

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of MAY 8, 2012 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (OWNER) and CDP Engineers, Inc. (CONSULTANT). OWNER intends to proceed with the Loudon Avenue Sidewalk Project as described in the attached Scope of Services document. The services include a design and preparation of complete construction plans and specifications for a sidewalk between the western terminus at or near Newtown Pike and the eastern terminus at or near Russell Cave Road. The services are hereinafter referred to as the "Project".

OWNER and CONSULTANT in consideration of their mutual covenants herein agree in respect of the performance of professional engineering and landscape architectural 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, environmental, and civil engineering services, and customary surveying services incidental thereto.

1.2. 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.

1.3. 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.

1.4. 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.

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

SECTION 3 - OWNER'S RESPONSIBILITIES

OWNER shall:

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.

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

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence. See Exhibit A "Scope of Services" (attached) 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 "Scope of Services" (attached).

5.1.1 **For Basic Services.**

OWNER shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding **\$71,450.00**.

5.1.2. **For Extra Work.**

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

5.2. **Times of Payment.**

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

5.3. **Other Provisions Concerning Payments.**

- 5.3.1. In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.
- 5.3.2. In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.
- 5.3.3. In the event the **CONSULTANT** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **CONSULTANT** shall be paid as set forth in Section 5.3.1 above.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

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

6.2. Ownership and Reuse of Documents.

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

6.3. Legal Responsibilities and Legal Relations.

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

6.4. Successors and Assigns.

- 6.4.1. **CONSULTANT** binds itself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements and obligations of this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement nor transfer any interest in the

same, whether by assignment or novation, without prior written consent of **OWNER**.

6.4.2. The **CONSULTANT** shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. The **CONSULTANT** shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

6.4.3. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

6.5. **Disputes.**

Except as otherwise provided in this Agreement, any dispute concerning the amount of payment due the **CONSULTANT** or any dispute concerning any question of fact of any act to be performed under this Agreement, which is not disposed of by agreement between the Urban County Engineer's Office and the **CONSULTANT**, shall be submitted to the Commissioner, Department of Public Works, 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 subcontractor 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. Required Risk Management Provisions.

6.10.1 GENERAL

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

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

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

6.10.2 INDEMNITY

- 6.10.2.1** **CONSULTANT** agrees to defend, indemnify, and hold harmless **ENTITY** from any and all losses or claims of whatever kind that are in any way incidental to or connected with or that arise or are alleged to have arisen,

directly or indirectly, in whole or in part from the execution, performance or breach of this Contract by CONSULTANT, including any environmental problems CONSULTANT may cause, including without limitation, soil and/or water contamination, and remedial investigations and feasibility studies thereof. This indemnity agreement shall in no way be limited by any financial responsibility, insurance, or loss control requirements below and shall survive the termination of this contract.

For purposes of this Indemnity Provision:

a. The word "defend" includes, but is not limited to, investigating, handling, responding to, resisting, providing a defense for, and defending claims, at CONSULTANT'S expense, using attorneys approved in writing by ENTITY, which approval shall not be unreasonably withheld.

b. The word "claims" includes, but is not limited to, claims, demands, liens, suits, notices of violation from Governmental agencies and other causes of action of whatever kind.

c. The word "losses" includes, but is not limited to claims, liens, demands, causes of action, judgments, penalties, interest, court costs, legal fees, and litigation expenses arising from death, injury or damage of any kind.

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

6.10.3 FINANCIAL RESPONSIBILITY

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

6.10.4 INSURANCE REQUIREMENTS

6.10.4.1 Required Insurance Coverages

CONSULTANT shall procure and maintain for the duration of the Contract, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT. Any/all insurance shall be written on an "occurrence form" for

limits not less than those specified below or as required by law, whichever is greater. Below are minimum insurance requirements set to protect the ENTITY interest in this agreement; and to provide guidelines consistent for each bidder, should insurance costs be included in your bid estimation costs. However, it does not limit the CONSULTANT's liability and necessary additional limits of coverage are at the CONSULTANT's discretion. SEE "EVIDENCE OF INSURABILITY" FORM FOR SUBMISSION OF BID.

6.10.4.1.1 Professional Liability providing coverage at least or broad as current ISO form:

- a. Endorsement naming as additional insureds "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest".
- b. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507.

