LONG CREEK WATERSHED MANAGEMENT DISTRICT
Request for Proposals – Engineering Design Services

The Long Creek Watershed Management District (LCWMD) is seeking qualification statements, design and construction administration proposals, and fee schedules from qualified parties to provide engineering design and landscape architecture services under contract with the LCWMD.

Interested parties may obtain a Request for Proposals (RFP) from LCWMD at the website: www.restorelongcreek.org. There is a mandatory pre-bid site meeting on February 27, 2013 at 2:00 PM. Potential Proposers shall meet in the east corner of the Maine Mall parking field adjacent to Philbrook Avenue and the existing General Growth Properties’ detention basin.

Proposals must be received by the LCWMD c/o CCSWCD at 35 Main Street, Suite 3, Windham, ME 04062 on or before 2:00 PM on April 2, 2014. Proposals must be sealed and clearly marked: “Proposal for Engineering Design Services for the E-24 Maine Mall and Adjacent Subcatchments for the LCWMD.” Proposers must submit an original, two (2) copies and an electronic (PDF format) copy.

All comments/questions must be received by 5:00 PM on March 10, 2014 for inclusion. Addenda to the RFP will be issued, if necessary, on or before the end of business on March 14, 2014. The Addenda will be provided to all parties who attend the mandatory pre-bid. A list of who attended the pre-bid meeting will also be attached to the Addenda. Receipt of the Addenda (if issued) must be acknowledged in the first paragraph of the proposal statement narrative. Proposals not acknowledging receipt of the Addenda will not be accepted and will be returned.

Any late proposals will not be opened or accepted and will be returned to the Proposer.

The LCWMD Governing Board will base its selection on its evaluation of the Proposer’s experience, qualifications, fees, demonstrated ability to meet schedule and references as provided in Section 7 of this RFP. Emphasis should be on completeness and clarity of content. Scoring criteria are provided in Section 7.

The LCWMD will not be responsible for any expenses incurred by Proposers in preparing, submitting or presenting of the proposal.

The LCWMD reserves the right to waive any informalities in proposals, to accept or reject any or all proposals for any reason, to negotiate with any Proposer and to select a Proposer deemed to have submitted a proposal that in the judgment of the LCWMD Board is in the best interest of the LCWMD. Proposals may be held by the LCWMD for a period not to exceed sixty (60) days from the opening date for the purpose of reviewing and investigating the qualifications of the Proposers prior to the award of a contract.
SECTION 1 – LONG CREEK WATERSHED MANAGEMENT DISTRICT

The Long Creek Watershed Management District (LCWMD) is a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine. The LCWMD was formed to provide the structure for the cooperative implementation of the General Permit for Post Construction Discharge of Stormwater in Long Creek (General Permit), which includes implementation of the Long Creek Watershed Management Plan, the Monitoring Plan, and the Operation and Maintenance Plan. The General Permit implementation is overseen by LCWMD in cooperation with the Cumberland County Soil & Water Conservation District (CCSWCD) and the Maine Department of Environmental Protection (MDEP).

Long Creek is a freshwater stream that flows into Clark’s Pond, eventually draining into the Fore River and Casco Bay. The Long Creek Watershed is approximately 3.45 square miles and is located in Portland, South Portland, Westbrook and Scarborough. The stream currently does not meet State water quality standards due to elevated concentrations of metals, chloride, phosphorus, nitrogen, polycyclic aromatic hydrocarbons, and reduced dissolved oxygen concentrations. Additional issues include altered hydrological conditions and increased water temperatures.

Development over the past several decades has converted the landscape from mostly forests and fields to commercial, light industrial, retail and transportation uses. One of the primary results of this conversion process has been the creation of impervious cover (IC) such as roads, driveways, parking lots, sidewalks, rooftops and any other impermeable surfaces of the built environment. Due to the impacts of IC, EPA made a final determination on November 9, 2009 to designate stormwater discharges from impervious areas equal to or greater than one acre in the Long Creek Watershed as requiring stormwater discharge permits. Owners of property within the watershed that meet the permitting threshold have two permitting options for discharging stormwater into Long Creek – General Permit or individual permit. The General Permit involves the collaborative implementation of the Long Creek Watershed Management Plan (the “Management Plan”).

