

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of October 26, 2017 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (OWNER) and CDP Engineers, Inc. (CONSULTANT). OWNER intends to proceed with the South Elkhorn Trail as described in the attached "Scope of Services" document (Exhibit A). The services are to include surveying, preliminary and final design, and preparation of complete plans and specifications for the South Elkhorn Trail. 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 services by CONSULTANT and the payment for those services by OWNER as set forth below.

CONSULTANT shall provide professional consulting services for OWNER in all phases of the Project to which this Agreement applies, serve as OWNER'S professional engineering representative for the Project as set forth below and shall give professional consultation and advice to OWNER during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF CONSULTANT

1.1. General

CONSULTANT shall perform professional services as hereinafter stated that include customary civil, geotechnical, structural, and traffic engineering services; and customary surveying services incidental thereto.

1.2. Data Collection and Preliminary Design Phase

After written authorization to proceed with the Data Collection and Preliminary Design Phase, 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. Meet with OWNER to discuss the project requirements and proposed Scope of Work, and to conduct a project site visit.
- 1.2.3. On the basis of the "Scope of Services", review available GIS, mapping, PVA and related documents; conduct field and boundary surveys; and prepare a Preliminary Design Technical Memorandum. The latter shall include preliminary plans and a preliminary opinion of construction costs, accompanied by separate cost opinions for utility relocation and total right-of-way/easement acquisition.
- 1.2.4. Furnish up to five (5) copies (total TBD) 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.

- 1.2.6. Furnish one (1) copy of the above preliminary drawings to the Kentucky Transportation Cabinet.

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 preliminary opinion of construction cost, prepare final drawings and specifications consistent with the "Scope of Services", 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 opinion of construction cost resulting from changes in the project extent and/or design requirements, or in changes to unit costs. Furnish a revised opinion of construction 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 up to five (5) copies (total TBD) 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 (1) copy of the Final Drawings to each of the local utility companies.
- 1.3.7. Furnish one (1) copy of the Final Drawings to the Kentucky Transportation Cabinet.

1.4. Easement and Right-of-Way Acquisition

After written authorization to proceed with Easement and Right-of-Way Acquisition, **CONSULTANT** shall:

- 1.4.1. Prepare plats and legal descriptions as required for acquisition of right-of-way consistent with the "Scope of Services".
- 1.4.2. Prepare exhibits and legal descriptions as required for acquisition of temporary and permanent easements consistent with the "Scope of Services".
- 1.4.3. Set corner pins (or offsets) as necessary to define the physical limits of all properties which must be acquired in fee simple consistent with the "Scope of Services".

Note: Negotiations with property owners for acquisitions of easements and right-of-way will be performed by LFUCG personnel.

1.5. Bidding or Negotiating Phase

The Bidding or Negotiation Phase shall be performed solely by the **OWNER**. However, during Bidding, the **CONSULTANT** shall be available to address any questions that arise concerning the accuracy or intent of his work.

1.6. Construction Phase

The Construction Phase shall be performed solely by the **OWNER**. However, during Construction, the **CONSULTANT** shall be available to address any questions that arise concerning the accuracy or intent of his work.

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 "Scope of Services, Additional Requirements, Part 1, Schedule and Completion" (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

5.1.1 For Basic Services.

OWNER shall pay **CONSULTANT** for Basic Services rendered a fee not exceeding **fifty thousand, one hundred, ten dollars, and zero cents (\$50,110.00)**.

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 sub-**CONSULTANTS**, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including sub-**CONSULTANTS**, and shall save and hold **OWNER** harmless therefrom.
- 6.3.3. The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes.

6.4. Successors and Assigns.

- 6.4.1. **CONSULTANT** binds himself 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. Risk Management Provisions, Insurance and Indemnification

6.9.1. Definitions

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

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

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors 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.

6.9.2. 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.

6.9.3. 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.

6.9.4. Insurance Requirements

6.9.4.1 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
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. Policy shall be obtained unless it is deemed not to apply by **OWNER**.
- b. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the contract, 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**, unless **OWNER** waives requirement.
- c. **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.
- d. Said coverage shall be written by insurers acceptable to **OWNER** and shall be in a form acceptable to **OWNER**. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

6.9.4.2. 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.

