

## 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 Stantec Consulting Services Inc. with offices located at 1409 North Forbes Road, Lexington KY 40511-2024 (“CONSULTANT”). OWNER intends to proceed with the Engineering Services for the Sanitary Sewer System Capacity Assurance Program as described in the attached EXHIBIT A, Scope of Engineering Services and Related Matters RFP #6-2012 (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 obligations and deadlines of the CONSENT DECREE, specifically Paragraph 16.B. 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.

The total compensation associated with this agreement is limited to \$1,012,500 with individual Task Orders issued by the OWNER to define mutually agreed upon specific scope deliverables and costs.

### 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 #6-2012 (Including Appendices 1 & 2 and all 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 #6-2012).
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 #6-2012, **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 #6-2012, 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.
- 4.5. This agreement may be renewed annually up to four (4) times, but only upon approval by the **OWNER'S** Urban County Council consistent with the terms of this Agreement. The renewal will be directly related to performance evaluations and the timely achievement of target dates. If requested by the Urban County Council, the **CONSULTANT** shall present

a summary of findings and accomplishments to them near the time of renewal at no additional cost to OWNER.

## SECTION 5 - PAYMENTS TO CONSULTANT

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

#### 5.1.1. For Basic Services

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

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

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

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

#### 5.1.2. For Extra Work

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

### 5.2. Times of Payment

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

### 5.3. Other Provisions Concerning Payments

5.3.1. In the event the Agreement is terminated by the OWNER without fault on the part of the CONSULTANT, the CONSULTANT shall be paid for the work

performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

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

## **SECTION 6 - GENERAL CONSIDERATIONS**

### **6.1. Termination**

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

### **6.2. Ownership and Reuse of Documents**

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

### **6.3. Legal Responsibilities and Legal Relations**

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

representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.

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

6.4. **Successors and Assigns**

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

6.5. **Disputes**

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

6.6. **Accuracy of Consultant's Work**

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

6.7. **Security Clause**

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

**6.8. Access to Records**

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

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

**6.9.1. DEFINITIONS**

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

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

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

**6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION**

**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**. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments,



penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of CONSULTANT in the performance of this agreement.

In the event OWNER is alleged to be liable based upon the above, CONSULTANT shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by OWNER, which approval shall not be unreasonably withheld. 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 have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by OWNER. (OWNER does not need to be named as additional insured).
- d. 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.
- e. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, CONSULTANT shall notify OWNER and obtain similar insurance that is commercially available and acceptable to OWNER.
- f. Said coverage shall be written by insurers acceptable to OWNER and shall be in a form acceptable to OWNER. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

**6.9.5.2. Renewals**

After insurance has been approved by OWNER, evidence of renewal of an expiring policy must be submitted to OWNER, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

**6.9.5.3. Right to Review, Audit and Inspect**

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

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

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

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

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

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

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

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

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

- 8.1. This Agreement is subject to the following provisions.
  - 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, OWNER has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "OWNER'S

Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.

- 8.2. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3. **NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.
- 8.4. **UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5. **NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

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

**OWNER:**  
**LEXINGTON-FAYETTE URBAN**  
**COUNTY GOVERNMENT**

**CONSULTANT:**  
**STANTEC CONSULTING SERVICES INC.**

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

BY:   
JOE HERMAN, PRINCIPAL

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY )

COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Joe Derman, as the duly authorized representative for and on behalf of Stantec, on this the 9th day of April, 2012.

My commission expires: July 29, 2015.

Christine Workman  
NOTARY PUBLIC

**EXHIBIT A**

**Scope of Engineering**

**Services and Related Matters**

**RFP #6-2012**



# Lexington-Fayette Urban County Government

## Request For Proposal

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The Lexington-Fayette Urban County Government hereby requests proposals for **RFP #6-2012 – Engineering Services for the Sanitary Sewer System Capacity Assurance Program for Consent Decree** 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 **March 19, 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 #6-2012 – Engineering Services for the Sanitary Sewer System Capacity Assurance Program for Consent Decree**

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.

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 firm(s).
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, and ability to meet schedules.
5. Familiarity with the details of the project.
6. Degree of local employment to be provided by the person or firm in the performance of the contract by the person or firm.
7. Estimated Cost of Services - see Appendix II

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

**Questions shall be addressed to:**

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

**Affirmative Action Plan**

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

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

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

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

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

**AFFIDAVIT**

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

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

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

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

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

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

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

**continued on next page**

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

Further, Affiant sayeth naught.

STATE OF \_\_\_\_\_

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

The foregoing instrument was subscribed, sworn to and acknowledged before me by \_\_\_\_\_ on this the \_\_\_\_\_ day of \_\_\_\_\_, 2012.

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												
<b>Total:</b>												

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

Name & Title



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

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

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

For assistance in locating MBE/WBE Subcontractors contact Marilyn Clark at 859/258-3320 or by writing the address listed below:

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

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

**PART 1 - GENERAL**

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

**PART 2 - PROCEDURES**

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

**PART 3 - DEFINITIONS**

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

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

#### PART 4 - OBLIGATION OF PROPOSER

- 4.1 **The bidder shall make a Good Faith Effort to achieve the Participation Goal for MBE/WBE subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the bidder; however, bidders not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 4.2 Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 4.3 The Form of Proposal includes a section entitled "MBE/WBE Participation Form". The applicable information must be completed and submitted as outlined below.
- 4.4 **Failure to submit this information as requested may be cause for rejection of the proposal.**

#### PART 5 - DOCUMENTATION REQUIRED

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

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

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



## MINORITY BUSINESS ENTERPRISE PROGRAM

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

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

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

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

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

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

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

**LFUCG—Economic Engine Listings**

Marilyn Clark  
[mclark@lexingtonky.gov](mailto:mclark@lexingtonky.gov)  
859-258-3323

**Commerce Lexington—**

Tyrone Tyra, Minority Business Development  
[tyra@commercelexington.com](mailto:tyra@commercelexington.com)  
859-226-1625

**Tri-State Minority Supplier Diversity Council**

Sonya Brown  
[sbrown@tsmsdc.com](mailto:sbrown@tsmsdc.com)  
502-625-0137

**Small Business Development Council**

Dee Dee Harbut /UK SBDC  
[ddharbut@uky.edu](mailto:ddharbut@uky.edu)

