

## **ENGINEERING SERVICES AGREEMENT**

**THIS IS AN AGREEMENT** made as of \_\_\_\_\_, 2015 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and **CDP Engineers, Inc.** (**CONSULTANT**). **OWNER** intends to proceed with the **Clays Mill Road Improvement Project – Phase 1** 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 **Clays Mill Road Public Improvement Project, Section 1 (from Harrodsburg Road to Waco 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 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.** On the basis of the “Scope of Services”, perform hydraulic/hydrologic modeling and prepare a Conditional Letter of Map Revision (CLOMR) for the Wolf Run Creek culvert replacement near Southbend Drive.

- 1.2.5. 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.
- 1.2.6. Furnish one copy of the above preliminary drawings to each of the local utility companies.
- 1.2.7. 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 ten (10) 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.

Note: Negotiations with property owners for acquisitions of easements and right-of-way will be performed under a separate contract.

### **1.5. Bidding or Negotiating Phase**

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

- 1.5.1.** Assist **OWNER** in obtaining bids for construction, materials, equipment and services, consistent with the "Scope of Services". This shall include furnishing bid documents to a private planroom/printing service.
- 1.5.2.** 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.
- 1.5.3.** 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.
- 1.5.4.** Assist **OWNER** in evaluating bids or proposals.

### **1.6. Construction Phase**

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

- 1.6.1.** Consult with and advise **OWNER** as requested.
- 1.6.2.** 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.
- 1.6.3.** 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).
- 1.6.4.** 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, Part 13, 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 **Five hundred twenty six thousand, four hundred eighty two dollars and zero cents (\$ 526,482.00)**.

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

**6.5. Disputes.**

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

diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

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

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

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

**6.7. Security Clause.**

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

**6.8. Access to Records.**

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

**6.9. 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 \$1,000,000.00.
- 8.1.2.** Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Mark Feibes, 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 seven (7) pages.
  - 8.2.2 Exhibit B TC 40-2 Fee Proposal Summary Sheets, based on Negotiated Production Hour Worksheets consisting of three (3) pages.
  - 8.2.3 Exhibit C "Certificate of Insurance" consisting of one (1) page.
- 8.3. This Agreement (consisting of pages 1 to 14 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.

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  
LEWIS DIXON, PRINCIPAL

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, on this the 28<sup>th</sup> day of July, 2015.

My commission expires: 11/4/2015.

ID# 454453

Margaret A. Clark  
NOTARY PUBLIC

**EXHIBIT A**

**SCOPE OF SERVICES**

## **Exhibit A**

### **Scope of Services Design and Surveying Services Clays Mill Road Improvement Project – Section 1**

#### **General**

The *Clays Mill Road Improvement Project, Section 1* project entails roadway reconstruction of Clays Mill Road from Harrodsburg Road to Waco Road. The Scope of Services includes topographic and cadastral surveying; preparation of preliminary and final design drawings, bid documents, easement descriptions and right-of-way drawings; and preparation of a CLOMR/LOMR package and completion of paperwork associated with LPA projects.

#### **Scope of Services**

##### **1. Pre-Design Conference and Review of Existing Information**

- 1.1. Meet with Lexington-Fayette Urban County Government (LFUCG) Division of Engineering (DOE) staff to discuss the project requirements and proposed Scope of Work. The meeting shall include a project site visit.
- 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. The most recent aerial photography for the project area licensed by LFUCG will be made available to the Consultant.

