

## ENGINEERING SERVICES AGREEMENT

THIS AGREEMENT made as of 31<sup>st</sup> day of January, 2017 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, (OWNER), and Banks Engineering, Inc., (CONSULTANT). OWNER intends to contract for engineering services for a Preliminary and Final Design for the project known as the West Hickman Trail South Project (the "Project"). The services include a preparation of plans and specifications for a 3,600 foot shared use trail within Veterans Park from near Clearwater Way to near Rockbridge Road.

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 planning and scoping studies, and environmental (as needed), civil engineering services, and customary surveying services incidental thereto.

#### 1.1. Preliminary Design Phase

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

- 1.2.1. Notify the OWNER in writing of its authorized representative who shall act as Project engineer and liaison representative between the CONSULTANT and the OWNER.
- 1.2.2. On the basis of the "Scope of Services", conduct field surveys and gather other necessary data or information, prepare preliminary design document consisting of final design criteria, analysis of design, preliminary drawings, and outline specifications.
- 1.2.3. Based on the information contained in the preliminary design documents, submit an estimate of probable Project costs.
- 1.2.4. Furnish copies as indicated in the Scope of Services of the above preliminary design documents and present them in person to OWNER. After OWNER'S detailed review, attend conference with OWNER to discuss OWNER'S comments.
- 1.2.5. Furnish one copy of the above preliminary drawings to each of the local utility companies via certified mail.

**1.2. Final Design Phase**

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

- 1.3.1. On the basis of the approved preliminary design documents and the revised estimate of probable Project cost, prepare final Drawings and Specifications to show the character and extent of the Project.
- 1.3.2. Prepare such documents and design data as may be required to apply for approvals of such governmental authorities as have jurisdiction over design criteria applicable to the Project, and obtain such approvals by negotiations with appropriate authorities.
- 1.3.3. Advise **OWNER** of any adjustments to the latest estimate of probable Project cost caused by changes in extent or design requirements of the Project or construction costs and furnish a revised estimate of probable Project cost based on the Drawings and Specifications.
- 1.3.4. Prepare for review and approval by **OWNER**, contract agreement forms, general conditions and supplementary conditions, bid forms, invitations to bid and instructions to bidders, and other related documents.
- 1.3.5. Furnish copies as indicated in the Scope of Services of the above documents and present them in person to **OWNER**. After **OWNER'S** detailed review, attend conference with **OWNER** to discuss **OWNER'S** comments.
- 1.3.6. Furnish one copy of the Final Drawings to each of the local utility companies via certified mail.

**1.3. Bidding or Negotiating Phase**

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

- 1.4.1. Assist **OWNER** in obtaining bids or negotiating proposals for each separate prime contract for construction, materials, equipment and services.
- 1.4.2. Consult with and advise **OWNER** as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.
- 1.4.3. Consult with and advise **OWNER** as to the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.
- 1.4.4. Assist **OWNER** in evaluating bids or proposals.

#### **1.4. Construction Phase**

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

- 1.5.1.** Consult with and advise **OWNER** as requested.
- 1.5.2.** When requested by **OWNER**, make visits to the site as an experienced and qualified design professional to determine that work is proceeding in accordance with the Contract Documents. **CONSULTANT** shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of such work.
- 1.5.3.** Review and approve (or take other appropriate action in respect of) Shop Drawings and samples, the results of tests and inspections and other data which each Contractor is required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents (but such review and approval or other action shall not extend to means, methods, sequences, techniques or procedures of construction or to safety precautions and programs incidental thereto); determine the acceptability of substitute materials and equipment proposed by Contractor(s).
- 1.5.4.** Conduct an inspection, with **OWNER**, to determine if the Project has been completed in accordance with the Contract Documents and if each Contractor has fulfilled all of his obligations thereunder.

#### **SECTION 2 - EXTRA WORK BY CONSULTANT**

- 2.1** The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this Project other than provided by the expressed intent of this Agreement. However, given the nature of Scoping Studies it is inherent that some minor changes will occur. Therefore any minor changes requested during the Public Participation, stakeholder, neighborhood or private meetings shall be considered incidental. Any major changes as a result of these meetings shall be considered as "Extra Work", subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as "Extra Work" and shall be paid as such.
- 2.2** All "Extra Work" is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

#### **SECTION 3 - OWNER'S RESPONSIBILITIES**

**OWNER shall:**

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

#### **SECTION 4 - PERIOD OF SERVICES**

- 4.1 Time is of the essence. See Exhibit A "**Further Description of Basic Engineering Services and Related Matters**" for the detailed 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.