Shawn Rogers, UK SBDC

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

Shiree Mack

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

**Community Ventures Corporation**

James Coles  
[jcoles@cvcky.org](mailto:jcoles@cvcky.org)  
859-231-0054

**Kentucky Department of Transportation**

Sheila Jarvis  
[Sheila.Jarvis@ky.gov](mailto:Sheila.Jarvis@ky.gov)  
502-564-3601

**KPAP**

Debbie McKnight  
[Debbie.McKnight@ky.gov](mailto:Debbie.McKnight@ky.gov)  
800-838-3266 or 502-564-4252

Bobbie Carlton

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

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

Rea Waldon  
[rvaldon@ocul.org](mailto:rvaldon@ocul.org)  
513-487-6534

**Kentucky Small Business Connect**

Tom Back  
800-626-2250 or 502-564-2064  
<https://secure.kentucky.gov//sbc>

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

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

**LFUCG MBE/WBE PARTICIPATION FORM**  
**RFP #6-2012**

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 #6-2012**

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 #6-2012**

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 #6-2012 \_\_\_\_\_

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 #6-2012**

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



# SANITARY SEWER SYSTEM CAPACITY ASSURANCE PROGRAM

## Scope of Engineering Services

The Lexington-Fayette Urban County Government is accepting proposals from interested consulting engineering firms for the *Consent Decree - Capacity, Management, Operation and Maintenance (CMOM) Specific Program Development – System Capacity Assurance Program, or CAP*. In cases where there is no definition of term or phrase provided by this scope, a definition contained in the *Consent Decree* prevails.

The Capacity Assurance Program (CAP) will be submitted to the EPA and EEC, per the *Consent Decree*, by January 3, 2013 for review, comment and approval. No later than thirty days after EPA and EEC approval, LFUCG shall commence implementation of the CAP, subject to the schedules set forth in the approved CAP Plan.

This contract will be an Engineering Services Agreement with separate task orders defining the scope of services specific to:

1. Completion, submission and final approval of the CAP,
2. Implementation of the approved CAP,

The agreement will be five (5) years in duration, subject to the specific terms and conditions of the contract documents.

### I. General Project Background

Since March 2008, the Lexington Fayette Urban County Government (LFUCG), Division of Water Quality has been implementing required provisions of its federal *Consent Decree*. Provisions implemented to date include:

- Development / regulatory submission of various work plans including a Sanitary Sewer System Assessment (SSSA) Work Plan, a Sanitary Sewer System Capacity Assessment Work Plan and a Hydraulic Model Report.
- Sewer System Assessment (SSA) reports for Groups 1 and 2, as defined by the *Consent Decree*.
- Remedial Measures Plan (RMP) for Group 1, as defined by the *Consent Decree*.
- All CMOM specific reports / plans except for the CAP submittal.
- List of Authorized Connections (Paragraph 16.B.viii of the *Consent Decree*).

Section VII, Paragraphs 15 & 16 of the *Consent Decree* are most relative to this scope of services because they:

1. Define the required scope for the CAP – *Consent Decree* Paragraph 16.B
2. Define the hydraulic model (Mike Urban) - *Consent Decree* Paragraph 15.E: Hydraulic Model Report
3. Define the parameters for flow monitoring and data collection necessary to complete calibration of the hydraulic model - *Consent Decree* Paragraph 15.D: Capacity Assessment Work Plan

All prospective proposers must fully understand the Hydraulic Model Report, the Capacity Assessment Work Plan along with the CAP requirements of Consent Decree Paragraph 16.B in order to meet the obligations associated with this scope of services. The Hydraulic Model Report, the Capacity Assessment Work Plan and the Consent Decree can be obtained by accessing LFUCG's webpage at <http://www.lexingtonky.gov>.

## II. Scope of Services

- A. The successful Proposer (Capacity Assurance Program Consultant) will be required to develop a System Capacity Assurance Program (CAP) in accordance with all provisions contained in Section VII, Paragraph 16 of the *Consent Decree*. The CAP Plan must be submitted to the USEPA / EEC by January 3, 2013, in accordance with the delivery requirements specified in Paragraphs 34 thru 41 of the Consent Decree,
- B. LFUCG will form a Task Force consisting of interested parties (city officials, business leaders and neighborhood leaders) to provide perspective and input during the development of the CAP. The Capacity Assurance Program Consultant will be required to lead the Task Force by:
- Educating Task Force members with respect to the *Consent Decree* required components of the CAP.
  - Providing leadership, technical guidance, functional direction and clerical support during monthly progress meetings.
  - As requested by the Task Force and approved by the LFUCG project manager, complete all research necessary to establish benchmarks for LFUCG's CAP in comparison with other cities already operating under a similar EPA enforced CAP.
  - Incorporating Task Force recommendations for the overall improvement of LFUCG's current and proposed sanitary sewer extension policies and tap-on permit issuance processes, provided that those recommendations are not in conflict with any requirements necessary to meet the requirements of the *Consent Decree*.

LFUCG expects that the Task Force will be formed simultaneous to contract award for this scope and will meet monthly until the CAP is submitted. LFUCG expects quarterly CAP implementation meetings to occur in 2013 and 2014.

Organizations expected to participate in the Task Force are identified in Section III.B of this scope.

- C. The CAP Consultant will be required to utilize the existing Mike Urban sanitary sewer system hydraulic modeling software for all sanitary sewer system analysis necessary to develop and implement an Information Management System (IMS) capable of tracking all capacity credits and allocations.
- D. LFUCG currently does not possess an adequate methodology or work flow process to fully and accurately track potential system capacity credits. Capacity credits can be obtained from a wide variety of sources including:

1. Division of Water Quality – Sewer Line Maintenance (pipeline repairs, manhole repairs, manhole lid replacements, infiltration pan installations, etc.)
2. Division of Water Quality – Capital Construction Program (pump station upgrades, pipeline replacements, storage facility construction, etc.)
3. Division of Water Quality – Inflow and Infiltration Removal Program (pipeline repairs, manhole repairs, pipeline replacements, etc.)
4. Division of Water Quality – Private Property Program (sump pump redirections, private lateral repairs, cleanout cap replacement, downspout disconnects, etc.)
5. Division of Water Quality – Sewer Tap-on Desk (sewer plug permits for demolitions)
6. Division of Engineering – (sanitary sewer replacements associated with roadway improvements, Community Development Block Grant (CDBG) projects or other urban renewal projects).
7. Division of Building Inspection – (remodels and/or retrofits that effectively increase or decrease sanitary sewer capacity demand).