##### **2. Field Survey and Related Research**

- 2.1. The Consultant shall perform sufficient field survey to be confident in his design. Sufficient field survey should be done to confirm, at a minimum:
  - a) Topography;
  - b) Existing sidewalks, edge of roadway, entrances, turn lane configurations, etc.
  - c) Storm and sanitary sewers, and related structures (horizontal and vertical);
  - d) Location of overhead and underground utilities, including pole ownership information;
  - e) Significant site improvements, such as fences, retaining walls, flag poles, yard lights, etc.;
  - f) Location and identification of significant trees and vegetation;
  - g) Cross sections taken at 50-foot intervals, at driveways, steps, retaining walls and as otherwise needed;



- h) Location of existing corner monuments and R/W markers;
- i) Temporary benchmarks for use during construction, set outside of construction limits;
- j) Location of all existing easements in the project area; and
- k) Staking associated with easement acquisition and establishing street centerline prior to bidding for construction.

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, 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.

- 2.2. Research all deeds, plats and other property records to identify property lines, right-of-ways and easements.
- 2.3. Perform boundary surveys and set corner pins (or offsets) as necessary to define the physical limits of properties for which fee simple purchase for right-of-way must be acquired.

### **3. Preliminary Design**

- 3.1. Develop an updated set of Preliminary Plans. At a minimum the plans shall include, but are not limited to the following items:
  - a) Roadway plan and profile depicting existing and proposed conditions (all features identified in the survey shall be shown on the plans);
  - b) Existing and proposed topography;
  - c) Typical roadway sections depicting existing and proposed conditions;
  - d) Alignments and grades for approach roads and turn lanes;
  - e) Proposed limits of disturbance;
  - f) Location of property lines with all owners/lessees and street addresses shown;
  - g) Existing and proposed right-of-way lines and easements;
  - h) Sanitary and storm sewer plan and profile (existing and proposed);
  - i) Stream sections, situation survey and necessary channel changes; culvert sizing and inlet/outlet design;
  - j) An Erosion and Sediment Control Plan;
  - k) Quantities Table (to be consistent with the bid schedule);
  - l) A Traffic Management Plan, Management of Traffic Plan consistent with KYTC guidelines; and
  - m) A plan for lighting, signalization, signage and striping.

Preliminary Plans shall be so identified. The Consultant shall deliver two paper copies to the DOE and one paper copy to each utility company.

- 3.2. Prepare a Conditional Letter of Map Revision (CLOMR) for the culvert replacement near Southbend Drive. This will include hydraulic/hydrologic modeling of Wolf Run Creek between Harrodsburg Road and Lafayette Parkway. Where results of the modeling indicate property owner notifications are in order, the Consultant shall provide the notifications. Upon completion of the road reconstruction project, the Consultant shall also file all documents required to secure a Letter of Map Revision (LOMR). Under this section, it is LFUCG's intent that the Consultant provide every item of work required to obtain the Revision.

Notwithstanding the CLOMR/LOMR described above, consideration of avoidance and minimization of effects on blue-line streams shall be in accordance with Section 401 and 404 of the Clean Water Act. The Consultant shall be responsible for obtaining all flood studies and other pertinent drainage information to be utilized in the design, as well as any permits required from various federal, state or local agencies.

- 3.3. Prepare a Preliminary Design Technical Memorandum documenting the following:
  - a) Preliminary Plans;
  - b) Identification of all known utility conflicts and proposed solutions;
  - c) List of impacted properties and property owners;
  - d) List of required easements and road right-of-way taking and apparent encroachments (Determination of land rights shall be limited to recorded easements and right-of-way; prescriptive easements will not be considered.);
  - e) List of required permits and respective agencies from which the permit(s) will be secured;
  - f) List of agencies that will require notifications and/or approvals;
  - g) hydraulic/hydrologic modeling of Wolf Run Creek; and
  - h) Preliminary Opinion of Construction Costs.
- 3.3. Meet with the DOE to review the Preliminary Design Technical Memorandum. Consultant shall be responsible for meeting agendas, handouts, and meeting summaries.

#### **4. Final Plans, Specifications, and Bid Documents**

- 4.1 Upon completion of the Preliminary Plans, the Consultant shall incorporate all significant comments into a revised (Final) plan set and submit three paper copies to the LFUCG DOE.