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

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

## **SECTION 5 - PAYMENTS TO CONSULTANT**

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

See Exhibit A “**Further Description of Basic Engineering Services and Related Matters**” (attached).

#### **5.1.1 For Basic Services.**

**OWNER** shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding \$116,055.00. The **CONSULTANT** will provide services outlined in the Exhibit A “**Further Description Of Basic Engineering Services And Related Matters**”.

#### **5.1.2 For Extra Work.**

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

### **5.2 Times of Payment.**

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

### **5.3 Other Provisions Concerning Payments.**

**5.3.1** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

- 5.3.2** In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.
- 5.3.3** In the event the **CONSULTANT** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **CONSULTANT** shall be paid as set forth in Section 5.3.1 above.

## **SECTION 6 - GENERAL CONSIDERATIONS**

### **6.1 Termination**

- 6.1.1** The obligation to provide further services under this Agreement may be terminated by either party upon seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
- 6.1.2** The **OWNER** reserves the right to terminate the Agreement at any time upon seven (7) days written notice to the **CONSULTANT**.

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

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

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

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

#### **6.4 Successors and Assigns.**

- 6.4.1** **CONSULTANT** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the same, whether by assignment or novation, without prior written consent of **OWNER**.
- 6.4.2** The **CONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **CONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.
- 6.4.3** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

#### **6.5 Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Engineer's Office and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Planning, Preservation and Development, Lexington-Fayette Urban County Government for review. The decision of the Commissioner as to the determination of such dispute shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

#### **6.6 Accuracy of CONSULTANT'S Work.**

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

The **CONSULTANT** shall be responsible for the accuracy of all work, even though Drawings and Specifications have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **CONSULTANT**, without additional compensation. By submission of

reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to the **OWNER**, the **CONSULTANT** has made an incontrovertible representation that the information is accurate. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to disqualify **CONSULTANT** from consideration for future **CONSULTANT** engineering contracts.

#### **6.7 Security Clause.**

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

#### **6.8 Access to Records.**

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

#### **6.9 Resident Services During Construction.**

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

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

##### **6.10.1. 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 or subconsultants 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.

#### **6.10.2. Indemnification and Hold Harmless Provision**

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- b. **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT**'s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.
- d. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **OWNER**, which approval shall not be unreasonably withheld.

- e. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.

**6.10.3. 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 Section 6.9 of this Agreement.

**6.10.4. Insurance Requirements**

**6.10.4.1. Required Insurance Coverage**

**CONSULTANT** shall procure and maintain for the duration of this Agreement at its cost and expense 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**.

<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. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky

DOI approved forms. A copy of the certificates shall be submitted to **OWNER** and attached as Exhibit "D" to this Agreement.

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

#### **6.10.4.2. 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.

#### **6.10.4.3. 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.

#### **6.10.5 Safety and Loss Control**

**CONSULTANT** understands and agrees that **OWNER** is in no way responsible for the safety and property of **CONSULTANT** or its personnel, **CONSULTANT** shall comply with all applicable federal, state and local safety standards related to the performance of its work or services under this Agreement and take reasonably necessary action to protect the life, health and safety and property of its personnel, the public and **OWNER** in the locations and areas in which **CONSULTANT** is performing services under the Agreement.

#### **6.10.6 Definition of Default**

**CONSULTANT** understands and agrees that the failure to comply with any of these 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.

#### **6.10.7 RIGHT TO REVIEW, AUDIT AND INSPECT**

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

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

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

7.1 Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, the **CONSULTANT** agrees as follows:

7.1.1 The **CONSULTANT** will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The **CONSULTANT** further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public

Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The CONSULTANT agrees to provide, upon request, needed reasonable accommodations. The CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. 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 compensations; and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

7.1.2 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, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

7.1.3 The CONSULTANT will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the CONSULTANT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

7.1.4 The CONSULTANT will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

7.1.5 The CONSULTANT will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

7.1.6 In the event of the CONSULTANT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the CONSULTANT may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as

amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7.1.7 The CONSULTANT will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No.11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The CONSULTANT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance.