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

- a. Combination of primary and umbrella coverage limits of not less than \$2,000,000 per occurrence for bodily injury and property damage.
- b. Business Interruption Coverage must be included.
- c. Endorsements naming as additional insureds "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
- d. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice, to Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507

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

- a. Combined Single Limits not less than \$1,000,000 per occurrence.
- b. Endorsement naming as additional insured "The Lexington-Fayette Urban County Government, its elected and appointed officials,

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

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

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

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

6.10.4.2 Acceptability of Insurers

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

6.10.4.3. Notice of Coverage Renewals for Expiration

After insurance has been approved by ENTITY, evidence of renewal of an expiring policy must be submitted to ENTITY, at the Division of Law, 200 East Main Street Lexington, Kentucky 40507 and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

6.10.4.4. Self-Insured Programs

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

deductibles, self-insurance programs, or self-insured retention, CONSULTANT agrees to provide Lexington-Fayette Urban County Government, the following data prior to the final acceptance of bid and the commencement of any work:

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

6.10.4.5. Verification of Coverage

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

6.10.4.6. Right to Review, Audit and Inspect

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

6.10.5 SAFETY AND LOSS CONTROL

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

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

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

6.10.6 DEFINITION OF DEFAULT

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

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

6.10.7 RIGHT TO REVIEW, AUDIT AND INSPECT

CONSULTANT understands and agrees that upon reasonable notice 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. CONSULTANT agrees to comply with Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Age Discrimination Act of 1975, Executive Order 11063, and with Executive Order 11246 as amended by Executive Order 11375 and 12086.
- 7.2. CONSULTANT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, disability or other handicap. The CONSULTANT shall take affirmative action to insure that applicants are employed, and that employees are treated during their employment, without regard to their race,

religion, color, national origin, sex, age, disability or other handicap. **CONSULTANT** will take affirmative action to insure that all employment practices include, but are not limited to, the following: employment, hiring, upgrading, demotion, transfer, recruitment, recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection of training, including apprenticeships. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.

7.3 A Compliance with Civil Rights Act of 1964. During the performance of this AGREEMENT, the **CONSULTANT** agrees as follows:

- A. **CONSULTANT** will comply with the regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this AGREEMENT.
- B. Nondiscrimination: The **CONSULTANT** with regard to the work performed by it after award and prior to completion of the AGREEMENT work will not discriminate on the ground of race, color, or national origin in the selection and retention of subcontractors including procurement of materials and leases of equipment. The **CONSULTANT** will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the AGREEMENT covers a program set forth in Appendix B of the REGULATIONS.
- C. Solicitations for Subcontractors, including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiations made by the **CONSULTANT** for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the **CONSULTANT** or the **CONSULTANT'S** obligations under this AGREEMENT with the REGULATIONS relative to nondiscrimination on the ground of race, color, or national origin.
- D. Information and Reports: the **CONSULTANT** will provide all information and reports required by the REGULATIONS, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the GOVERNMENT to be pertinent to ascertain compliance with such REGULATIONS orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the **CONSULTANT** will so certify to the GOVERNMENT as appropriate, and shall set forth what efforts it has made to obtain the information.

E. Sanctions for Noncompliance: In the event of the **CONSULTANT'S** noncompliance with the nondiscrimination provisions of this AGREEMENT, the GOVERNMENT will impose such contract sanctions as it may determine to be appropriate, including but not limited to:

- 1) Withholding payment to the **CONSULTANT** under the AGREEMENT until the **CONSULTANT** complies; and/or
- 2) Cancellation, termination or suspension of the AGREEMENT, in whole or in part.

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

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

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

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

8.1. This Agreement is subject to the following provisions.

Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned 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

EXHIBIT A
SCOPE OF SERVICES



March 28, 2012

Mr. Brian Marcum
Purchasing Director
Lexington-Fayette County Urban Government
Division of Purchasing
200 East Main Street
Lexington, KY 40507

Re: Scope of Services – Loudon Avenue Sidewalk Project

Dear Mr. Marcum:

CDP Engineers, Inc. appreciates this opportunity to provide professional planning and design services for this project. We have assembled a design team that presented a comprehensive approach to this project as outlined in our original proposal. CDP has reviewed the scope of work with representatives of your office and the Division of Engineering. We have formatted the following listing of services in a manner as consistent with proposal.

Project Outline:

The scope of this project is provide new sidewalks along Loudon Avenue with connections to existing and proposed pedestrian facilities at BCTC, Legacy Trail and Russell Cave Road. The project study area will extend from Newtown Pike to Russell Cave Road identifying gaps in pedestrian facilities. The limits of construction documents will be based upon pedestrian facility connections and available funds for the project.