The CAP Consultant will be required to develop a verifiable and reproducible methodology that will allow LFUCG to accurately capture and validate every capacity credit available presently and in the future. The CAP Consultant will also be required to evaluate, tabulate and categorize all identifiable, potential capacity credits obtained by LFUCG since March 13, 2008.

- E. LFUCG's existing planning, new development, redevelopment and sanitary sewer tap-on permit process is not likely to be sufficient for implementation of an approved CAP. Of particular concern is:
- How and when areas of limited capacity are clearly identified to those who are potentially impacted by a lack of sanitary sewer capacity.
  - How and when available sanitary sewer capacity is allocated to parcels requesting new or expanded sanitary sewer capacity.
  - How granted, reserved or forfeited capacity allocations are accurately tracked in a single Information Management System.

The CAP Consultant will be required to develop a verifiable and reproducible methodology that will allow LFUCG to allocate and track available sanitary sewer hydraulic capacity in a fair, equitable and reproducible manner. This methodology should include careful consideration for the allocation of capacity, the allocation of capacity credits, the purchase of credits, expiration dates for unused credits and the return, resale or trading of unused credits.

- F. Final analysis required for the January 3, 2013 completion and delivery of the Capacity Assurance Program Plan will be the sole responsibility of the CAP Consultant. Final preparation and delivery of the Capacity Assurance Program Plan to LFUCG is the sole responsibility of the CAP Consultant. LFUCG will provide direction to the CAP Consultant in how the final work product will be prepared for submission to EPA and EEC.

- G. The CAP Consultant will be responsible for directing the future procurement and/or implementation of all services necessary to accurately implement the approved CAP and recalibrate the model as necessary. **Any procurement and/or implementation services, while a component of this contract, will be authorized by separate, unique task orders. Cost estimates for these services should not be included in this proposal or provided at this time. Future costs will be on a time and material basis and based on the hourly rates provided in the Bid Tabulation sheet.**
- H. For the duration of the approved contract, the CAP Consultant will be responsible for all aspects of the CAP implementation, including hydraulic model recalibrations, capacity credit validation, capacity allocation tracking, connection approvals / certifications and reports as required by the *Consent Decree*. **Any implementation services, while a component of this contract, will be authorized by separate, unique task orders. Cost estimates for these services should not be included in this proposal or provided at this time. Future costs will be on a time and material basis and based on the hourly rates provided in the Bid Tabulation sheet.**
- I. Any and all other technical requirements for this Scope of Services can be found in Paragraph 16 of the *Consent Decree*.

III. Challenges of a CAP Consultant to Consider:

- A. The CAP program considers an input of credits from various sources and the allocation of those credits to developers and land owners. Questions that must be answered include the following:
1. *Allocated sewer capacity considerations:*
    - Where is it available?
    - How far in advance will we know it is available?
    - How long is it available?
    - If capacity is purchased; is it reserved and for how long?
    - How disputes regarding capacity determinations are resolved.
  2. *Inflow of capacity credit. How will LFUCG accurately track and allocate credit for:*
    - Capital repair and replacement,
    - Maintenance repairs,
    - Private property repairs
    - Services removed or redeveloped within the sanitary sewer system
- B. Multiple partners will be affected by an implemented CAP. The success of the program will likely depend on the Task Force involvement of the representatives from the following list:
- Lexington Homebuilders Association

- Commerce Lexington
- Fayette County Neighborhood Council
- The Fayette Alliance
- LFUCG Administration – Economic Development
- LFUCG Urban County Council
- LFUCG Planning Commission
- LFUCG Planning
- LFUCG Building Inspection
- LFUCG Engineering – New Development
- LFUCG Sewer Tap-On Desk
- LFUCG Division of Water Quality

This list is not intended to be all inclusive. The final makeup of the Task Force will be at the discretion of the Urban County Mayor and Council.

- IV. In addition to the Task Force meeting described above, the CAP Consultant shall attend project progress meetings with the project manager assigned by the Division of Water Quality. Progress meetings will held at 125 Lisle Industrial Ave., Suite 180 (Tate Building) and begin at the inception of the project scope, then occurring once every two weeks until such time that the CAP Plan has been submitted to USEPA and EEC.

The progress meetings will resume after approval of the CAP Plan until the implementation of the CAP, subject to the schedules set forth in the approved CAP.

V. Summary of Deliverables

The following list of deliverables is intended solely as a guide and may not be an all inclusive list of deliverables associated with this Scope of Services.

- A. A submitted CAP Plan. The submitted CAP Plan must contain all required elements identified in Section VII, Paragraph 16.B.i of the Consent Decree. A total of five (5) hard copies of the plan will be required. An additional electronic copy, suitable for posting on LFUCG's website is also required.
- B. Information Management System (IMS) software suitable for the on-going management and tracking of capacity credits and allocations.
- C. A final CAP Plan revised (if necessary) in response to USEPA / EEC comments and submitted for final approval. A total of five (5) hard copies of the plan will be required. An additional electronic copy, suitable for posting on LFUCG's website is also required.
- D. A November 29, 2012 Urban County Planning Commission presentation of CAP Plan to be submitted on January 3, 2013.
- E. A December 4, 2012 Urban County Council presentation of CAP Plan to be submitted on January 3, 2013.
- F. A final report detailing recommendations of the Task Force with respect to policies for:

1. Approving extensions of the sanitary sewer system,
2. Tap-on permit issuance and processes,
3. Allocation of hydraulic capacity,
4. Allocation of capacity credits,
5. The return, purchase or trading of allocated capacity or capacity credits,
6. All related recommendations of the Task Force.

The final report shall be submitted in hard copy (5 copies) and in electronic format.

- G. A compilation of meeting agendas and summaries of Task Force meetings submitted in hardcopy format (5 copies) and electronic format.

VI. Fee Estimate Format

Proposal fee estimates should be limited to the estimated lump sum fees associated with the completion, submission and final EPA and EEC approval of the submitted CAP. Appendix II of the scope provides a bid tabulation sheet that must be used by all proposers.

Proposers should also include hourly rates for all employees expected to contribute to the implementation phases of the CAP. The quoted hourly rates will be in effect for the entire 5-year duration of this contract.

For the purposes of contract award, the lump sum fee total provided in Appendix II will be the single pricing component used in the overall evaluation and scoring of proposals.

VII. Schedule and Completion

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

Proposals Due to Purchasing	_____
Meeting to Negotiate Contract	_____
LFUCG Approval of Contract	_____

System Capacity Assurance Program (CAP) Submittal -USEPA / EEC submittal required by January 3, 2013.