Final Plans shall build upon the completed and approved information in the Preliminary Plans. In addition to the components of the Preliminary Plans, Final Plans shall also include but not be limited to:

- a) Cross sections at 50-foot stationing, all driveways, all step locations, and all retaining walls. Cross sections shall generally extend 30 feet from proposed curb face or to the front of the house, whichever is closer; however, longer coverage may be needed in some locations;
- b) Culvert Situation plans and profiles as needed;
- c) Right-of-Way strip maps and summary sheets;
- d) Coordinate Control Plan;
- e) Site-specific Detail Sheets as needed; and
- f) Landscaping Plan

## 5. Design Criteria

### 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:

- |                          |   |
|--------------------------|---|
| a. Plan Sheets           | 1" = 20'                                |
| b. Profile sheets        | 1" = 20' horizontal<br>1" = 2' vertical |
| c. Cross sections sheets | 1" = 5' horizontal<br>1" = 5' vertical  |

Note: Combined Plan/Profile sheets are preferred.

All designs and plans must be approved by the LFUCG DOE. The following shall apply:

- a. Drawing files shall be prepared using or shall be converted to AutoCAD and will be transmitted to the Urban County Government upon request. The formatting specifics shall be determined during the contract negotiation process.
- b. The November, 2002 *Clays Mill Scoping Study* and the *Clays Mill Road Improvements Section 1* plan set establish the basis of design for this project.
- c. Consultant will provide the pavement sections to be used on each street.
- d. Unless otherwise stated, design shall incorporate LFUCG 2008 Standard Drawings, and KYTC 2012 Standard Drawings in that order of preference.
- e. Intersection improvements are to be ADA compliant. Design shall comply with the AASHTO green book, the Manual of Uniform Traffic Control Devices and, to the extent practicable, the AASHTO Roadside Design Guide.

- f. Where storm and/or sanitary sewers are located within the right of way, profiles of these systems should be shown on the street profile sheets.
- g. The preparation of an Erosion and Sediment Control (ESC) 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 ESC Plan as developed through preliminary and final plans, as well as the SWPPP will be reviewed and approved by LFUCG DOE.
- h. Consultant shall prepare a Traffic Management Plan consistent with KYTC guidelines.

## **6. Detailed Cost Opinions**

The Consultant shall prepare a detailed opinion of probable construction cost at completion of the preliminary and final design stages of the project. Line items for construction costs shall be consistent with the Quantities Table in the drawing set and the Bid Schedule in the Form of Proposal. The construction cost opinion shall also be accompanied by separate cost opinions for utility relocation, and total right-of-way/easement acquisition.

## **7. Easement and Right-of-Way Acquisition**

Plats shall be prepared as required for acquisition of right-of-way, and they shall meet all requirements of the Lexington-Fayette Urban County Government Subdivision Regulations, Department of Law; the LFUCG DOE Digital Submission Policy; and the *KYTC Highway Design Manual*.

Permanent and temporary easements shall be drawn to sufficient scale to be clear and distinguishable, and such drawings shall be prepared to meet the requirements of the Lexington-Fayette Urban County Government Division of Engineering. A legal description will be required for each easement taking.

The Consultant shall set corner pins (or offsets) as necessary to define the physical limits of all properties which must be acquired in fee simple. Consultant shall provide a legal description for each right-of-way and easement taking.

The Consultant or an agent thereof, will conduct negotiations with property owners for acquisitions of easements and right-of-way. Rate of compensation per parcel for easements and fee simple acquisition negotiations will be negotiated between the consultant and the LFUCG, as will appraisal costs. Acquisition will involve approximately 180 parcels, 40 of which will require plats.

## **8. Environmental Assessment**

The original Level 2 CE for this project was reevaluated and approved on 11/17/14. Therefore, as directed by the KYTC, there shall be no time dedicated for environmental work in this Scope.