6.9.4.3. Deductibles and Self-Insured Programs

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of **CONSULTANT'S** financial capacity to respond to claims. Any such programs or retentions must provide **OWNER** with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If **CONSULTANT** satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, **CONSULTANT** agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the 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.

6.9.4.4. Verification of Coverage

CONSULTANT agrees to furnish **OWNER** with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide **OWNER** copies of all insurance policies, including all endorsements.

6.9.4.5. Right to Review, Audit and Inspect

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

6.9.5 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.

6.9.6 Default

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that **OWNER** may elect at 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 the work.

6.10 Resident Services During Construction.

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

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

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

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

7.2 The **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

SECTION 8 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

8.1. This Agreement is subject to the following provisions.

8.1.1. Limits of Liability, as described in Section 6.9.2., shall be \$4,000,000.00.

8.1.2. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Brian Hayes, PE, Municipal Engineer Sr., of the Division of Engineering, (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports and all matters associated with carrying out this Agreement shall be addressed to the **OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance

under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.

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

8.2.1 Exhibit A "Scope of Services", consisting of five (5) pages, plus a one (1) page map attachment.

8.2.2 Exhibit B Fee proposal consisting of one (1) pages.

8.2.3 Exhibit C "Certificate of Insurance" consisting of one (1) page.

8.3. This Agreement (consisting of pages 1 to 13 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.

8.3. NO THIRD PARTY RIGHTS. This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.

8.4 UNENFORCEABLE TERMS/SURVIVABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.

8.5. NON-WAIVER. The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

[INTENTIONALLY LEFT BLANK - SIGNATURE PAGE TO FOLLOW]

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

OWNER:


CONSULTANT:

**LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT
200 East Main St.
Lexington, KY 40507**

**CDP ENGINEERS, INC.
3250 Blazer Parkway
Lexington, KY 40509**

BY: 
JIM GRAY, MAYOR

BY: 
LEWIS DIXON, EXEC VICE PRESIDENT

ATTEST:

URBAN COUNTY COUNCIL CLERK
COMMONWEALTH OF KENTUCKY
COUNTY OF FAYETTE

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Lewis Dixon, as the duly authorized representative for and on behalf of CDP Engineers, Inc. on this the 20th day of September, 2017.

My commission expires: February 22, 2018.


NOTARY PUBLIC ID #: 505352
State at Large

Scope of Engineering Services South Elkhorn Trail

This Scope of Engineering Services provides a minimum set of guidelines, tasks, and activities for professional engineering and registered land surveying services (Consultant), to prepare a design for the third section of South Elkhorn Trail. The constructed trail will connect to the Shillito Park Trail. The Scope of Services includes topographic and boundary surveys, preliminary and final design, preparation of easement and right-of-way drawings, preparation of construction bid documents; and associated funding, permitting and regulatory paperwork.

The design project will be overseen by the Lexington-Fayette Urban County Government, Division of Engineering (DOE). The project is primarily funded through a Transportation Alternatives Program (TAP) grant, administered through the Kentucky Transportation Cabinet Office of Local Programs (KYTC OLP).

Background

This portion of the South Elkhorn Trail presents a variety of impediments to all modes of transportation. An existing, unendorsed, dirt path across public right-of-way and private property has been long established by its users – mainly pedestrians and bicyclists. Also known as South Elkhorn Trail, Section 3 by previous works; this project will connect South Elkhorn Trail, Section 1 to Shillito Park Trail.

This project, South Elkhorn Trail is described as 1,700 feet of multi-use trail from Lochdale Terrace under Man O' War Blvd to a Shillito Park parking lot. This section will be constructed pursuant to an agreement with Norfolk Southern. A substantial portion of the project is within the right-of-way of the railroad.

The project general affects and adjoins five properties. Right of way and/or easement acquisition requirements will be determined through the design process.

Previous preliminary land survey and design efforts were undertaken in 2010 thru 2011. Much of this information is still relevant and deemed useful. The Consultant responsible for this scope of service application will be able to utilize the previous work. The Consultant will also be responsible to verify and update any of the previous work that is to remain an integral part of design solution in this scope of service.

Scope of Services

1. Project Initiation and Review of Existing Information

- 1.1. Meet with LFUCG staff (DOE and Traffic Engineering) to discuss the project requirements and proposed Scope of Work. The meeting shall include project site visits with the DOE.