NOTE: The consultant should review the "Scope of Work" to fully understand the significance of these completion dates.

VII. Method of Invoice and Payment

The Consultant may submit monthly invoices for basic services or work rendered, based upon the Consultant's estimate of the portion of the total services actually completed during the billing

cycle. Each invoice shall be accompanied by a breakdown of hours attributed to each Task for both the billing cycle and the cumulative project period. The Project Manager shall respond to the invoice within thirty days, either denying or approving payment. Specific project time sheets and other payroll information may be subject to reviews and audits by the Lexington-Fayette Urban County Government.

VIII. Miscellaneous

- A. All plans, specifications and accompanying documents associated with this Scope of Services are subject to review by the Lexington-Fayette Urban County Government's Division of Water Quality. The CAP Consultant shall be responsible for ensuring that all documents prepared by the CAP Consultant are transferred to the Division of Water Quality and LFUCG's Sanitary Sewer Remedial Measures Plan Program Manager.
- B. Any data collection or data transfers associated with this project shall be compatible with existing Geographic Information System parameters used by the Urban County Government. Access Data Base formats will be provided.
- C. All data files associated with hydraulic analysis software shall be easily and readily edited and documented and configured to operate with ArcInfo and ArcView GIS.
- D. All material, policies, plans, computer models, reports and other data shall become the property of LFUCG and shall be for its exclusive use only. The CAP consultant may retain copies of the work products listed above but shall not use, provide or share such work products in any way or with any other clients without the express, written consent of LFUCG's Commissioner of Environmental Quality and Public Works.

Appendix I – available documents list

Appendix II – Bid Tabulation and Hourly Rates Form

**RFP #6-2012**  
**List of Available Documents**  
**Appendix I**

1. Sewer System Assessment Work Plan: June 2008
2. Capacity Assessment Work Plan: September 2008
3. Hydraulic Model Report: July 2008
4. Sewer System Assessment – Group 1: April 2011
5. Sewer System Assessment – Group 2: October 2011
6. Remedial Measures Plan Group 1: October 2011

\* All plans have been submitted for regulatory review but have not received official endorsement or approval.



RFP #6-2012  
**CAPACITY ASSURANCE PLAN**  
**APPENDIX II**

TASK	DESCRIPTION	LUMP SUM FEE
II.A	Existing document review necessary to provide superior project management in subsequent tasks through EPA/EEC approval of the CAP.	
II.B	Coordination and overall management of ten (10) Task Force meetings concluding by January 2013.	
II.C	Develop a functional and calibrated CAP Information Management System (IMS) utilizing Mike Urban software as the hydraulic capacity determination system and present the calibrated CAP IMS to LFUCG. (Presentation - 2 hour introductory demo to LFUCG staff. Functional - defined as approved by LFUCG.	
II.D	Development and LFUCG approval of written LFUCG methodologies for tracking potential system capacity credits.	
II.E	Development and LFUCG approval of written LFUCG methodologies for allocating sanitary sewer capacity, allocation of credits, expiration dates for unused credits and the return, resale or trading of credits	
II.F	Final Analysis and Delivery of written CAP to LFUCG. CAP Consultant will be responsible for delivering USEPA submission ready CAP and related documents to a different LFUCG consultant for final delivery, by the deadlines described in the scope.	
V.D	CAP Plan presentation to the Urban County Planning Commission. Presentation attendance by the CAP Consultant is limited to three (3) CAP Consultant employees.	
V.E	CAP Plan presentation to the Urban County Council. Presentation attendance by the CAP Consultant is limited to three (3) CAP Consultant employees.	
V.F	Final report of Task Force recommendations as described in the scope of work.	
V.G	Bound copies of meeting Task Force meeting agendas and summaries, as described in the scope of work.	

HOURLY RATE QUOTATION  
RFP #6-2012  
CAPACITY ASSURANCE PLAN  
APPENDIX II

	Title	Hourly Rate
1		
2		
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4		
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RFP Scoring Sheet

**RFP #6-2012 - Engineering Services for the Sanitary Sewer System Capacity Assurance Program for Consent Decree**

Consultant Name:		Notes	Total Points	Score(1-5)	Weighted Score	Comment
Selection Criteria						Weighted Score= (Total Points/5) xScore
Specialized experienced and technical competence of the person or firm (including a joint venture or association) with the type of service required.			15			
Capacity of the person or firm to perform the work, including any specialized services, within the time limitations.			10			
Character, integrity, reputation, judgment, experience, and efficiency of the firm(s).			5			
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, and ability to meet schedules.			10			
Familiarity with the details of the project.			20			
Degree of local employment to be provided by the person or firm in the performance of the contract by the person or firm.			15			
Estimated Cost of Services - see Appendix II			25			
Final Technical Score			100			

DBE Participation(Name)  
DBE Portion(Percentage)

Evaluator:

RFP Scoring Sheet

RFP #6-2012 - Engineering Services for the Sanitary Sewer System Capacity Assurance Program for Consent Decree

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

Comments:

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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 Engineering Services for the Sanitary Sewer System Capacity Assurance Program per the Consent Decree as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #6-2012 (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 Capacity, Management, Operation and Maintenance (CMOM) Specific Program Development—System Capacity Assurance Program (CAP) 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 #6-2012 (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 #6-2012).
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 #6-2012, **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 #6-2012, attached **EXHIBIT C**, Proposal of Engineering Services and Related Matters, and attached **EXHIBIT D** Further Description of Basic Engineering Services and Related Matters unless otherwise agreed to in writing by the parties.
- 1.3.3. The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4. The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5. After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6. Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5)

business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

## SECTION 2 - EXTRA WORK BY CONSULTANT

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

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

- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

## SECTION 3 - OWNER'S RESPONSIBILITIES

**OWNER shall:**

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

## SECTION 4 - PERIOD OF SERVICES

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

## SECTION 5 - PAYMENTS TO CONSULTANT

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

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



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

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

**5.1.2. For Extra Work**

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

**5.2. Times of Payment**

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

**5.3. Other Provisions Concerning Payments**

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

which it has not already been paid, and the amount to be paid shall be determined by the OWNER.

## SECTION 6 - GENERAL CONSIDERATIONS

### **6.1. Termination**

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

### **6.2. Ownership and Reuse of Documents**

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

### **6.3. Legal Responsibilities and Legal Relations**

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

**6.4. Successors and Assigns**

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

**6.5. Disputes**

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

**6.6. Accuracy of Consultant's Work**

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

**6.7. Security Clause**

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

**6.8. Access to Records**

The **CONSULTANT** and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable

times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future consultant engineering Agreements.