**9. Public Interface**

The Consultant shall attend public meetings, and other meetings with elected officials, affected residents, owners and businesses. If requested to do so, the Consultant will lead the meetings. The Consultant shall provide all necessary exhibits and prepare minutes of all meetings they attend.

**10. Utility Company Coordination**

There are numerous utilities in the project corridor. The Consultant will meet and coordinate with all affected utility companies as necessary, with the goal of minimizing disturbance to utilities and underground lines. Consultant shall obtain utility location data for purposes of mapping, and shall determine which parcel easements/acquisitions if any should be expedited to facilitate timely relocation of utilities.

On previous Clays Mill Road phases, the utility companies relocated and/or upgraded their facilities within the project area, *before* the LFUCG's contractor started. Thus, a timely start by the LFUCG contractor depends on a timely start by the affected utility companies, which in turn requires that plans with dependable design elements be furnished to them well in advance of construction contract bidding. *The Consultant should pay close attention to the dates shown for delivery of Preliminary Plans, as listed in the "Schedule and Completion" section.*

**11. Bid Phase**

The Consultant shall provide all bid documents to a private planroom/printing service (to be identified) for distribution to potential bidders. The Consultant shall be responsible for keeping a permanent record of all individuals or companies that purchase bid documents through the private printer.

The Consultant's scope shall include assisting with Bid Administration. At minimum, this includes responding to technical questions during the bid period, preparing addenda, reviewing and approving alternates, attending pre-bid meeting, attending bid opening, preparing and certifying a tabulation of bid prices, evaluating bids received, checking bidder references and submitting a recommendation of award.

**12. Construction Phase**

The Lexington-Fayette Urban County Government will provide construction inspection. However, the Consultant shall be available to advise in matters of intent during construction. The Consultant shall also conduct site visits as requested, and shall conduct

a final punchlist walkthrough and prepare related correspondence. The Consultant shall also review and approve shop drawings.

### 13. Schedule and Completion

The Consultant 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 the Consultant. Exact times of meetings shall be arranged by the Consultant; locations of meetings shall be at either the site of proposed improvements or at the DOE office, as deemed appropriate.

Meeting to review design intent	20 days
Submit preliminary plans; provide to utilities	180 days
Meeting to review preliminary plans/contact utilities	210 days
Submit revised preliminary plans	240 days
Hold public meeting	300 days
Submission of final plans	330 days
Meeting to review final plans	360 days
Submission of completed final plans	390 days
Preparation of ROW/easement plats and descriptions	450 days

### 14. Miscellaneous

All preliminary plans and accompanying documents are subject to review by the Lexington-Fayette Urban County Government Division of Engineering, Division of Water Quality and Division of Traffic Engineering. Documents shall also be subject to review by the Kentucky Department of Highways and the Federal Highway Administration. The Consultant shall be responsible for addressing comments from and requirements of these agencies into all documents.

The Consultant shall also be responsible for preparing paperwork and documents as required for Local Public Agency (LPA) Project funding.

Consultant shall attend periodic progress meetings with the Division of Engineering and/or Kentucky Department of Highways and must submit a written monthly status report detailing work in the past month, and anticipated work in the upcoming month. This report must be submitted in written format as well as in an electronic format acceptable by the DOE.

END OF SCOPE OF SERVICES

**EXHIBIT B**

**TC 40-2 FEE PROPOSAL SUMMARY SHEETS**

**TRANSPORTATION CABINET**  
**Division of Professional Services**  
**ENGINEERING AND RELATED SERVICES FEE PROPOSAL**

COUNTY Fayette DATE 7/27/2015  
 PROJECT Widen Clays Mill Road  
 UPN \_\_\_\_\_  
 FED. NO. \_\_\_\_\_  
 Item Number 7-224.10