The Management Plan, as well as other supporting documentation, is available on the project website: www.restorelongcreek.org. Please be aware that the implementation of the Management Plan has been an on-going adaptive process. As such, in no way should proposed retrofits for this RFP be limited to those previously identified as Tier level retrofits for Catchment E-24.

SECTION 2 – BACKGROUND

The LCWMD desires to use the services of a qualified civil engineering firm working in cooperation with a landscape architect (either in-house or subcontracted), together, otherwise known as “Consultant”) to provide engineering design and landscape architectural services (the “Engineering Design Services”) to design structural retrofits for Catchment E-24 (the Maine Mall) and adjacent subcatchments (the “Project”). For the purposes of this RFP, the Project Area (Figure 1) includes the Maine Mall structure (including Sears and Macy’s stores), the outlying
satellite structures, the entire Maine Mall parking field, the building and parking located in the west corner of the Maine Mall area (Jared’s), and the existing General Growth Properties (GGP) detention basin.

The Project Area shown in Figure 1 is bounded by Maine Mall Road to the west, Gorham Road to the north, and Philbrook Avenue to the east and south, with the exception of Jared’s located in the west corner of the Project Area just outside the Philbrook Avenue border. The South Branch of Long Creek flows adjacent to, and parallel with, the south side of the Project Area (Philbrook Avenue), emanating from a Maine Mall Road cross culvert located adjacent to Jared’s. This approximately 2,000-foot section of the South Branch lies within roadside swales and culverts. Proposers should note the requested discussion of restoration opportunities related to this section of the South Branch as presented in Section 4 (3) Materials To Be Submitted.

The goals for this Project include, but are not limited to, the following:

1. Identify retrofit opportunities for the existing GGP detention basin in order to address primary water quality concerns (e.g. temperature, dissolved oxygen, nutrient levels, metal concentrations, and runoff volume).
2. Identify type and location for low impact development best management practices and tree island plantings around the Project Area that will address primary water quality concerns (e.g. temperature, dissolved oxygen, nutrient levels, metal concentrations, and runoff volume) by disconnecting and/or removing some impervious areas.
3. Utilize an urban forest assessment application such as i-Tree, or equivalent, to quantify ecosystem services and the benefit values of trees. Articulate the significance of trees in terms of pollution mitigation and stormwater runoff reduction.

The overall focus of this Project will be to integrate green infrastructure elements and stormwater best management practices (BMP’s) with parking, mall traffic, and commercial business needs. Also important to the Project work is the initiation of a tree program within the Project Area that will include substantially increasing the local tree canopy, setting canopy goals, and monitoring canopy changes over time.

Some existing drawings from GGP’s archives can be downloaded from the Long Creek website www.restorelongcreek.org. These plans are dated and may not (and in some cases do not) show conditions as they exist on the ground today.

Proposers should note that the LCWMD possesses the following GIS data for the entire Long Creek watershed that will be made available to the designer: 2-foot contours, 2-meter DEM data, and 2-meter hillshade data. The data were obtained from the Maine Office of GIS on February 14, 2013. The data files were derived from the LiDAR for the North East Project. The LiDAR was collected in the fall of 2010 and the fall of 2011 at a 2-meter or better nominal post spacing (2-meter GSD) while no snow was on the ground and rivers were at or below normal levels. The data were developed based on a horizontal projection/datum of UTM NAD83 (2007), UTM Zone 19, meters and vertical datum of NAVD1988 (GEOID09), meters. More information on these data are available from LCWMD upon request.
SECTION 3 - SCOPE OF SERVICES

The scope of the Engineering Design Services for the Project is broken down into the following six tasks:

Task 1 – Assemble Data Set for Completing Tasks 2 – 5.
The Consultant will coordinate with LCWMD staff, GGP/Sears/Macy’s (“Owners”), South Portland municipal officials, and utility companies in order to assemble a data set and prepare complete existing conditions drawings for the Project Area. This will include, but is not limited to, the following:

- Collect and review data relevant to the project including, but not limited to: (1) development plans available from City of South Portland and Owners’ archives, (2) border roadway plans and profiles, (3) utility company drawings identifying locations of underground utility lines, and (4) aerial photography.
- Notify Dig Safe at the beginning of the Project for utility identification, establishing the location of the utilities by GPS, and comparing them to the existing plans.
- Perform necessary field survey to confirm the current conditions of the GGP wet pond and ground truth existing record drawings for the Project Area in order to complete a set of existing condition drawings.
- Use available localized rainfall data generated at the National Weather Service Station KPWM (Portland International Jetport) and the LCWMD weather station located at the ecomaine facility on Scott Drive to develop a hydrological model (HydroCad or equivalent) for the subcatchments within the Project Area. Weather station data is currently compiled in a MS Access 2010 database and updated approximately monthly. Analysis should include identification of drainage patterns and calculation of runoff rates.