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

### **6.9.1. DEFINITIONS**

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

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

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

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

**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**. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and

expenses, using attorneys approved in writing by OWNER, which approval shall not be unreasonably withheld. 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), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by OWNER. (OWNER does not need to be named as additional insured).
- g. OWNER shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- h. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, CONSULTANT shall notify OWNER and obtain similar insurance that is commercially available and acceptable to OWNER.
- i. Said coverage shall be written by insurers acceptable to OWNER and shall be in a form acceptable to OWNER. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

#### **6.9.5.2. Renewals**

After insurance has been approved by OWNER, evidence of renewal of an expiring policy must be submitted to OWNER, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

#### **6.9.5.3. Right to Review, Audit and Inspect**

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

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

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

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

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

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

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

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

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

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

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

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

**OWNER:**  
**LEXINGTON-FAYETTE URBAN**  
**COUNTY GOVERNMENT**

**CONSULTANT:**  
 \_\_\_\_\_

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

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

ATTEST:  
 \_\_\_\_\_  
 URBAN COUNTY COUNCIL CLERK



COMMONWEALTH OF KENTUCKY )

)

COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by \_\_\_\_\_, as the duly authorized representative for and on behalf of \_\_\_\_\_, on this the \_\_\_\_ day of \_\_\_\_\_, 2012.

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

\_\_\_\_\_  
NOTARY PUBLIC

**EXHIBIT A**

**Scope of Engineering**

**Services and Related Matters**

**RFP #6-2012**

**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**

**RFP #6-2012**  
**List of Available Documents**  
**Appendix I**

1. Sewer System Assessment Work Plan: June 2008
2. Capacity Assessment Work Plan: September 2008
3. Hydraulic Model Report: July 2008
4. Sewer System Assessment – Group 1: April 2011
5. Sewer System Assessment – Group 2: October 2011
6. Remedial Measures Plan Group 1: October 2011

\* All plans have been submitted for regulatory review but have not received official endorsement or approval.

**RFP #6-2012  
CAPACITY ASSURANCE PLAN  
APPENDIX II**

TASK	DESCRIPTION	LUMP SUM FEE
II.A	Existing document review necessary to provide superior project management in subsequent tasks through EPA/EEC approval of the CAP.	
II.B	Coordination and overall management of ten (10) Task Force meetings concluding by January 2013.	
II.C	Develop a functional and calibrated CAP Information Management System (IMS) utilizing Mike Urban software as the hydraulic capacity determination system and present the calibrated CAP IMS to LFUCG. (Presentation - 2 hour introductory demo to LFUCG staff. Functional - defined as approved by LFUCG.	
II.D	Development and LFUCG approval of written LFUCG methodologies for tracking potential system capacity credits.	
II.E	Development and LFUCG approval of written LFUCG methodologies for allocating sanitary sewer capacity, allocation of credits, expiration dates for unused credits and the return, resale or trading of credits	
II.F	Final Analysis and Delivery of written CAP to LFUCG. CAP Consultant will be responsible for delivering USEPA submission ready CAP and related documents to a different LFUCG consultant for final delivery, by the deadlines described in the scope.	
V.D	CAP Plan presentation to the Urban County Planning Commission. Presentation attendance by the CAP Consultant is limited to three (3) CAP Consultant employees.	
V.E	CAP Plan presentation to the Urban County Council. Presentation attendance by the CAP Consultant is limited to three (3) CAP Consultant employees.	
V.F	Final report of Task Force recommendations as described in the scope of work.	
V.G	Bound copies of meeting Task Force meeting agendas and summaries, as described in the scope of work.	

HOURLY RATE QUOTATION  
RFP #6-2012  
CAPACITY ASSURANCE PLAN  
APPENDIX II

	Title	Hourly Rate
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		





Lexington-Fayette Urban County Government  
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray  
Mayor

Jane C. Driskell  
Commissioner

**ADDENDUM #1**

RFP Number: **6-2012**

Date: March 12, 2012

Subject: **Engineering Services for the Sanitary Sewer System  
Assurance Program for Consent Decree**

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

**TO ALL PROSPECTIVE BIDDERS:**

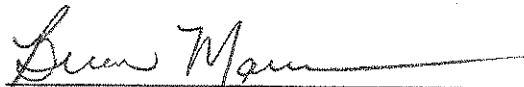
Please be advised of the following clarifications to the above referenced RFP. The following two (2) questions were addressed at the pre-proposal meeting:

- 1) Joe Herman asked when Mr. Martin thought the agreement would be awarded. Mr. Martin said as quickly as possible given the Consent Decree deadline of January 3, 2012. Mr. Martin added that the Work Group tasked with reviewing the proposals had already been identified, and he did not know if they would short list the proposals.
- 2) Mr. Martin added that the that the most relevant documents for this RFP are the "Hydraulic Model Report" and the "Capacity Assessment Work Plan"—which are both posted on the LFUCG website. He also asked Betty Landrum to post on the LFUCG Economic Engine the final reports for the Group 1 and Group 2 Sanitary Sewer Assessments and the first Remedial Measures Plan that have been submitted to USEPA. Mr. Martin said the documents being posted to the LFUCG Economic Engine are still being reviewed by USEPA, and are not final until USEPA has approved.

**Below are Questions Received via Email**

Questions	Answers
Does LFUCG intend to conduct short-list interviews? (I did not see anything pertaining to this in my initial scan of the RFP.)	LFUCG will not determine the need to conduct short-list interviews until after the proposals are submitted and reviewed by the RFP review team.
In Section IV (page 5) of the Scope of Engineering Services, meetings with DWQ are required every 2 weeks until the CAP Plan is submitted in Jan 2013. Which task in the CAP Cost Tabulation Form (provided in the RFP) should proposers include the fee for these meetings?	Task II.F
For purposes of determining the lump sum fees (such as for the every 2 weeks meeting), when should proposers assume the Notice to Proceed is issued?	April 27, 2012