General Design Criteria:

All designs and plans will be reviewed and approved by the LFUCG Division of Engineering and the KYTC Office of Local Programs at the following milestones; 15%, 30%, 60%, 90%, 100%.

- a. Choose the placement of the sidewalks along sections of Loudon Avenue that will minimize impacts to private property and to the public right of way but will still meet all other goals of the project as outlined.
- b. Prepare typical sections based on site conditions.
- c. Unless otherwise specifically acknowledged and approved, design shall conform to LFUCG Standard Drawings and KDOH Drainage Manual.
- d. The preparation of an Erosion and Sediment Control Plan including a Storm Water Pollution Prevention Plan (SWPPP) integrating the non-structural and structural practices and procedures of the Stormwater Manual is a requirement for all

- construction projects and is the responsibility of the Contractor; however Consultant shall prepare a generalized plan. The plan shall be prepared and submitted to the LFUCG Division of Engineering for approval.
- e. Design shall comply with the AASHTO Guide for the Planning, Design and Operation for Pedestrian Facilities, Manual of Uniform Traffic Control Devices and the extent possible, the AASHTO Roadside Design Guide.
 - f. Prepare a Landscaping Plan showing location, size and number of plants. The Plan shall follow the LFUCG Planting Manual and the LFUCG sight distance requirements at intersections and driveways.
 - g. Assist the Division of Engineering in the preparation of the Project Development Checklist (PDC).
 - h. All designed drainage structures shall meet the requirements of the Division of Water, Army Corp of Engineers, and LFUCG Standard Drawings.
 - i. Design the facilities to meet ADA standards to the extent practical.
 - j. Prepare all required permits for construction.
 - k. The Consultant is also responsible for obtaining encroachments onto railroad property.
 - l. Determine the Best Management Practices (BMPs) that will be used to control storm water runoff, the specific placement of BMPs, and a visual monitoring and maintenance program to ensure the effectiveness of erosion and sedimentation controls.
 - m. The consultant shall refer to the applicable state requirements listed in the Interim Federal-Aid Highway Project Development Guide for Local Public Agencies and any future revisions for preparation of the plans and required submittals.

Based upon our knowledge of the project and information provided by your office, the following outlines CDP's scope of services for this project:

1. **Field Survey:** CDP shall complete a limited field survey to supplement LFUCG GIS Base Mapping. CDP shall obtain LFUCG's GIS data information for use as base map. The minimum requirements of the field survey shall include, but are not limited to, the following items within the defined project area not identified in the GIS data:
 - a. location of existing sidewalks;
 - b. topography showing all existing structures, buildings, and houses, including railroad right of way and railroad structures;
 - c. coordinate with utility companies to identify
 - d. Location of overhead and underground utilities;
 - e. Location of storm and sanitary sewers;
 - f. Temporary benchmarks for use during construction: set outside construction limits;
 - g. Profiles of pertinent existing infrastructure;
 - h. Cross sections taken at 100-foot stations, or as otherwise needed;
 - i. location of existing corner monuments and R/W markers, if available
 - j. All survey associated with drainage structures,
 - k. staking associated with easement acquisition and prior to bidding for construction
 - l. all existing easements in the project area
 - m. location of significant trees and vegetation

The elevations of utilities, sewers, and other critical items shall be verified during the field survey. Such verification shall be carefully coordinated with the appropriate parties (e.g., utility companies, railroad, LFUCG). If digging operations, permission, etc. are necessary in certain instances it shall be the responsibility of the consultant to see to it that they are performed properly and to get appropriate approvals.

2. **Environmental Assessment:** The environmental assessment shall conform to the requirements of the Lexington-Fayette Urban County Government, the Kentucky Department of Highways and the U.S. Department of Transportation, Federal Highway Administration for a minor project as noted in the approved categorical exclusion. Guidelines shall be as dictated in the FHA Technical Advisory T 6640.8A dated October 30, 1987 and Volume 7, Right-of-Way and Environment; Chapter 7 Environment; Section 1, Environmental Impact and Related Procedures of the Federal-Aid Highway Program Manual.

Completion of the complete Environmental Assessment shall coincide with completion of the final design. All percentage milestones for the final design will apply to the Environmental Assessment.

