporated into and made an integral part of the Contract with full compliance the responsibility solely of the **CONSULTANT**.

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

6.10.6 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 Contract. **CONSULTANT** also agrees that **ENTITY** 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 Contract.

CONSULTANT understands and agrees that the Risk Management provisions of this Contract define its responsibilities and those of its employees, agents, owners, principals, licensees, assigns, and subcontractors of any tier to the **ENTITY**, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest.

6.10.7 RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that upon reasonable notice **ENTITY** may review, audit, and inspect any and all of the **CONSULTANT'S** records and operations relative to the **SERVICES** performed under this Agreement to assure compliance with the Risk Management provisions of the Agreement.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

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

- 7.1. **CONSULTANT** agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- 7.2. **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. The **CONSULTANT** shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, national origin, sex, age, disability or other handicap. **CONSULTANT** will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of 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.
- 7.3. A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, the **CONSULTANT** agrees as follows:
 - A. **CONSULTANT** will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the

REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.

- B. **Nondiscrimination:** The **CONSULTANT** with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. The **CONSULTANT** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
- C. **Solicitations for Subcontractors, including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the **CONSULTANT** for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the **CONSULTANT** or the **CONSULTANT'S** obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
- D. **Information and Reports:** the **CONSULTANT** will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the **CONSULTANT** will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.
- E. **Sanctions for Noncompliance:** In the event of the **CONSULTANT'S** noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - 1) Withholding payment to the **CONSULTANT** under the AGREEMENT until the **CONSULTANT** complies; and/or
 - 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

7.4 It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds

under this AGREEMENT. Consequently the DBE requirements of 49 CFR Part 23 apply to this AGREEMENT.

- 7.5** The **CONSULTANT** or its subcontractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this AGREEMENT. In this regard the **CONSULTANT** or subcontractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The **CONSULTANT** and the subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U. S. DOT – assisted contracts.

The **CONSULTANT** will make every effort to located DBEs to purchase materials and services for use in this AGREEMENT. The **CONSULTANT** shall document the steps it has taken to obtain DBE participation, including, but not limited to the following:

- A. The names, addresses, and telephone numbers of DBEs that were contacted;
- B. A description of the information provided to DBEs regarding the type of work to be performed.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

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

Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned **Andrew Grunwald, P.E.** (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.** The following Exhibits are attached to and made a part of this Agreement:

8.2.1. Exhibit A –

- "Scope of Services" consisting of eleven (7) pages.
- "Fee Proposal" consisting of two (2) pages.
- "KYTC-Authorization Form" consisting of one (1) page.

8.2.2. Exhibit B - "Certificates of Insurance" consisting of two (2) pages.

8.3. This Agreement (consisting of pages 1 to 16 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

OWNER:

Lexington-Fayette Urban County Government

200 East Main Street

Lexington, Kentucky 40507

The Honorable Jim Gray – Mayor

CONSULTANT:

CMW, Inc

400 East Vine Street

Lexington, Kentucky 40507

Jack H. Ballard - Principal

EXHIBIT A
Old Frankfort Pike Scenic Byway Viewing Area

SCOPE OF SERVICES

LFUCG

FEE PROPOSAL

CMW

KYTC - AUTHORISATION FORM

Kentucky Transportation Cabinet

Office of Local Programs

SCOPE OF SERVICES
Engineering Design, Construction, and Bid Documents
Old Frankfort Pike Scenic Byway Viewing Area - 2450 Old Frankfort Pike

The Lexington-Fayette Urban County Government (LFUCG) is accepting qualification statements from interested Consulting Engineering firms for the development of construction plans, specifications and bid documents for an access road and site layout for construction of a Scenic Viewing Area at 2450 Old Frankfort Pike. This project utilizes federal funds and must follow the current Federal-Aid Highway Program Project Development Guide for Local Public Agencies.