<p>The RFP indicates (in Section II.C) that the CAP Consultant will be required to use the existing Mike Urban hydraulic modeling software. It is our understanding that DWQ's current hydraulic modeling performed by the Capacity Assessment and Remedial Measures Consultant(s) was performed using the PCSWMM software with the EPA SWMM computational engine (version 5.0.022). Will the CAP Consultant be responsible for converting the PCSWMM model to Mike Urban or will it be supplied to the CAP Consultant in Mike Urban format? If the former, what Task in the Cost Tabulation Form should the model conversion be included?</p>	<p>Section 5.B.1 of the Group 1 - Sewer System Assessment (SSA) document (Page 115) states that Mike Urban software was used to develop the hydraulic models. It also states that it uses the SWMM 5 engine.</p> <p>The selected CAP consultant will be supplied with modeling data compiled in the Mike Urban format.</p>
--	--

  
 \_\_\_\_\_  
 Brian Mardum, 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:** \_\_\_\_\_

**EXHIBIT B**

**Certificate of Insurance**

**and**

**Evidence of Insurability**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/12/2012

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	AON REED STENHOUSE INC. AON RISK SERVICES CENTRAL, INC. OF MINNESOTA 900 - 10025 - 102A AVENUE EDMONTON, AB T5J 0Y2	CONTACT NAME: ANDREA OTTO PHONE (A/C No. Ext): 1-800-444-3017 FAX (A/C No.): 952-656-8834 E-MAIL ADDRESS: ANDREA.OTTO@AON.COM
	INSURED	INSURER(S) AFFORDING COVERAGE
		INSURER A: ZURICH AMERICAN INSURANCE COMPANY NAIC # 16535
		INSURER B: ZURICH AMERICAN INSURANCE COMPANY NAIC # 16535
		INSURER C: ZURICH AMERICAN INSURANCE COMPANY NAIC # 16535
		INSURER D: ZURICH AMERICAN INSURANCE COMPANY NAIC # 16535
		INSURER E:
		INSURER F:

COVERAGES      CERTIFICATE NUMBER: 627      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 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 <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL/CROSS LIABILITY <input checked="" type="checkbox"/> OWNERS & CONTRACTORS PROTECTIVE GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJ <input checked="" type="checkbox"/> LOC			GLO6556026  XCU COVER INCLUDED	05/01/12	05/01/13	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS			BAP5940882	11/01/11	11/01/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
C	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			8831307 EXCESS GENERAL, AUTO AND EMPLOYERS LIABILITY (FOLLOW FORM)	05/01/12	05/01/13	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
D	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N N N/A	WC5940881	11/01/11	11/01/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

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

LEXINGTON, KY. STANTEC PROJECT : 175662009L;100 RE: SANITARY SEWER SYSTEM CAPACITY ASSURANCE PROGRAM LEXINGTON-FAYETTE URBAN COUNT GOVERNMENT, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, BOARDS, ASSIGNS, VOLUNTEERS AND SUCCESSORS ARE INCLUDED AS ADDITIONAL INSUREDS BUT ONLY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED IN RELATION TO THE COMMERCIAL GENERAL AND AUTOMOBILE LIABILITY POLICIES. THIS COVER IS PRIMARY AND OTHER INSURANCE IS EXCESS AND NON-CONTRIBUTORY. THE COVERAGE SHALL NOT BE CANCELLED OR NON RENEWED EXCEPT AFTER THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER AND ADDITIONAL INSUREDS. BESTS RATING FOR INSURER A IS A+, FOR INSURER B IS A+

CERTIFICATE HOLDER      CANCELLATION

LFUCG DIVISION OF RISK MANAGEMENT 200 EAST MAIN STREET, SUITE 925 LEXINGTON KY 40508	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  Andrea R. Otto

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# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
04/12/2012

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  <b>MARSH CANADA LIMITED</b> 2260, 10180 - 101 STREET EDMONTON, AB T5M 3S4	CONTACT NAME <b>MICHAEL POPLETT</b>	PHONE (A/C, No, Ext): 780-917-4850	FAX (A/C, No): 780-429-1422
	E-MAIL ADDRESS: <b>MICHAEL.POPLETT@MARSH.COM</b>		
INSURED  <b>STANTEC CONSULTING SERVICES INC.</b> 1409 NORTH FORBES ROAD LEXINGTON KY 40511-2024	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E: <b>LLOYD'S OF LONDON</b>		37540
INSURER F:			

**COVERAGES**                      **CERTIFICATE NUMBER:** 617                      **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 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
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE  DED    RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$ WC STATUTORY LIMITS    OTH-ER
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> Y/N If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
E	<b>PROFESSIONAL LIABILITY INCLUDING ENVIRONMENTAL</b>	N/A		QF033111 NO RETROACTIVE DATE	08/01/11	08/01/12	CLAIM AND AGGREGATE LIMIT \$2,000,000 INCLUSIVE OF COSTS CLAIMS MADE BASIS

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
LEXINGTON, KY. STANTEC PROJECT: 175662009L; 100, RE: SANITARY SEWER SYSTEM CAMPACITY ASSURANCE PROGRAM, THE COVERAGE SHALL NOT BE CANCELLED OR NON RENEWED EXCEPT AFTER THIRTY (30) DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER. BEST'S RATING FOR INSURER E IS A

**CERTIFICATE HOLDER****CANCELLATION**

LFUCG DIVISION OF RISK MANAGEMENT  
200 EAST MAIN STREET, SUITE 925  
LEXINGTON, KY 40507

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

AUTHORIZED REPRESENTATIVE

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**EXHIBIT C**

**Proposal of Engineering Services**

**and**

**Related Matters**

**EXHIBIT D**

**Further Description of Basic Engineering Services**

**and**

**Related Services**



Stantec Consulting Services Inc.  
1409 North Forbes Road  
Lexington KY 40511-2050  
Tel: (859) 422-3000  
Fax: (859) 422-3100

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**Stantec**

April 24, 2012

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Mr. Charles Martin, PE  
Lexington-Fayette Urban County Government (LFUCG)  
Division of Water Quality  
125 Lisle Industrial Avenue, Suite 180  
Lexington, Kentucky 40511

Re: Further Description of Basic Engineering Services and Related Services  
Sanitary Sewer System Capacity Assurance Program (CAP)

Dear Mr. Martin:

As requested, Stantec Consulting Services Inc. (Stantec) has prepared this letter to summarize additional engineering services that are anticipated to be required during the development and initial implementation of LFUCG's Sanitary Sewer System Capacity Assurance Program (CAP). These services were not expressly identified in the Request for Qualifications (RFQ) or in the fee proposal included in Stantec's proposal. This letter also provides a clarification on the proposed capacity and credits tracking Information Management System (IMS). This information is being provided to assist the Division of Water Quality (DWQ) in preparing the contract documents and program budget.