Task 2 – Identify GGP Detention Basin Retrofit Opportunities.
The Project Area is shown on Figure 1. A majority of the runoff from the Project Area currently drains to the GGP wet pond located in the eastern portion of the Project Area. The goal for this task is to identify retrofit opportunities for the existing GGP detention basin in order to address primary water quality concerns (e.g. temperature, dissolved oxygen, nutrient levels, metal concentrations and runoff volume). Ideas for wet pond retrofits should not be limited to those previously identified within the Management Plan, proposed by past consultants, or be limited by current MDEP Chapter 500 treatment requirements.

The GGP detention basin was retrofitted to a wet pond by the current owners. This work was performed in 2007 and included the installation of a gravel underdrain and new outlet control structure (see Figure 2). The LCWMD is now looking at taking this retrofit further to provide additional water quality treatment and storage.
The specific activities required to perform this Task should include, but are not limited to, the following:

- Delineate the existing drainage area within the Project Area that contributes runoff to the GGP wet pond.
- Perform a stormwater analysis for the Project Area to determine runoff peak flows.
- Confirm the current condition of the GGP wet pond and document that past retrofits were constructed as shown on Figure 2. Document conditions on an existing conditions drawing for the wet pond.
- Determine additional retrofit opportunities for the wet pond that provide increased water quality treatment and/or peak discharge control.

The results of this Task’s activities will help to form the basis for the Retrofit Feasibility Study, Preliminary & Final Design drawings, Project Specifications, and Basis of Design Report in Task 5.

Task 3 – Identify Maine Mall LID BMP Opportunities.

Within the Project Area, there are drainage subcatchments that do not currently drain to the existing wet pond and that do not receive any treatment or control. The goal for this task is to identify the type and location for low impact development (“LID”) best management practices (“BMPs”) and tree island plantings throughout the Project Area that will address water quality concerns and disconnect and/or remove some impervious areas. This may also include subcatchments that currently drain to the wet pond but may be better treated at a “local” site thereby disconnecting this impervious area from the overall wet pond drainage.

**LID BMP opportunities should not be limited to those previously identified within the Management Plan or proposed by past consultants, or be limited by current MDEP Chapter 500 treatment requirements.** A preliminary list of potential stormwater BMPs/green infrastructure improvements includes, but is not limited to, the following:

- Underdrained soil filters (bio-cells, rain gardens, and swales)
- Vegetated buffers
- Pervious pavement
- Parking space removal and/or re-stripping
- Green roofs
- Catch basin retrofits and inserts
- Stormwater planters and tree islands
- Other stormwater management practices

The specific activities required to perform this Task should include, but are not limited to, the following:

- Delineate the existing drainage area within the Project Area that does not currently contribute runoff to the GGP wet pond.
Perform a stormwater analysis for the Project Area to determine runoff peak flows (together with that developed for Task 2).

Determine LID BMP opportunities that provide increased water quality treatment and/or peak discharge control.

The results of this Task’s activities will help to form the basis for the Retrofit Feasibility Study, Preliminary & Final Design drawings, Project Specifications, and Basis of Design Report in Task 5.

Task 4 – Quantify Maine Mall Tree Planting Benefits.
LCWMD and the Owners have an interest in initiating a tree planting program in the Project Area to address the primary water quality concern of temperature. The goal of this Task will be to utilize an urban forest assessment application such as i-Tree, or equivalent, to quantify ecosystem services and the water quality benefits of adding trees by articulating the significance of pollution mitigation and stormwater runoff reduction.

The specific activities required to perform this Task should include, but are not limited to, the following:

- Perform an initial inventory of trees that currently exist within the Project Area.
- Identify areas where additional tree plantings can occur.
- Use existing and proposed inventory data to quantify the urban forest structure, environmental effects and values to the community.
- Use existing and proposed inventory data to put a dollar value on the Mall trees’ annual environmental and aesthetic benefits.
- Simulate the effects of changes in tree and impervious cover characteristics within the Project Area on stream flow and water quality.
- Prepare renderings using satellite-based imagery to present benefits of proposed tree plantings. Define tree canopy cover and use to set canopy goals and to monitor canopy change over time.