1. General Project Description

Site Work

The Consultant shall design and prepare construction plans, specifications, bid documents and obtain all permits necessary to construct an access road connecting Old Frankfort Pike to the site; construct a stormwater collection and conveyance system using both open ditches and piping where necessary; conduct an evaluation of any impacted existing detention basin and structures for both water quantity and quality; detail all site work including re-grading and other elements on the site (as shown on *SITE PLAN* in Attachment A); provide a layout for vehicular movement and adequate parking; cost estimates.

Kiosk

The Consultant shall, in consultation with the Division of Engineering, evaluate costs, construction times, and special requirements for a Kiosk to be constructed at the site. The size and configuration of the Kiosk will be of sufficient size to accommodate the information provided by the Lexington-Frankfort Scenic Corridor, Inc. Provisions shall be made to illuminate the sign by bringing in electricity to kiosk.

2. Design

The design will be reviewed in three principal submittals: a preliminary site evaluation, preliminary plans and construction plans.

The Consultant shall prepare a preliminary site evaluation plan using, in part, existing information, provided by the LFUCG. This information shall be provided in either electronic format or printed reference. Electronic format information shall include aerial photograph imagery, Geographical Information System (GIS) data, and limited digital topography. Printed references shall include property boundary information from the deed for 2450 Old Frankfort Pike and a preliminary construction cost estimate.

The preliminary site evaluation plan shall include, but not be limited to: a site plan showing existing topography and features such as trees, utilities, property lines, public and private infrastructure, preliminary plan and profile of the access road with critical cross sections, street addresses, proposed drainage improvements, and accessory

structures, preliminary location of sewage disposal facilities if applicable, and an independent conceptual cost estimate. No specifications or contract documents need to be submitted with the preliminary site evaluation.

After reviewing the preliminary site evaluation plan and cost estimate the LFUCG will direct the Consultant to develop preliminary plans. Preliminary plans will generally include the information from the preliminary site evaluation plan but will contain more detail and design certainty. Additional elements include: cover sheet, proposed typical sections, footprint of the Kiosk, sufficient geotechnical investigation to reasonably estimate the impact of rock on construction methods and costs and an updated cost estimate.

After review and acceptance of the preliminary plans and cost estimate the LFUCG will direct the Consultant to develop construction plans, specifications, contract documents and a detailed cost estimate necessary to bid and construct. Construction plans shall build upon the completed and approved information provided in the preliminary plans and shall address all aspects of site preparation, road construction, parking facilities construction, stormwater facilities construction and facility utilities construction and connection.

The construction plans shall be developed in accordance with the current editions of the LFUCG Design Manuals and the current Kentucky Building Code (2012 IBC with 2013 Kentucky Amendments), and shall generally include the following items:

- a. All topography, including utilities and utility pole ownership information. All mapping will be the responsibility of the Consultant.
- b. Proposed regrade contours shall be shown on the plans.
- c. Cross sections at 50 foot intervals and all critical cross sections along the proposed access road.
- d. Approximate limits of disturbance.
- e. Approximate location of property lines with all owners and lessees owners shown. The Consultant is responsible for researching and obtaining final record plats and deeds on all affected properties, except as noted previously.
- f. Right-of-way lines and easements.
- g. Drainage and if needed detention calculations. This shall include evaluation of water quality and BMP credits per LFUCG Engineering Manuals.
- h. If needed all geotechnical investigations for site evaluation and road construction to be utilized on the project, including but not limited to rock soundings and soil classifications will be the responsibility of the Consultant.
- i. A plan for recommended landscaping features and water quality plantings.
- j. A plan for erosion and sediment control as well as a Storm Water Pollution Prevention Plan utilizing BMP's as described in the LFUCG Storm Water Manual.
- k. Cover Sheet

- l. Quantities Summary Sheet
- m. Notes Sheet- General, Construction, Erosion Control, etc.
- n. Survey Control information

The Consultant shall prepare all permits, along with all associated plans, reports or other submittals required to construct improvements and to allow OWNER to perform the anticipated activities on the site, including but not limited to:

- a. Kentucky General Permit (KYR10)
- b. Permits from the Lexington-Fayette County Health Department and, if required, the Kentucky Division of Water for the sewage disposal system, if applicable.
- c. Encroachment permit with the KYTC as well as all required plans (i.e. MOT plan) containing traffic control, signage, striping (both temporary and permanent).
- d. Project Development Checklist (LPA-PDC)

3. Detailed Cost Estimates

As stated previously, the Consultant shall prepare a preliminary cost estimate in conjunction with the preliminary site evaluation, and detailed cost estimates in conjunction with the construction plans submittals.