#### **1. CLARIFICATIONS**

The RFQ identified that the CAP Consultant shall develop and implement an IMS capable of tracking all capacity credits and allocations. Stantec's proposal and fee estimate includes the development of a web-based IMS. Stantec proposes to develop the capacity and credits tracking IMS within a commercially available, third-party software (.NET application and SQL Server), customized to the methodologies/protocols established for LFUCG's CAP. The source code for the IMS will be provided to LFUCG at no additional fee. Stantec's fee does not include furnishing any third party, commercially available software or licenses (i.e. Microsoft Server, SQL Server, etc.) A list of any third party software necessary to implement the IMS will be provided to LFUCG upon completion of the IMS.

It was assumed that the IMS would be installed and hosted on an LFUCG-owned server. There are commercially available web-hosting alternatives if LFUCG does not wish to host the IMS internally. Stantec's proposal did not include fees for hosting the IMS.

Stantec's fee for upgrading/maintaining the capacity and credits tracking IMS software will be limited to actual hours necessary to perform requested services. No annual maintenance fee or license fee is associated with the IMS.

Stantec Consulting Services Inc.  
One Team. Infinite Solutions.



## 2. ADDITIONAL SERVICES

The following engineering services are anticipated to be necessary during the development and initial implementation of LFUCG's CAP. These services were not expressly identified in the RFQ or included in the fee estimate included in Stantec's proposal. Estimated fees have been provided for these services. In most cases, the fee estimates are based on limited information and should be considered approximate. It is understood that work on this project will be invoiced based on actual hours expended, not estimated hours, and that work in excess of the estimated hours is not to be performed without prior approval by DWQ.

### 2.1. **Field Verification of Hydraulic Model**

The hydraulic model that will be used to make capacity determinations was developed during the Capacity Assessment (CA) and used during development of the Remedial Measures Plan (RMP). Discussions with the CA and RMP Consultants indicate that there are areas within the sanitary sewer system that do not meet the CAP criteria (as defined in the Consent Decree) that may be the result of inaccuracies in the physical dimensions and/or elevations of sewer pipes and manholes in the model. It is recommended that field surveying be performed in these areas to verify the accuracy of the data in the model. It is anticipated that some of the areas within the model that violate the CAP criteria may be eliminated through field verification.

Stantec does not currently have a copy of the model or an exact estimate of the amount of field surveying that will be required. For planning purposes, it is recommended that **\$40,000.00** be allocated for performing supplemental field surveying and updating the hydraulic model. This estimate is based on 4 weeks of field surveying (2-person crew), updating the hydraulic model, and identifying the impact(s) to the CAP violation areas.

Hourly rates were not provided for field surveying personnel in Stantec's proposal. These rates are provided in Table 1 and are valid for the entire 5-year duration of the contract without escalation.

**Table 1. Statement of Hourly Rates – Field Surveying**

Description	Hourly Rate
Two-person survey crew	\$170.00 / hour
One-person GPS survey	\$125.00 / hour

### 2.2. **Maintain Approved Connection List**

Section VII.16B(viii) of the Consent Decree requires LFUCG to establish a list of all authorized new sewer service connections or increases from flow from existing connections which flow have not yet been introduced into the sanitary sewer system. LFUCG is required to update and maintain the list until full implementation of CAP. Information to be recorded

includes: street address, estimated average daily flow, estimated maximum flow, sewershed, WWTP, date authorized, and estimated date when additional flow from the connection will begin. The list was required to be developed within 120 days of the Consent Decree effective date, which corresponds to May 3, 2011.

During implementation of the CAP, new service connections and flow additions will be tracked within the proposed capacity/credit tracking IMS. In the interim, Stantec can maintain/track new sewer service connections and flow additions within a separate spreadsheet/database to meet LFUCG's Consent Decree requirements. The list can then be uploaded into the IMS during CAP implementation.

Stantec estimates that the level of effort necessary to maintain the list will be approximately 1 hour per week. A start date of April 27, 2012 and a CAP implementation date of March 3, 2013 are also assumed (45 weeks). The estimated fee to maintain an approved connection list is **\$5,400.00**.

**2.3. Performance Flow Monitoring**

Section VII.16B.(iii)(g) stipulates that commencing the first year of the CAP (and annually thereafter), LFUCG shall review capacity enhancing projects and inflow/infiltration (I/I) projects to determine if actual added capacity is in line with what was estimated for those projects. Flow monitoring and subsequent recalibration of the hydraulic model will be required to make this determination.

A summary of the flow meter and rain gage totals used during the Capacity Assurance and Sanitary Sewer Assessment (SSA) efforts in each of LFUCG's seven major sewersheds are summarized in Tables 2 and 3.

**Table 2. Flow Meter Summary**

No.	Capacity Assessment	Sanitary Sewer Assessment
East Hickman	16	30
<b>West Hickman</b>	<b>38</b>	<b>50</b>
Wolf Run	17	30
<b>Cane Run</b>	<b>16</b>	<b>26</b>
Town Branch	33	36
<b>North Elkhorn</b>	<b>19</b>	<b>17</b>
South Elkhorn	21	32
<b>Totals =</b>	<b>160</b>	<b>221</b>

**Table 3. Rain Gage Summary**

Sewershed	Capacity Assessment	Sanitary Sewer Assessment
East Hickman	4	4
West Hickman	5	6
Wolf Run	5	6
Cane Run	4	6
Town Branch	6	6
North Elkhorn	5	5
South Elkhorn	5	6
<b>Totals =</b>	<b>34</b>	<b>39</b>

Annual flow and rainfall monitoring for CAP verification is anticipated to be performed only in those portions of the sewer system where a significant amount of rehabilitation activities or credits have been earned in the prior year. The number of flow meters and rain gages needed for performance verification is unknown at this time, but is anticipated to be significantly less than the quantities identified in Tables 2 and 3. For planning purposes, it is recommended that a budget of **\$250,000.00** be allocated for annual performance flow monitoring during the first year of CAP implementation.

**2.4. Model Recalibration**

A summary of the estimated fee to recalibrate the model is presented in Table 4. The estimate is based on the anticipated effort necessary to recalibrate the model for the flow monitoring data collected during the first year of CAP implementation.