The results of this Task’s activities will help to form the basis for the Retrofit Feasibility Study, Preliminary & Final Design drawings, Project Specifications, and Basis of Design Report in Task 5.

Task 5 – Deliverables
The Consultant will develop a LID BMP Retrofit Feasibility Study, Preliminary and Final Designs, Basis of Design Report, renderings; engineering plans, Project Specifications, and cost estimates for the Project; as follows:

- Retrofit Feasibility Study. Integrate the work from Tasks 2 – 4 to prepare Project Area specific Retrofit Feasibility Study to include retrofit options for the GGP wet pond; LID BMP opportunities and identification of recommended LID BMP measures to construct; and, a discussion of proposed tree plantings that identifies locations, species, and number of proposed trees. The Retrofit Feasibility Study will be used as an initial tool to evaluate
potential retrofit opportunities within the Project Area. Provide the study in hard copy and electronic portable document format (PDF) to LCWMD based on the project timelines presented in the Project Schedule section of this RFP.

- Present Retrofit Feasibility Study to LCWMD and Owners, and Work with LCWMD and Owners to determine retrofit, LID, BMP, and tree planting options prior to development of 30-percent design drawings and construction cost estimate.
- Preliminary (30%) Design. Prepare 30-percent design drawings and construction cost estimate for review by LCWMD and Owners. Plans and renderings will be submitted at the 30-percent design phase for review. The 30-percent design submittal will have considered and resolved site development planning issues, Owner business needs, traffic and safety issues, and preliminary on-site utility issues. Submission will include a base map for the Project Area and results of any drainage analyses performed, preliminary sections and elevations, spatial layout of the recommended retrofits, and a preliminary cost estimate for construction and annual maintenance.
- Present Preliminary Design Drawings and construction cost estimate to LCWMD and Owners and work with LCWMD and Owners to review retrofit, LID, BMP and tree planting options in 30-percent design drawings and construction cost estimate.
- Final Design. Prepare 95-percent design drawings, project specifications, and construction cost estimates for LCWMD and Stakeholder review. Submit final draft plans and specifications (95-percent) to appropriate permitting agencies.
- Attend City of South Portland Planning Board meeting(s) and MDEP meeting(s) as required for site plan approvals and amendments as necessary. This activity will include preparation of presentations and handouts to facilitate presentation of the project elements.
- Incorporate review and permitting comments into Final Design Plans and Project Specifications (100%). The Final Design Plan set will include detailed design drawings and details for all proposed LID BMPs, stormwater infrastructure, and retrofits. Final design drawings will be required and must be submitted as hard copies and in the following electronic format: AutoCAD Civil 3D 2013, geospatial referenced geodatabase feature class compatible with ArcMap 10.1, and pdf. Final technical specifications will be prepared in accordance with MaineDOT technical specifications and the up-front (boiler plate) will be provided by LCWMD.
- Work with LCWMD legal representation to provide the plans and metes and bounds for the development of easements and to prepare Contract Documents to accompany the Final Design Plans and Project Specifications.
- Assist LCWMD with Contractor selection during bidding activities to include evaluation of bids and award of contract. Consultant will be required to provide up to fifteen packages of Bid Documents (Final Design Plans and Project Specifications plus Contract Documents).
- Prepare a Final Basis of Design Report to include all supporting calculations, results of all data collection, mapping, analysis and design.
Assumptions for Tasks 1 through 5
To complete Tasks 1 – 5 presented above it is expected that Consultant will complete the following specific tasks as part of the overall task scopes to include, but not limited to, the following:

- Attend up to ten meetings. This will include a kick-off meeting with Stakeholders and the LCWMD. Up to nine additional meetings are to be scheduled to discuss the Retrofit Feasibility Study and Preliminary and Final Design documents with Stakeholders, City of South Portland, MDEP, and the LCWMD. This task will include preparation of presentations and handouts as necessary to facilitate presentation of the project elements.
- Throughout the project duration, coordinate with LCWMD/CCSWCD staff to provide project updates and technical information suitable for distribution on the LCWMD’s website.
- LCWMD/CCSWCD staff will facilitate Owner contact.
- Consultant shall utilize the Landscape Architect as an integral part of the design team and the Landscape Architect will provide feedback on all aspects of the design process.