Project shall conform with:

- National Environmental Policy Act (NEPA)
- Section 4(f) of 49 United States Code (USC) 303
- National Historic Preservation Act
- Section 404 of the Clean Water Act

3. **Detailed Cost Estimate:** CDP shall prepare detailed cost estimates at 15%, 60% and 90% stages of the design and at the completion of the design. Each total construction cost estimate shall be accompanied by subtotal cost estimates for each design item, total utility relocation, and total right-of-way acquisition.
4. **Rights-of-Way and Easements:** CDP shall prepare temporary construction easements, permanent easements and acquisition for right-of-way based on a unit price basis. Upon the completion 60% construction documents, an assessment of the number of temporary construction easement, permanent easement or right-of-way acquisition will be provided to LFUCG Division of Engineering. CDP will prepare the number of easements as agreed upon by LFUCG Division of Engineering at the per unit rate indicated in this agreement. A plat shall be prepared, if required for acquisition of right-of-way, and shall meet all requirements of the Lexington-Fayette Urban County Government Planning Commission and Department of Law.

Permanent and temporary easements shall be drawn to sufficient scale to be clear and distinguishable, and such drawings shall meet the requirements of the Lexington-Fayette Urban County Government Division of Engineering.

CDP shall provide a legal description for each easement taking.

- 5. Drawing Scales, Units, and Unit Conversion:** All quantities measured, calculated, and specified shall be in English units (e.g., feet, pounds). All drawings and sheets shall conform to the follow scales unless another option is viable and approved by the Project Manager:

a. Plan Sheets	1" = 50'
b. Profile sheets	1" = 20' horizontal 1" = 2' vertical
c. Cross sections sheets (as needed)	1" = 5' horizontal 1" = 5' vertical

- 6. Pavement Design:** CDP shall use the existing sidewalk thickness and LFUCG standard detail as the pavement design for this project.
- 7. Plans, Specifications, and Bid Documents:** CDP shall prepare plans, construction specifications, and other pertinent bid documents as required by the Lexington-Fayette Urban County Government and shall be reviewed and approved by the Lexington-Fayette Urban County Government Division of Engineering at the intervals outlined in this document.

Preliminary plans shall include, but are not limited to: existing topography and infrastructure, street addresses, proposed alignment, proposed profile, typical proposed section, proposed drainage improvements, critical cross sections at 100' interval, if needed, line and grade review information, environmental overview and a cost estimate. Preliminary plans shall be so identified; the Consultant shall deliver two paper copies to the Division of Engineering, and CDP shall deliver one paper copy to each utility company via certified mail.

Final plans shall contain the completed and approved information provided by the preliminary plans. Final plans shall also include, but are not limited to: a cover sheet, quantities summary, general notes, utility company information, plan and profile sheets, development sheets, cross section sheets, pipe sheets, reference points, detail sheets, typical sections, and right-of-way sheets.

All sheets shall be inked mylar and shall be submitted in a common acceptable format including a "dwg" and "shape" file format. The LFUCG owns all rights to data and files associated with project.

CDP shall deliver by certified mail one paper copy of the final plans to each utility company. CDP shall deliver five (5) paper copies of the final plans, specifications, and bid documents to the Division of Engineering. After Contractor bids are opened, CDP shall deliver the final inked mylar sheets and electronic drawings to the Division of Engineering.

- 8. Utility Company Coordination:** There are known utility lines in the vicinity of the project, CDP will meet and coordinate with all affected utility companies, as necessary to minimize disturbance to underground lines and to facilitate the Project.
- 9. Construction Inspection:** The Lexington-Fayette Urban County Government will provide routine construction inspections. CDP shall be available to advise the Urban County Government in a limited matter of design intent during construction.

- 10. Attendance at Bid Opening:** CDP shall attend the bid opening in the office of the LFUCG Division of Central Purchasing. LFUCG shall provide copies of all bids to CDP. CDP shall evaluate and prepare a tabulation of bid prices and submit a recommendation to award.
- 11. Public Meetings:** No public meeting is scheduled for this project.
- 12. Bid Administration:** CDP's scope shall include assisting with Bid Administration. This shall include responding to technical questions during the bid period, preparing addenda, approving alternates, attending pre-bid meeting (if required) and evaluating bids received.

Project Schedule:

CDP shall meet deadlines as provided in the following schedule. Calendar days are counted from the date that a written notice to proceed is received by CDP. CDP shall coordinate the exact times of meeting(s) with Urban-County Government; locations of meeting(s) shall be at either the site of proposed improvements or at the offices of the Division of Engineering, as appropriate.