**Table 4. Fee Estimate – Model Recalibration**

No.	Description	Estimated Fee
1.	Develop RTK Coefficients	\$13,500.00
2.	Model Recalibration	\$41,100.00
3.	Update IMS with New Hydraulic Model Results	\$5,460.00
	<b>TOTAL ESTIMATED FEE =</b>	<b>\$60,060.00</b>

## 2.5. Tap Record Database

A tap record database provides an effective tool for managing sewer connections. LFUCG's Tap-On-Desk currently maintains a mainframe database application of tap record information. Based on our understanding of the information included in the database, it will be insufficient to support CAP implementation without extensive reprogramming of the current application. Stantec understands that LFUCG has been migrating away from the mainframe applications, so costly and extensive reprogramming is not recommended.

Based on our understanding in the RFP, the CAP Consultant will be responsible for processing sewer capacity requests during CAP implementation. During fulfillment of this role, Stantec could also create/maintain a tap records database for new service connections and flow additions received during CAP implementation.

The anticipated level of effort necessary to develop the work flow protocols and ongoing maintenance of the tap record database is summarized in Table 5.

**Table 5. Fee Estimate – Tap Record Database**

No.	Description	Estimated Fee
1.	Review existing tap records information and protocols, coordinate with DWQ, design tap record database, determine information to be collected, and establish work flow protocols	\$33,900.00
2.	Perform ongoing maintenance/population of tap record database from sewer capacity requests (4 hours/week for 52 weeks)	\$24,960.00
<b>TOTAL ESTIMATED FEE =</b>		<b>\$58,860.00</b>

## 2.6. Public Outreach and Education

The implementation of the CAP represents a significant change in LFUCG's existing land development and sewer permitting policies. To aid in successful adoption and smooth transition to the CAP, it is recommended that LFUCG develop effective public outreach and educational materials. These materials may be made available on LFUCG's web site and hardcopy pamphlets available at the sewer tap-on desk. The materials will be designed to educate LFUCG customers and local plumbers/contractors on the new permitting requirements under the CAP. A public meeting is also recommended to outline the new requirements prior to implementation of the CAP.

For planning purposes, it is recommended that a budget of **\$20,000.00** be allocated to develop public outreach and education materials and conduct the public meeting.

## **2.7. Harvest Earned Credits from Completed Rehabilitation Activities**

Credits can be earned for capacity enhancing and I/I projects completed prior to CAP implementation. Credits earned from these projects will be used to establish the initial balances for each credit "bank". Calculation of credits will require review of prior DWQ rehabilitation activities and capital projects.

Rehabilitation work performed by DWQ after July 2011 has been documented thru work orders created within the Accela asset management system. However, it is anticipated that not all the information necessary to make credit determinations is currently being recorded by DWQ in Accela. For example, earned credits for cured-in-place pipe rehabilitation are typically based on whether the host pipe is located in a riparian zone. Similarly, manhole inflow dishes earn credits based on their location and ponding potential. Manhole ponding potential and riparian zone are not typically recorded by DWQ on work orders.

Calculation of earned credits from completed DWQ rehabilitation activities will require review of eligible work orders, determination of missing input parameters, and calculation of earned credits. Capital projects by the Division of Engineering or by DWQ that occurred prior to Accela implementation will also need to be manually reviewed and earned credits determined.

The level of effort and number of eligible credit-earning activities are unknown at this time. For planning purposes, a budgetary estimate of **\$30,000.00** is recommended to harvest earned credits from completed capital and rehabilitation projects.

## **2.8. I/I Removal and Rehabilitation Program Support**

It is anticipated that DWQ will require assistance from the CAP Consultant in prioritizing areas for I/I removal and evaluating the effectiveness of rehabilitation efforts. Program support may include:

- Prioritization of collector system rehabilitation activities;
- Post-rehabilitation flow monitoring;
- Analysis and quantification of effectiveness of I/I removal efforts;
- Use of Stantec's customized software rehabilitation tool to develop preliminary rehabilitation recommendations and budgetary estimates;
- Private property I/I program administration and support; and
- Tracking resolution of pipe and manhole defects identified during the SSAs.

For planning purposes, it is recommended that a budget of **\$75,000.00** be allocated for I/I removal and rehabilitation program support.

## **2.9. Regulatory Coordination**

The Cost Tabulation Form within LFUCG's RFP did not include provisions for regulatory coordination or negotiation on the CAP Plan. It is anticipated that CAP Consultant will need to assist LFUCG in addressing EPA comments or requests for additional information on the

CAP Plan submitted on January 3, 2013. For planning purposes, it is recommended that a budget of **\$15,000.00** be allocated to assist LFUCG in addressing EPA comments on the CAP Plan.

**2.10. CAP Implementation**

It is our understanding that DWQ anticipates that Stantec will be responsible for processing new sewer connection and flow addition requests for the first year of CAP implementation. It is uncertain the volume of requests that will be received or the level of effort that will be required to process each request. It is recommended that a preliminary budget of **\$100,000.00** be allocated for CAP implementation.

**3.0. FEE SUMMARY**

The fee summary is presented in Table 6 and includes both the base fee included in Stantec's proposal and the recommended budget allocations for the proposed additional services.

**Table 6. Fee Estimate – Base Fee and Proposed Additional Services**

<b>Description</b>		<b>Estimated Fee</b>
<b>Base fee (included in proposal)</b>		<b>\$301,190.00</b>
<b>Proposed Additional Services:</b>		
2.1.	Field Verification of Hydraulic Model	\$40,000.00
2.2.	Maintain Approved Connection List	\$5,400.00
2.3.	Performance Flow Monitoring	\$250,000.00
2.4.	Model Recalibration	\$60,060.00
2.5.	Tap Record Database	\$58,860.00
2.6.	Public Outreach and Education	\$20,000.00
2.7.	Harvest Earned Credits	\$30,000.00
2.8.	I/I Removal Program Support	\$75,000.00
2.9.	Regulatory Coordination	\$15,000.00
2.10.	CAP Implementation	\$100,000.00
<b>TOTAL ESTIMATED FEE =</b>		<b>\$955,510.00</b>

Lexington-Fayette Urban County Government  
April 24, 2012  
Page 8

Stantec appreciates the opportunity to assist DWQ in meeting their Consent Decree objectives and, ultimately, improving the quality of life in Lexington. If you have any questions regarding the proposed change or require additional information, please contact me.

Sincerely,

STANTEC CONSULTING SERVICES INC.

A handwritten signature in black ink, appearing to read "Joe Herman", with a long horizontal flourish extending to the right.

Joseph J. Herman, PE  
Project Manager

/jjh/rdr