Task 6 – Construction Management
Provide construction support to include assistance with clarification during construction; evaluation of submittals, pay requisitions, and change orders; routine day-to-day construction management; coordination of the production of a public awareness campaign during construction; and, preparation of final “Record Drawings.” Perform on-site inspections at a frequency appropriate to document site work.

- Task 6.1 – Detention Basin Retrofit Construction Management
- Task 6.2 – Maine Mall LID BMP Construction Management
- Task 6.3 – Tree Planting Construction Management

SECTION 4 - MATERIALS TO BE SUBMITTED

Proposer shall submit the following materials as part of its proposal:

1. Affirmation of ability to sign the attached Engineering Design Services Agreement with LCWMD (Exhibit 1). Required insurance coverage and amounts as well as the required additional insureds are provided within the example Engineering Design Services Agreement attached.
2. Acknowledgement of receipt of the Addenda.
3. Maximum 500-word discussion on opportunities that the Consultant sees for restoration of the swale and culvert section of the South Branch adjacent to the Project Area.
4. Identification of who will conduct the engineering design and landscape architectural services to the LCWMD and include their qualifications.
5. Demonstration of the qualifications, competence and capacity of the Proposer and its team to carry out the services as specified. Most important are qualifications that demonstrate the ability to successfully integrate greenway development and stormwater management with parking and commercial business needs.
6. Description of the organizational structure of Proposer’s firm and its methods of working with subcontractors/subconsultants.

7. Names, addresses, and telephone numbers of representatives of three current or recent clients of multidiscipline projects (do not use LCWMD or CCSWCD) who are familiar with the work your firm has done. These clients will also serve as references for your firm.

8. Similar “Green” design projects and experience: Describe three current or most recent projects undertaken by your firm that demonstrate your ability to complete the work described in the Scope of Services above. Projects to include examples that demonstrate the successful integration of greenway development and stormwater management with parking and commercial business needs.

9. Include the involvement of the staff being proposed for this RFP.

10. Describe projects your firm has undertaken that were either directly or partially funded by either/both State and Federal funds.

11. Company Workload: Describe your current projects and their respective “end dates.” Explain how these identified projects will affect this contract in terms of workload and scheduling.

12. Describe your proposed method of coordinating the work with LCWMD/CCSWCD, Utility companies, GGP and the City of South Portland.

13. Biographies on key personnel and any pertinent training and certification received. Please provide information on their roles on the projects discussed in items 7 & 8.

14. Describe your proposed approach to complete the work described in the Scope of Services.

15. Evaluate your firm’s performance on projects listed for item #8 above, including:
   i. Ability to establish and maintain accurate project budget and to design to that budget.
   ii. Your firm’s quality of work as demonstrated by number of design-related change orders issued during construction.

The Proposer, by submitting a proposal, agrees: that it has carefully read and fully understands the information provided by LCWMD to serve as the basis for submission of its proposal to perform the Engineering Design Services; that it has the capability to successfully undertake and complete the responsibilities and obligations of the submitted proposal; that it has completed attached forms and are submitting same as part of its proposal; that the information contained within its proposal is true and correct to the best of its knowledge; that it did not, in any way, collude, conspire, or agree, either directly or indirectly, with any person, firm, corporation, or other proposer in regards to the amount, terms or conditions of its proposal; that by the submission of a proposal, it acknowledges that the LCWMD has its permission to make said inquiries; and that it shall provide LCWMD any and all requested documentation in a timely manner.
SECTION 5 – PROJECT SCHEDULE

Maine Mall Retrofit:

- Proposal Due: April 2, 2014
- Notice of Award: April, 2014
- Feasibility Study: May - July, 2014
- Design: July - December, 2014
- Bid/Award: January - February, 2015
- Construction: Spring, 2015

SECTION 6 - FEE SCHEDULE

The LCWMD will consider only time-and-materials proposals, which contain a not-to-exceed cost, as part of this RFP.