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

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

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

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

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

8.1 This Agreement is subject to the following provisions.

Pursuant to subparagraph 3.4 of this Agreement, OWNER has assigned Keith Lovan (the "OWNER'S Agent"), as the authorized agent of OWNER, to monitor, direct and review the performance of work of the CONSULTANT. Documents,

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

**8.2** The following Exhibits are attached to and made a part of this Agreement:

**8.2.1** Exhibit A - "Further Description of Basic Engineering Services and Related Matters" consisting of two ( 2 ) pages.

**8.2.2** Exhibit B - "Certificates of Insurance" consisting of one (1) page.

**8.2.3** Exhibit C "Scope of Services" consisting of four ( 4 ) pages.

**8.3** This Agreement (consisting of pages 1 to 25 inclusive), together with the Exhibits and schedules identified above constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or canceled by a duly executed written instrument.

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

**OWNER:**

Lexington-Fayette Urban County Government

200 East Main Street

Lexington, Kentucky 40507

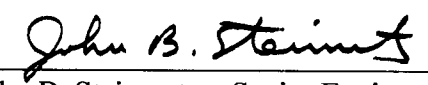
  
The Honorable Jim Gray – Mayor

**CONSULTANT:**

Banks Engineering, Inc.

1211 Jessamine Station

Nicholasville, Kentucky 40356

  
John B. Steinmetz – Senior Engineer

**EXHIBIT A**

**FURTHER DESCRIPTION OF BASIC ENGINEERING  
SERVICES AND RELATED MATTERS**



November 23, 2016

Mr. D. Keith Lovan, P.E.  
Municipal Engineer Senior  
Lexington-Fayette Urban County Government  
Division of Engineering  
101 East Vine Street, 4<sup>th</sup> Floor  
Lexington, KY 40507

RE: Proposal for Professional Services  
RFP #31-2016 West Hickman South Trail Project

Mr. Lovan:

Banks Engineering is pleased to submit this revised proposal for professional services for the engineering design of the West Hickman South Trail Project. Based on the information in your Request for Qualifications, our recent scoping meeting, and subsequent discussions we propose to complete the following services:

1. Reviews of potential trail alignments with affected residents, Councilperson Plomin, and LFUCG staff
2. Conduct field surveys along the potential alignment, extending approximately 4000 linear feet between two sections of existing trails in Veterans Park
3. Survey and inspect the existing bridge over West Hickman Creek
4. Design a new bridge over a tributary to West Hickman Creek, and upgrades / repairs to the existing bridge over West Hickman Creek
5. Conduct a flood study and prepare CLOMR and LOMR documents for FEMA review (excluding public notice and property owner notifications)
6. Prepare a landscape plan and stormwater pollution prevention plan (SWPPP)
7. Prepare final designs and cost estimates
8. Conduct a public information meeting with the Cumberland Hill Neighborhood Association
9. Attend review and progress meetings
10. Prepare technical specifications and contract documents
11. Coordinate regulatory permitting (Kentucky Division of Water and Army Corps of Engineers)
12. Provide limited assistance with LPA coordination, bidding, and construction administration (shop drawing reviews)
13. Prepare two easement descriptions after construction of the trail is complete

We have prepared a detailed manhour estimate for the proposed work, as shown on the attached documents. Also attached is the KYTC Production-Hour Worksheet with the estimated hours. Based on these manhour estimates our proposed fee is as follows:

<u>Labor Category</u>	<u>Estimated Hours</u>	<u>Hourly Rate</u>	<u>Total Fee</u>
Principal / Senior Engineer	73	\$150	\$10,950
Project Manager	177	\$145	\$25,665
Professional Engineer	390	\$100	\$39,000
Project Engineer / LA	82	\$85	\$6,970
Senior Technician	62	\$95	\$5,270
CAD Technician	232	\$70	\$16,240
Survey Crew	<u>48</u>	\$120	<u>\$5,760</u>
Totals	1,064		\$109,855

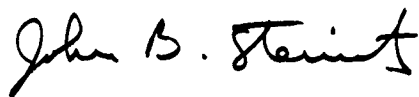
Total labor cost from above: \$109,855  
Geotechnical subconsultant: \$6,000  
Direct expenses: \$200  
Total proposed fee: \$116,055

This proposal is based on the following assumptions / limitations:

- Any additional easement descriptions shall be prepared for a unit price of \$700
- Additional meetings shall be conducted at a unit price of \$2,500
- Any construction administration other than structural shop drawings shall be at \$150/hour
- LFUCG will pay all permit and review fees and shall provide all LPA coordination

Please review this proposal at your earliest convenience, and contact me at (859) 881-0020 with any questions or comments. If this proposal is acceptable we will execute the Urban County Government's standard engineering contract. Thank you again for the opportunity to work with you on this project.