- 1.2. Review all project related information as provided by DOE. Obtain available LFUCG GIS data for the area, mapping including parcel lines, aerial photography, and existing infrastructure.

2. Field Surveys and Preliminary Design

- 2.1. Conduct field surveys with appropriate referencing to locate topographic features not shown on existing mapping. Confirm critical locations and elevations necessary for design including but not limited to existing roadway, sidewalk edges, retaining walls, sanitary and storm sewer features, and other utilities.
- 2.2. Research all deeds, plats and other property records to identify property lines, right-of-ways and easements. Verify and update said records as noted on previous design work.
- 2.3. Perform boundary surveys and set corner pins (or offsets) as necessary to define the physical limits of properties from which right of way must be purchased (if necessary).
- 2.4. Update a topographic survey of the project area.
- 2.5. Review and revise the preliminary trail way plans. Plans shall include information on lane width, entrance limits, crossings and extents of construction. Trail way plan shall also consider the existing drainage, existing property lines, existing utilities/utility conflicts, and/or other features or improvements that may impact construction costs.
- 2.6. Prepare a Preliminary Design Technical Memorandum documenting the following for each Project:
 - Confirm trail alignment proposed in preliminary plan or offer revised trail way plan;
 - Identification of all utility conflicts and proposed solutions;
 - List of impacted properties and property owners;
 - List of required easements and any right-of-way taking and encroachment (Determination of existing land rights shall be limited to recorded easements and right-of-way. For these purposes, prescriptive easements will be ignored.);
 - Investigate design options for areas that may be less safe, e.g. retaining wall;
 - List of required permits, and agreements with respective agencies from which the permit(s) will be secured;
 - List of agencies that will require notifications and/or approvals; and
 - Preliminary Opinion of Construction Costs.

- 2.7. Meet with the DOE to review the Preliminary Design Technical Memorandum. Consultant shall be responsible for meeting agendas, handouts, and meeting summaries.

3. Final Design

Note: Task 3: Detailed (final) Design shall not begin until written authorization is received from DOE.

- 3.1 Prepare Contract Drawings. At a minimum, the drawings shall include the following sheets:
 - Cover sheet with location map, sheet index, etc;
 - Plans scaled to 1" = 20'. Plans shall show all finalized features and detailed information as required for the preliminary plan;
 - Cross sections every 50 ft., and any details such as driveway entrances or other critical points;
 - Detail sheets, as required to fully convey the intent of the project and how to construct it; and
 - A General Summary Sheet, consistent with the LFUCG, DOE 2016 Unit Price Contract list.
- 3.2 Submit drawings to LFUCG DOE and KYTC OLP for review and comment, and revise drawings accordingly.
- 3.3 Correspond and meet with all impacted utility companies and regulatory agencies as required for this project. The Consultant may attend bi-monthly LFUCG Utility Coordination meetings as deemed useful.
- 3.4 Prepare an Engineers Estimate (EE) for each Project.
- 3.5 Prepare paperwork necessary for TIP funding, including LDA Design Review Checklist (LDRC), Project Development Checklist (PDC), Utility and Rail Note, Traffic Management Plan, etc.
- 3.6 Prepare a Bid Proposal. Note: LFUCG will furnish the front-end contract documents and their standard technical specifications. Consultant will need to prepare specifications for any special materials if used for this project.
- 3.7 Coordinate with the KYTC OLP to provide supporting data for the Environmental Review. OLP will take the lead on the Environmental. Note: Prior Clearinghouse letters from KYTC have been issued in the past for this project. Consultant is responsible to review and obtain current letters.

- 3.8 Prepare, submit applications, including public notices, and secure all required permits including but not limited to those listed in the Preliminary Design Technical Memorandum, or identified above.

Note: Contractor selection and construction administration will be performed solely by LFUCG. However, at any time during construction, the Consultant shall be available to address any questions that arise concerning the accuracy or intent of his work. Time to address potential questions should be incorporated into the final design fee.

4. Easement and Right-of-Way Acquisition

- 4.1. Consultant shall prepare a detailed plat for any required right-of-way acquisitions, and a metes and bounds description any required easements.
- 4.2. Consultant shall prepare all paperwork necessary for easement acquisition and right-of-way encroachment and/or taking, except for correspondence to affected property owners.

Notes: LFUCG will take the lead on contact with affected property owners.