Please provide a separate fee schedule for the following:

- Task 1 – Assemble Data Set for Completing Tasks 2 - 5
- Task 2 – Identify GGP Detention Basin Retrofit Opportunities
- Task 3 – Identify Maine Mall LID BMP Opportunities
- Task 4 – Quantify Maine Mall Tree Planting Benefits
- Task 5 – Deliverables
- Task 6 – Construction Management
  - Task 6.1 – Detention Basin Retrofit Construction Management
  - Task 6.2 – Maine Mall LID BMP Construction Management
  - Task 6.3 – Tree Planting Construction Management

Fee Schedules must provide labor and expenses for all anticipated categories based on the Engineering Design Services summarized under the Scope of Services and in the format provided below using Microsoft Excel or compatible spreadsheet program. MS Excel file shall be provided to LCWMD electronically as part of the submittal. Fee Schedules not provided in this format, and not provided electronically, will not be considered.

Itemized bills including the date, description of service, person providing service, number of hours (to the ¼-hour), and the associated hourly rate will be required to be submitted as part of the invoices. The Proposal must include hourly rates through the Term of the Engineering Design Services Agreement for staff and equipment expected to be involved in the Project, as well as the not-to-exceed total cost for the Engineering Design Services. The Fee Schedule must include all costs that may be billed to LCWMD under the contract.

Expenses and materials used in Project design such as paper, mylar, telephone, printing, faxes, mileage, etc. must be billed at actual cost with no markup and must be supported with proper documentation prior to reimbursement.
**PRICING TABLE**  
(Please use this format, include all pertinent information, notes column optional)

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SECTION 7 - EVALUATION

LCWMD Board shall evaluate applications and weight the selection criteria as follows:

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The Proposer should be prepared to make the Project team available for an interview to be scheduled on April 8, 2014.

SECTION 8 - CONTRACT FOR SERVICES

The LCWMD will select a Proposer to perform the Engineering Design Services outlined in this RFP. Contract award is expected to occur in April of 2014. The selected Proposer will be required to sign the Engineering Design Services Agreement that is provided as Exhibit 1 to this RFP within ten days of notification of LCWMD’s acceptance of its proposal. This Engineering Design Services Agreement is non-negotiable. If the selected Proposer is unable to sign this Engineering Design Services Agreement as written it will be excluded and an alternate Proposer will be selected.

The following shall be included among the requirements of the Engineering Design Services Agreement:

- All data collected shall be treated as confidential material and shall be disclosed only to authorized LCWMD representatives;
- The Consultant shall not disclose or permit disclosure of any information or material furnished and/or generated under the contract without LCWMD’s prior written consent;
- All documents, data, plans, studies, estimates, summaries, and any other work or material developed under the contract shall be the property of LCWMD and shall be promptly delivered to the appropriate contact person upon the completion of a particular service/assignment or upon the request of LCWMD;
- All survey data collected in the process of completing a project shall be recorded in hardcopy, sewn-bound survey field books and in electronic data collection files. These field books and data files are to be delivered to LCWMD at the
completion of each project and become the property of LCWMD. All electronic data files shall be submitted to LCWMD in a format that is compatible with ArcGIS 10.1, AutoCAD Civil 3D 2013, and Microsoft Excel file systems. All data shall be accompanied by appropriate documentation that summarizes data collection techniques, methodology, dates, and other identifying information (metadata).

- All reports/design plans/models shall be provided in hard copy and electronic portable document format (PDF).
- All record drawings shall be provided in electronic format using AutoCAD Civil 3D 2013, geospatial referenced geodatabase feature class compatible with ArcMap 10.1, and pdf.

SECTION 9 - TERM OF AGREEMENT

The duration of the Engineering Design Services Agreement shall be for 24 months from the date of Board approval, unless sooner terminated (the “Term of the Engineering Design Services Agreement”).
Figure 1: Project Area
Figure 2: GGP Detention Basin OCS

GP BASIN PHASE 1A
(Scale: 1" = 20')
(Constructed as maintenance activity 10/08/07 – 10/15/07)

POND 4 - SCHEDULE A
OUTLET CONTROL STRUCTURE

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ENGINEERING DESIGN SERVICES AGREEMENT

THIS Engineering Design Services Agreement (the “Agreement”) is entered into this ___ day of __________, 2014, by and between ________________________, a sole proprietorship/partnership/corporation/limited liability company (choose one) duly organized and existing under the laws of the State of __________________________ whose mailing address is __________________________, __________________________ (the “Consultant”) and the Long Creek Watershed Management District, a quasi-municipal, special purpose district established as a separate legal entity and instrumentality and as a body corporate and politic under the laws of the State of Maine (“LCWMD”). The foregoing also are referred to herein collectively as the “Parties” or singly as “Party.”