Meeting to review design intent	10 days
Submission of brief preliminary engineering report & environmental overview	60 days
Submission of preliminary plans	90 days
Meeting to review preliminary plans	120 days
Submission of revised preliminary plans (if necessary)	130 days
Submission of final plans	150 days
Meeting to review final plans	160 days
Submission of completed final plans	180 days

This schedule excludes review time by LFUCG, KYTC District 7, KYDOW and ACOE during the design of the project.

Design Fees:

This scope of work is for the preparation of field survey, schematic design, design development and construction documents for the Loudon Avenue Sidewalk Project as outlined in the above list of services. We will complete the scope of work described above for a lump sum fee of forty-four thousand six hundred fifty two dollars (\$44,652.00). Professional services for the temporary and permanent easement(s) shall be prepared based per parcel/unit price. The number of easements required for the project will be determined after the 60% construction document review by CDP and LFUCG Division of Engineering. The following is the per parcel price for each type of easement:

Temporary Construction Easement	\$850/parcel
Permanent Easement or ROW acquisitions	\$950/parcel

The following schedule outlines the invoicing and payment milestones:

Submission of brief preliminary engineering report and environmental overview	15%
Submission of preliminary plans	30%
Submission of final plans	60%

Mr. Brian Marcum
March 28, 2012
Page 6

Submission of completed final plans	90%
Submission of bid tabulations and award recommendation	100%

If the project is substantially changed for reasons not related to our work, a redesign of the project will be completed for additional compensation. Any additional work will not be undertaken until both parties agree upon the terms and conditions.

Owner provided items:

- All preliminary research for deeds, easements and right-of-way documents for the corridor
- GIS data for use in public meeting and as base map information
- Categorical Exclusion for minor projects for the following:
 - National Environmental Policy Act (NEPA)
 - Section 4(f) of 49 United States Code (USC) 303
 - National Historic Preservation Act
- All negotiations with property owners related to easements and right-of-way acquisitions

We look forward to working with Lexington on the Loudon Avenue Sidewalk Project. Please feel free to call me at 859.264.7500 with any questions.

Sincerely,
CDP Engineers, Inc.



B. Scott Southall, ASLA, LEED AP BD+C, AICP
Vice-President
P2328

EXHIBIT B
CERTIFICATES OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

OP ID: SHLA

DATE (MM/DD/YYYY)

05/09/12

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

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

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

INSURED MapSync Company
CDP Engineers Inc
3250 Blazer Parkway
Lexington, KY 40509

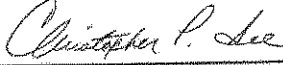
COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY						
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	S1853822	08/01/11	08/07/12	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000
A	<input checked="" type="checkbox"/> Bikt Addtl Insd		S1853822	08/01/11	08/07/12	PERSONAL & ADV INJURY \$ 1,000,000
A	<input checked="" type="checkbox"/> Ohio Stop Gap		S1853822	08/01/11	08/07/12	GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000 Emp Ben. \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						
AUTOMOBILE LIABILITY						
A	<input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS	X	S1853822	08/01/11	08/07/12	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$
A	<input checked="" type="checkbox"/> HIRED AUTOS		S1853822	08/01/11	08/07/12	PROPERTY DAMAGE (Per accident) \$
A	<input checked="" type="checkbox"/> NON-OWNED AUTOS		S1853822	08/01/11	08/07/12	\$
A	<input checked="" type="checkbox"/> Bikt Addtl Insd		CA7735 FORM			\$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE		S1853822	08/01/11	08/07/12	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ \$
DEDUCTIBLE \$						
<input checked="" type="checkbox"/> RETENTION \$ 0						
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						
C	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A	08/07/11	08/07/12	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000
B	If yes, describe under DESCRIPTION OF OPERATIONS below		WC296690 (IN) 19610622 (KY, TN)	08/07/11	08/07/12	E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Equipment Floater		S1853822	08/01/11	08/07/12	\$500 ded 88,000
D	Prof Liab		AEH006092226	08/07/11	08/07/12	Max/item 10,000

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

RE: Loudon Avenue Sidewalk
Certificate holder is listed as additional insured with respects to General Liability and Automobile Liability
Professional Liability \$2,000,000 per claim/\$2,000,000 aggregate with \$25,000 deductible

CERTIFICATE HOLDER Lexington Fayette Urban County Government 200 East Main St Lexington, KY 40507	CANCELLATION 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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