At a minimum, Consultant shall comply with all criteria and standards as set forth in 201 KAR 18:150, *Standards of Practice*.

LFUCG will conduct negotiations with property owners for easements and right-of-way, and will bear any associated costs, including appraisals.

Additional Requirements

1. Schedule and Completion

The contract time to complete Tasks 1-2, is 60 calendar days from the date of the Notice to Proceed.

The contract time to complete Tasks 3-4, is 60 calendar days from acceptance of the Preliminary Design.

Within the Price Proposal, the Consultant shall provide a schedule showing milestones, deliverables and the number of calendar days into the contract period that each milestone occurs.

2. Deliverables

- Five (5) copies of the Preliminary Design Technical Memorandum.
- Five (5) full-size sets of final plans.
- Two (2) reduced-size (11 x 17) sets of final plans.
- CD or flash drive with:
 - Bid-Set Plans in AutoCad (.dwg) format
 - Bid-Set Plans (stamped and signed) in Acrobat (.pdf) format
- Easement plats and descriptions.
- Right-of-way plats, descriptions and related paperwork for ROW taking and/or encroachment.

3. General Notes

- Drawings shall be prepared in AutoCad format and according to LFUCG standards.
- Consultant is not responsible for:
 - Pavement design. LFUCG will provide pavement section detail(s) to be incorporated into the plans as needed.
 - Traffic and pedestrian signal design. LFUCG will provide details to be incorporated into the plans as needed.
 - Historical/Cultural Resources studies and Biological Resources studies, as required for the Environmental.

Attachments:

- Plan View of Project Area – South Elkhorn Trail Aerial Map

Fee Proposal

South Elkhorn Trail

Lump Sum Fee Components

Task No. 1 — Project Initiation and Review of Existing Information	\$ <u>3,540</u>
Task No. 2 — Field Surveys and Preliminary Design	\$ <u>19,820</u>
Task No. 3 — Final Design	\$ <u>22,800</u>
Task No. 4 — Easement and/or Right-of-Way Encroachment/Acquisition (Assume 3 Parcels)	\$ <u>3,950</u>
Total (Basis of Contact Award)	\$ <u>50,110</u>

Signed: 

Firm Name: SDP ENGINEERS.

Date: 07/26/17



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
09/10/2017

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 have ADDITIONAL INSURED provisions or 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 Lexington / AssuredPartners NL 2443 Sir Barton Way, Suite 400 Lexington, KY 40509	CONTACT NAME: Ashley Hacker PHONE (A/C, No, Ext): (859) 685-6520 6520 FAX (A/C, No): E-MAIL ADDRESS: ashley.whattenbarger@assuredptrnl.com
INSURED CDP Engineers Inc./Mapsync 3250 Blazer Parkway Lexington, KY 40509	INSURER(S) AFFORDING COVERAGE INSURER A: Selective Casualty Insurance NAIC # 14376 INSURER B: Bridgefield Casualty Insurance Co 10335 INSURER C: Hanover Insurance Company 22292 INSURER D: INSURER E: INSURER F:

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:
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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 INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A X	COMMERCIAL GENERAL LIABILITY CLAIMS-MADE X OCCUR			S185382208	08/07/2017	08/07/2018	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PRO-JECT X LOC OTHER							
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY SCHEDULED AUTOS HIRED AUTOS ONLY NON-OWNED AUTOS ONLY			S185382208	08/07/2017	08/07/2018	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A X	UMBRELLA LIAB X OCCUR EXCESS LIAB CLAIMS-MADE DED X RETENTION \$ 0			S185382208	08/07/2017	08/07/2018	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	19610622	08/07/2017	08/07/2018	X PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Professional Liabili			LHWA050893	08/07/2017	08/07/2018	\$25,000 Deductible 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Blanket Additional Insured status applies with respects to General Liability when required by written contract Excluding Architects, Engineers, or Surveyors.
Transfer of Rights of Recovery-Waiver of Subrogation applies to General Liability per form BP7194 & Auto Liability per form CA7735

Re: LFUCG - South Elkhorn Trail

LFUCG is listed as additional insured with respects to General Liability and Auto Liability when required by written contract.

CERTIFICATE HOLDER

Lexington-Fayette Urban County Government
200 E Main St.
Attn: Mark Feibes
Lexington, KY

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