WITNESSETH:

WHEREAS, LCWMD’s Request for Proposals for Engineering Design Services dated __________, 2014 and any Addendum or Addenda thereto (together, the “RFP,” a copy of which is attached hereto as Exhibit A and is hereby incorporated as part of this Agreement”) requests proposals for the Engineering Design Services (as defined below);

WHEREAS, Consultant has submitted a Proposal (the “Proposal,” a copy of which is attached hereto as Exhibit B and is hereby incorporated as part of this Agreement);

WHEREAS, LCWMD has determined that the Consultant has the requisite equipment, labor and knowledge to perform the Engineering Design Services needed by LCWMD; and

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions set forth herein made by each Party to the other, the Parties agree as follows:

1. CONSULTANT’S RESPONSIBILITIES.

1.1 In return for payment made as provided in Section 2 of this Agreement, Consultant shall furnish to LCWMD the Engineering Design Services as described in the RFP attached as Exhibit A to this Agreement and in Consultant’s Proposal attached as Exhibit B to this Agreement (together, the “Engineering Design Services”).

1.2 The Consultant shall perform the Engineering Design Services in accordance with all applicable federal, State and local statutes, laws, rules, regulations, ordinances, and orders which may in any way affect the provision of Engineering Design Services hereunder.

1.3 The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all analyses, reports, and other Engineering Design Services furnished by the Consultant under this Agreement. Within one year of completion of Services, the Consultant shall, without additional compensation, correct or revise any errors or deficiencies in its analysis, reports, and other Engineering Design Services. Deficiencies are defined as willful or negligent acts that distort or falsify the state of the art of the products and services developed and provided hereunder, or willful or negligent nonassignment of personnel or assignment of unqualified personnel to perform the duties hereunder.
1.4 Approval by LCWMD of analyses, reports, and other Engineering Design Services furnished hereunder shall not in any way relieve the Consultant of responsibility for the technical adequacy of the work. Neither LCWMD's review, approval or acceptance of, nor payment for, any of the Engineering Design Services shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Consultant shall remain liable in accordance with applicable law for all damages to LCWMD caused by the Consultant's negligent performance of any of the Engineering Design Services furnished under this Agreement.

1.5 The Consultant warrants:

A. That it will furnish all vehicles, materials, personnel and equipment, except as otherwise specified herein, and do everything necessary and proper to satisfactorily perform the Engineering Design Services required by this Agreement.

B. That it is financially solvent, is experienced in and competent to perform the Engineering Design Services and is able to furnish the appropriate vehicles, materials, personnel and equipment to be furnished by it.

C. That all Engineering Design Services to be performed under this Agreement shall be performed by personnel who are qualified and whose recommendations, guidance and performance reflect professional knowledge, judgment, and workmanship in accordance with the standards generally accepted and appropriate in the industry. All Engineering Design Services and deliverables shall be wholly original with Consultant and shall not infringe upon patent, copyright or other intellectual property rights of anyone else.

D. That it will provide the Engineering Design Services in a timely, competent and professional manner and in accordance with the highest generally accepted professional standards of care consistent with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services at the same time under similar conditions in the same or similar locality.

E. That it is familiar with all federal, State and local statutes, laws, rules, regulations, ordinances and orders which may in any way affect the Engineering Design Services.

F. That it has carefully examined the Request for Proposals and this Agreement and has conducted its own investigation of the nature and location of the Engineering Design Services, the character of equipment and personnel needed to perform the Engineering Design Services and all conditions which may in any way affect the performance of the Engineering Design Services.

G. That any increase in Consultant's costs during the term of this Agreement shall be the sole responsibility of the Consultant.

H. That all data collected shall be treated as confidential material and shall be disclosed only to authorized LCWMD representatives.

I. That the Consultant shall not disclose or permit disclosure of any information or material furnished and/or generated under the contract without LCWMD's prior written consent;
2. **TIME FOR PERFORMANCE OF ENGINEERING DESIGN SERVICES, COMPLETION; TERM OF AGREEMENT; PAYMENT.**

2.1 Time for Performance of Engineering Design Services, Completion. **Consultant** shall commence to perform Engineering Design Services hereunder on the date of execution of this Agreement by the Parties and, unless sooner terminated as provided in Section 3 of this Agreement, Consultant shall substantially complete the Engineering Design Services to the reasonable satisfaction of LCWMD on or by June 30, 2014. Due to the difficulty of calculating damages for late completion, Consultant shall pay to LCWMD liquidated damages in the amount of $100 per day for late completion after the date for substantial completion for delay in substantial completion not otherwise excused or permitted under this Agreement.