FEE CONSIDERATIONS	Negotiated	Man Hours	Average Rate	Estimated Cost
Surveying		862	\$ 29.41	\$ 25,351
Preliminary Line & Grade		66	\$ 34.73	\$ 2,292
Utility Coordination		0	\$ 37.17	\$ -
Right of Way & Utiliyt Plans		1,051	\$ 34.91	\$ 36,690
Final Plans Preparation		1,281	\$ 33.78	\$ 43,272
Meetings		88	\$37.17	3,271
Public Involement		156	\$37.17	\$5,799
QA/QC		30	\$34.91	1,047
Bidding Phase Totals		40	\$37.17	1,487
Construction Phase Totals		222	\$37.17	8,252
<b>TOTALS</b>		<b>3,796</b>		<b>\$ 127,461</b>

LIST OF OTHER DIRECT COSTS

Mileage & Meals	\$605
<b>Total</b>	<b>\$605</b>

SUBCONSULTANTS

Integrated Engineering	\$85,061.00
H.W. Lochner/S&ME	\$75,958
	<b>\$161,019</b>

TOTAL DIRECT PAYROLL	\$ 127,461
OVERHEAD 1.4871%	\$ 189,574
PROFIT ( %)	\$ 47,555
SUBCONSULTANTS	\$ 161,019.00
OTHER DIRECT COSTS	\$605
FMC 0.21	\$268
<b>TOTAL PROPOSED FEE</b>	<b>\$ 526,482.00</b>
SHOP PLANS	

FIRM NAME CDP Engineers, Inc

SIGNATURE 

DATE July 27, 2015

TITLE Vice President



**KENTUCKY TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
CONSULTING ENGINEERING FEE PROPOSAL**

COUNTY :	<u>Fayette County</u>	DATE :	<u>7/14/2015</u>
PROJECT :	<u>Clays Mill Road Widening</u>	PROJECT TYPE :	<u>Widening</u>
UPN :	_____	CONSULTANT :	<u>Integrated Engineering, PLLC</u>
FED.NO :	_____	PREPARED BY :	<u>Harsha P. Wijesiri PE</u>
ITEM NO :	<u>7-224.2</u>		

FEE CONSIDERATIONS	PRODUCTION HOURS	AVERAGE RATE	LABOR
SURVEY TOTAL	72	\$ 34.62	\$2,492.64
PRELIMINARY LINE AND GRADE TOTAL	0	\$ 39.25	\$0.00
UTILITY COORDINATION TOTAL	94	\$ 42.96	\$4,038.24
RIGHT OF WAY PLANS TOTAL	0	\$ 42.96	\$0.00
FINAL PLANS TOTAL	422	\$ 42.96	\$18,129.12
MEETINGS TOTAL	68	\$ 56.87	\$3,867.16
PUBLIC INVOLVEMENT TOTAL	0	\$ 56.87	\$0.00
STRUCTURES TOTAL	0	\$ 38.26	\$0.00
		\$ -	\$0.00
<b>TOTALS :</b>	<b>656</b>		<b>\$28,527.16</b>


LIST OF OTHER DIRECT COSTS	TOTAL DIRECT PAYROLL	<u>\$28,527</u>
MILEAGE AND MEAL EXPENSES \$243	OVERHEAD 157.19%	<u>\$44,841</u>
LODGING EXPENSES \$0	PROFIT 15%	<u>\$11,005</u>
SURVEY TRAVEL TIME \$0	SUBCONSULTANTS	<u>\$0</u>
MISCELLANEOUS SURVEYING EXPENSES \$0	FACILITIES COST OF MONEY 0.51%	<u>\$145</u>
PRINTING EXPENSES \$300	OTHER DIRECT COST	<u>\$543</u>
<b>TOTAL = \$543</b>		

SUBCONSULTANTS

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**TOTAL PROPOSED FEE** \$85,061  
SHOP PLANS \$0

FIRM NAME: Integrated Engineering, PLLC

SIGNATURE 

DATE: 07/14/15

TITLE Harsha P. Wijesiri PE  
President



**EXHIBIT C**

**CERTIFICATE OF INSURANCE**