Detailed construction cost estimates with the construction plan submittal shall include but not be limited to:

- a. Location and construction for a stormwater detention basin for the purposes of water detention and water quality, to meet LFUCG and Kentucky Division of Water requirements.
- b. Power for the Kiosk to supply a minimum of 100 amp service, with lines to be buried.
- c. Investigate all pertinent utilities, not previously described, evaluating accessibility and demand for future structure.
- d. Investigate locations of a 1 1/4" water line feed.
- e. Investigate area lighting, sufficient to light the site.
- f. All other costs normally associated with roadway and site development.

4. Rights-of-Way and Easements

It is anticipated that no right of way acquisitions are required for this project, and consequently, no acquisition plats.

Temporary construction easements and utility easements may be required and shall be clearly depicted on the plans and meet the requirements of the Lexington-Fayette Urban County Government Division of Engineering and KDOH if applicable. The Consultant shall be responsible for negotiation of Temporary Construction Easements, if needed and shall provide a written legal description for each easement to be acquired.

5. Drawing Scales, Units, and Unit Conversion

All quantities measured, calculated, and specified shall be in English units (e.g., feet, pounds). All drawings shall be prepared on Architectural D size sheets (24" x 36") and conform to the follow scales:

a. Site Plan	1" = 20' horizontal 1" = 20' vertical
b. Plan Sheets	1" = 20' horizontal
c. Profile Sheets	1" = 20' horizontal 1" = 2' vertical
d. Cross sections sheets	1" = 5' horizontal 1" = 5' vertical

6. Pavement Design

The Consultant shall provide a pavement design based on the procedures and geotechnical investigations outlined in the LFUCG Division of Engineering Roadway and Geotechnical Manuals. The Consultant shall be responsible for a geotechnical investigation as outlined in the LFUCG Division of Engineering Roadway and Geotechnical manuals.

7. Plans, Specifications, and Contract Documents

Preliminary plans shall be so identified; the Consultant shall deliver sufficient paper copies to the Division of Engineering, and the Consultant shall deliver one paper copy to each utility company and obtain a signature from each utility company upon plan delivery. A draft of the specifications and contract documents shall also be provided.

All sheets shall be generated via computer aided drafting and final plan sheets shall be plotted on mylar. Approved construction plans shall be submitted in an electronic format as specified in LFUCG's Digital Submission Policy. Sufficient paper copies shall be delivered to the Lexington Fayette Urban County Government and all utility companies. Final versions of specifications and contract documents shall also be submitted in electronic and paper formats.

8. Utility Company Coordination

There are known utilities in the vicinity of the Project. The Consultant will meet and coordinate with all affected utility companies, as necessary to minimize disturbance to

utilities and underground lines and to facilitate the Project. The Consultant will obtain from all affected utility companies a written accounting of reimbursable utility relocations required.

The Consultant shall coordinate with the utility companies regarding furnishing services to the site and determining firm costs associated with their installation.

9. Distribution of Plans and Specifications for Bidding

The Consultant shall deliver all final bid documents to a local private printer for reproduction and distribution. The private printer will be identified at a later date. The Consultant shall address, via addenda, questions that arise during Contractors' preparation of bids.

10. Attendance at Bid Opening

The Consultant shall attend the bid opening in the offices of the Lexington-Fayette Urban County Government Division of Purchasing. The Consultant shall obtain copies of all bids, review the bids for accuracy, prepare a tabulation of bid prices, and submit a recommendation of award.