Very truly yours,  
**Banks Engineering, Inc.**



John B. Steinmetz, P.E.  
Senior Engineer

**EXHIBIT B**  
**CERTIFICATES OF INSURANCE**



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
11/30/2016

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

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

<b>PRODUCER</b> Richard Woolums 872 Wilmore Rd Nicholasville, KY 40356	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): 859-885-5864      FAX (A/C, No): 859-885-5140 E-MAIL ADDRESS:	
	<b>INSURER(S) AFFORDING COVERAGE</b> NAIC # INSURER A: State Farm Fire and Casualty Company      25143 INSURER B: KEMI INSURER C: INSURER D: INSURER E: INSURER F:	
<b>INSURED</b> Banks Engineering Inc. 1211 Jessamine Station Nicholasville, KY 40356		

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADOL SUBR INSD WVO	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					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 \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N    N/A					<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
A	<b>PROFESSIONAL LIABILITY - ARCHITECTS &amp; ENGINEERS</b>		PS0000005060701	12/11/2015	12/11/2016	\$1,000,000- Limit of Liability

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

CERTIFICATE HOLDER      CANCELLATION

<b>CERTIFICATE HOLDER</b> Keith Lovan, PE Lexington-Fayette Urban County Government 101 E. Vine Street, Suite 400 Lexington, Kentucky 40507	<b>CANCELLATION</b> 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**  
**SCOPE OF SERVICES**

## Attachment A: Project Location Map

### West Hickman South Trail Project

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#### 4.1 Introduction:

The West Hickman Trail South is a proposed 4,000 foot shared use trail within Veterans Park in southern Fayette County. The proposed 12 foot wide trail is an extension of an existing shared use trail within the Park that connects to an elementary school. The new trail will connect neighborhoods to the school, and replace an older section of Park trail popular with neighbors. The project includes a crossing over a tributary stream to the West Hickman Creek.

The proposed trail is a segment of the West Hickman Trail, as identified in the Greenway Master Plan. The trail is proposed to extend into Jessamine County (and the new Brannon Crossing extension). To the north of Veterans Park, the proposed trail will connect residents to other parks, shopping centers and schools. It also will connect to an existing signed bike route that provides a north/south connection from southern Fayette County into Downtown Lexington.

This trail is an important component in the community's multimodal strategy to reduce automobile travel to work, school, recreation and shopping. The trail through the Park offers a healthy, safe alternate mode of transportation for students and park-users; and it will significantly cut the distance and time now required for the adjacent neighborhoods to access the school and park in vehicles. Also, the proposed trail and bridge will link to two existing trails within the Park. See Attachment A.

#### 4.2 Summary of Services Requested and Timeline:

A qualified firm (KYTC prequalified in the areas of **Multimodal Services (Bikeway Planning)**) will be selected to provide design and engineering services including but not limited to the following (see attachment B for a timeline):

The basic summary of services required include:

- Perform all necessary agency coordination including but not limited to KYTC and FHWA
- Perform a complete Environmental Assessment for the project. The Environmental Assessment shall conform to the requirements of the KYTC and FHWA.
- Conduct and coordinate public and stakeholder meetings
- Prepare all final design and engineering components including final construction plans and assist in preparation of bid documents consistent with all Federal and State requirements
- See Attachment B for a timeline

#### 4.3 Submittal Requirements and Criteria: Interested firms are encouraged to submit their qualifications which shall include the following information:

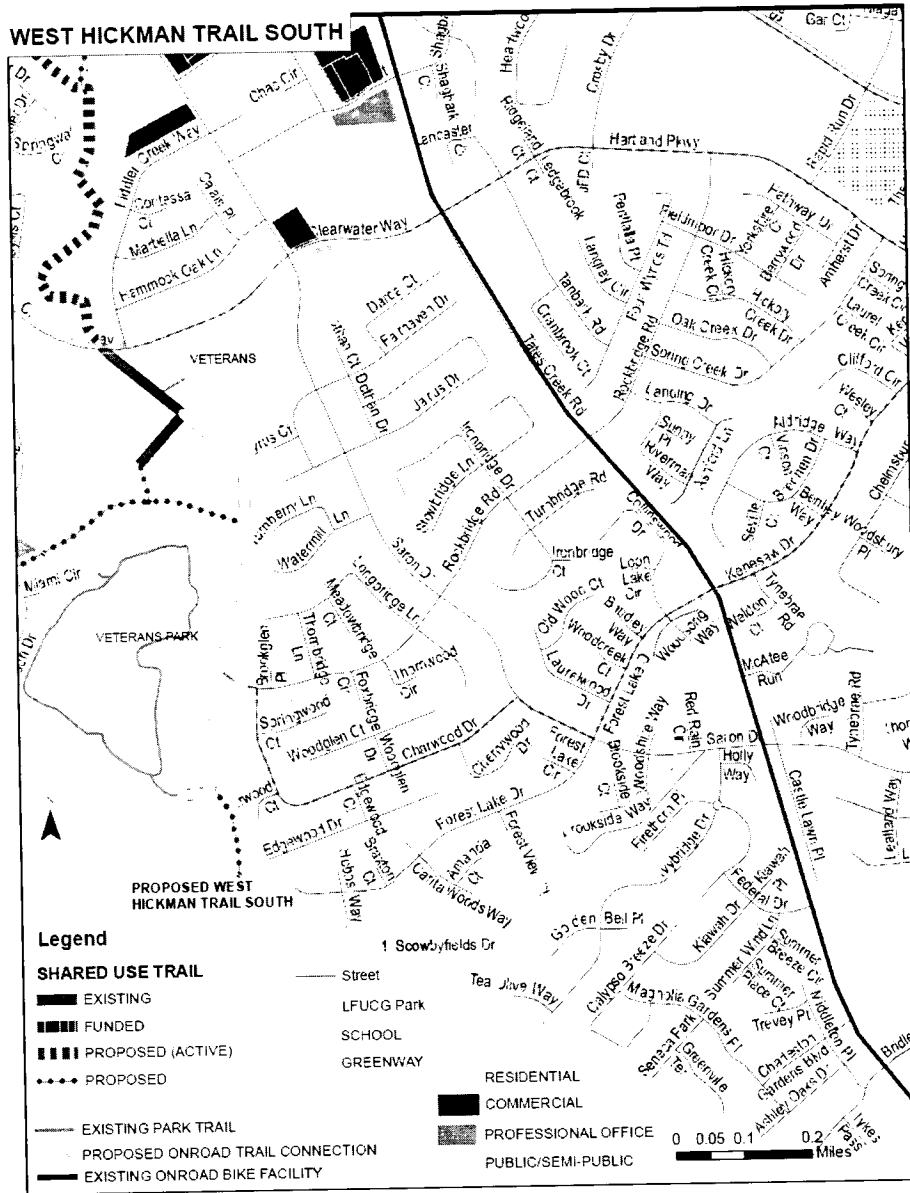
- 1) Qualifications to perform the project

20 pts

2)	Ability and expertise of the firm's professional personnel	20 pts	
3)	Familiarity with the project		20 pts
4)	Past record of performance		10 pts
5)	Current workload and projected project commitments of the firm	15 pts	
6)	Familiarity with the KYTC LPA Project Guide		10 pts
7)	Degree of local employment to be provided by the person or firm	5 pts	

Respondents are responsible for all costs associated with the preparation of materials in response to this RFQ. **LFUCG** assumes no responsibility for such costs. **LFUCG** reserves the right to waive any formality in the submitted statements of qualifications, to reject any and all statements of qualifications or to re-advertise for additional statements of qualifications.

# Attachment A: Project Location Map





## Attachment B: Project Scope and Timeline

**Title:** West Hickman South Trail Project

**Project Funding:** \$885,800 for Design, R/W, Utility Relocation, and Construction

**Description:** Selection of design consultant will be performed utilizing Qualification Based Selection. Competitive bidding consistent with Federal guidelines will be utilized for contractor selection for construction services.

The consultant shall complete a full design including construction plans, specifications and bid documents for the specified limits of the trail project.

### Project Schedule:

The following table identifies milestones and anticipated schedule.

Milestone/Task	Start/Completion Date
Meeting to review design intent	10 days
Submission of brief preliminary engineering report and environmental overview	30 days
Submission of preliminary plans	60 days
Meeting to review preliminary plans	70 days
Submission of revised preliminary plans	90 days
Submission of final plans	110 days
Meeting to review final plans	120 days
Submission of completed final plans	150 days