11. Shop Drawings and activity during Construction

The Consultant shall approve all Shop Drawings to ensure consistence and accuracy with the design and intent of the final product. The Consultant shall be available to address questions or conflicts during construction.

12. Schedule and Completion

The Consultant shall meet milestones as provided in the following schedule. Working days shown are counted from the date that a written notice to proceed is received by the Consultant. Exact times of meetings shall be arranged by the Consultant; locations of progress meetings shall be at either the site of proposed improvements, or at the offices of the LFUCG Division of Engineering, as appropriate.

Submit preliminary site evaluation	30 days
Joint meeting to review preliminary site evaluation	35 days
Submit permits & preliminary plans to LFUCG	50 days
Review permits & preliminary plans	60 days

Submit plans, specs, contract documents and permits	90 days
Meeting to review construction plans	100 days
<i>Submit completed construction plans</i>	<i>110 days</i>

13. Method of Invoice and Payment

The Consultant may submit up to four invoices- three invoices during the design and one following approval of shop drawings submitted by the successful bidder. The first invoice may be submitted after completion of preliminary site evaluation and joint meeting and shall not exceed 20% of the design cost total. The second invoice may be submitted after preliminary plans are received and shall not exceed 70% of project design cost. The third invoice shall be submitted after construction plans, contract and bid documents have been completed and accepted and shall not exceed 90% of the design cost.

14. Miscellaneous

All plans and accompanying documents are subject to review by various local, state and possibly federal agencies. The Consultant shall be responsible for incorporating comments and requirements of all such agencies into all contract documents.

15. DBE Notice

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

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this contract be subcontracted to DBEs. The goal for the utilization of certified DBEs as subcontractors are recommended goals. Contractors who fail to meet such goals will be expected to provide written explanation to the EEO Officer and the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goals and the extent to which they are successful in accomplishing the recommended goals will be a consideration in the procurement process.

For assistance in locating DBE Subcontractors contact:

Marilyn Clark
 Division of Central Purchasing
 200 East Main Street, Room 338
 Lexington, Kentucky 40507
 (859) 258-3320

EXHIBIT A

TAP Application Exhibits



22 July 2015

Andrew Grunwald, P.E.
Municipal Engineer Senior
LFUCG - Division of Engineering
200 East Main Street
Lexington, KY 40507

Re: Old Frankfort Pike Scenic Byway Viewing Area
2450 Old Frankfort Pike

Dear Mr. Grunwald:

CMW, Inc. is pleased to be presenting a proposal to provide professional design services for the Old Frankfort Pike Scenic Byway Viewing Area located at 2450 Old Frankfort Pike. CMW has been fortunate to work on many LPA projects with KYTC and understands the benefit these projects can have on a community. Through that experience, CMW has familiarized ourselves with the LPA Guidelines and the process KYTC has to undertake in order to have the projects approved for construction and through to completion.

As we understand, the scope of work will be the design and construction of an access road and viewing area for the site at 2450 Old Frankfort Pike. The project will also include locating information kiosk(s), stormwater & water quality management, utility coordination and landscaping.

CMW proposes to provide the following design/engineering services for the fee amount indicated.

Tasks

1. Procure Surveying Services to obtain and boundary survey of the project site and surrounding right-of-way.
2. Procure Geotechnical Services for locating bedrock elevations in addition to structural integrity of the existing soils.
3. Create a Preliminary Site Evaluation Plan indicating the site plan inclusive of existing topography and features such as trees, utilities, property lines, public and private infrastructure, preliminary plan and profile of the access road with critical cross sections, street addresses, proposed drainage improvements, suggested footprint of any buildings and accessory structures, and preliminary location of sewage disposal facilities, if applicable. We will also prepare an initial O.P.C. (Opinion of Probable Cost) and review anticipated costs with project team.
4. Once the Preliminary Site Evaluation Plan is approved by the project team we will prepare Preliminary Plans. The Preliminary Plans will be inclusive of the information

Architecture • Engineering • Interior Design • Landscape Architecture

a: 400 E. Vine Street, Lexington, Kentucky 40507

o: 859-254-6623 **f:** 859-259-1877 **w:** www.cmwaec.com

provided in the preliminary site evaluation plan but will contain more detail and design certainty. Additional elements included in the Preliminary Plan will be a cover sheet, proposed typical sections, footprint of the Kiosk(s), and sufficient geotechnical investigation (i.e. rock soundings) to reasonably estimate the impact of rock on construction methods. We will update the O.P.C. and review anticipated costs with project team.

5. Once the Preliminary Plan is approved by the project team we will prepare Final Construction Plans and Specifications. The Final Construction Plans will build upon the completed and approved information provided in the preliminary plans and shall address all aspects of site preparation, road construction, parking facilities construction, stormwater facilities construction and facility utilities construction and connection. In addition, we will provide a final O.P.C.
6. Submit the project Construction Drawings and LPA checklist to the Local District 7 office as well as KYTC Office of Local Programs for approval.
7. Solicit bids, address contractor inquiries during the bidding process, work with you to determine the successful contractor, prepare and issue the AIA Agreement Between Owner and Contractor and forward the Notice to Proceed.
8. Provide contract administration services for an anticipated two (2) month construction duration. We anticipate conducting a total of five (5) site observation trips inclusive of the Pre-Construction Conference, Substantial Completion, and Final Completion. Each trip will be followed up with us preparing and submitting a field observation progress report to all parties. Process any shop drawings, RFI's and all pay applications
9. Project expenses such as long distance phone calls, printing, postage, mileage, and filing fees are included in this fee.

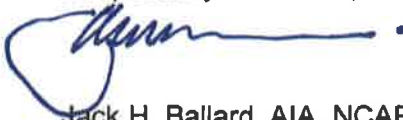
Total Fee = \$ 48,500

This proposal will include the use of DBE consultants. At a minimum, DBE consultants will constitute 10% of the total fee indicated herein.

If the terms of this proposal are acceptable, please advise and we will incorporate this proposal definition and fee into an AIA short form agreement for your signature.

We thank you very much for your consideration and look forward to the opportunity.

Respectfully submitted,



Jack H. Ballard, AIA, NCARB, KyCID
Principal



Kentucky Transportation Cabinet
 Department for Rural and Municipal Aid
 Office of Local Programs
TA/TE/SRTS Program

PRICE CONTRACT SELECTION EXPLANATION

Project Name Old Frankfort Pike Scenic Byway Viewing Area Date 7-20-15
 LPA Name Lexington-Fayette Urban County Government

Type of Price Contract (Check all that apply):

Aerial Services _____	Landscaping Services _____ X
Architectural Services _____	Mechanical Services _____
Civil Services _____ X	Site & Boundary Services _____
Electrical Services _____	Structural Services _____
Interior Design Services _____	Subsurface Services _____


Firms Considered:

Firm No.1 Name: CMW Inc.
 Firm No.2 Name: CDP Engineer Inc.
 Firm No.3 Name: Stantec
 Firm No.4 Name: _____
 Firm No.5 Name: _____
 Firm Selected: CMW Inc.

Basis for Selection (Check all that apply):

Available to meet time frame _____ X	New, small, or seldom used firm _____
Location/proximity to site _____	Familiarity with facility _____ X
Specific expertise required _____	Minority business enterprise _____
Good prior performance _____	Other: _____
Familiar with Federally funded projects _____ X	

By signing here, I attest our LPA has not awarded the selected firm in excess of \$100,000 in any one type of price contract in the same fiscal year.

LPA Representative Andrew Grunwald, P.E. 
 Title LFUCG - Municipal Engineer Senior
 Date 7/20/2015


Administering Office Authorization 
 Title IPA III / TAP Coord
 Date 8-7-15

EXHIBIT B

CERTIFICATES OF INSURANCE