2.2 Term of Agreement for Engineering Design Services. The term of this Agreement for Engineering Design Services hereunder shall commence upon the date of execution of this Agreement by the Parties and, unless sooner terminated as provided in Section 3 of this Agreement, shall continue through June 30, 2014.

2.3 Payment.

A. LCWMD shall pay Consultant for the performance of Engineering Design Services under this Agreement on a time and materials basis at the rate of $______ (____ Dollars) per hour, with the total amount of such payments under this Agreement not to exceed the amount of $________ (____ ______ Dollars).

B. No later than the 10th day of each month, Consultant shall submit for LCWMD’s approval an invoice for payment for the Engineering Design Services satisfactorily performed by Consultant hereunder during the previous month, if any. LCWMD shall pay Consultant approved amounts within thirty (30) days of receipt of the invoice by LCWMD. Payments due and unpaid under this Agreement shall bear interest from the date payment is due at the maximum rate permitted under Maine law at the time of the delinquency for unpaid municipal taxes.

3. **TERMINATION.**

3.1 LCWMD may terminate this Agreement for cause or convenience.

A. Termination for cause. Without prejudice to any other right or remedy, LCWMD may terminate this Agreement for cause by providing Consultant with seven (7) days' written notice of termination. For purposes of this Agreement, cause includes, but is not limited to: the adjudication of Consultant as a bankrupt; the making of a general assignment by Consultant for the benefit of its creditors; the appointment of a receiver because of Consultant’s insolvency; Consultant’s persistent or repeated refusal or failure, except for cases in which extension of time is provided, to supply enough properly-skilled workers or proper materials to perform the Engineering Design Services; Consultant’s persistent disregard of federal, State or local statutes, laws, codes, rules, regulations, orders or ordinances; and Consultant’s substantial violation of any provisions or requirements of this Agreement. In the event of a termination for cause, LCWMD may take possession of all materials and finish the Engineering Design Services by whatever method it may deem expedient. In the event of a termination for cause, Consultant shall not be entitled to receive any further payment under this Agreement from the date of receipt of said written notice of termination. In such case the Consultant shall not be entitled to receive any further payment until the Engineering Design Services are finished. If the unpaid balance
of the Agreement price shall exceed the expense of finishing the Engineering Design Services, including compensation for additional managerial and administrative services, such excess shall be paid to the Consultant. If such expense shall exceed such unpaid balance, the Consultant shall pay the difference to the LCWMD.

B. Termination for convenience. Further, LCWMD may terminate this Agreement for convenience upon thirty (30) days' written notice of termination to Consultant, in which case LCWMD shall pay Consultant for all Engineering Design Services satisfactorily performed and materials purchased up to the date of receipt of such written notice of termination by Consultant. In the event that LCWMD terminates this Agreement for cause and it subsequently is determined that cause did not exist, such termination shall be deemed to be for convenience.

4. INSURANCE AND INDEMNIFICATION.

4.1 Insurance. Except as otherwise provided by this Agreement, Consultant shall obtain and maintain, throughout the term of this Agreement and for a period of at least two years following the completion of Engineering Design Services under this Agreement, at no expense to LCWMD or to the Long Creek Watershed Landowners who enter into an “Agreement Between Participating Landowner and the Long Creek Watershed Management District” (the “Participating Landowners,” who are listed in Exhibit C attached hereto and hereby incorporated into this Agreement), the following insurance coverages:

A. Commercial General Liability Insurance in the amount of not less than One Million Dollars ($1,000,000) per occurrence, and not less than Two Million Dollars ($2,000,000) aggregate, to protect the Consultant, any subcontractor performing Engineering Design Services under this Agreement, Participating Landowners and LCWMD and their respective directors, officers, managers, members, agents and employees from claims and damages that may arise out of, be caused by or result from the performance of Engineering Design Services under this Agreement, whether by Consultant, by a subcontractor or by anyone directly or indirectly employed by them to perform the Engineering Design Services, or by anyone for whose acts any of them may be liable.

B. Automobile Liability Insurance in the amount of not less than One Million Dollars ($1,000,000), combined single limit, to protect the Consultant, any subcontractor performing Engineering Design Services under this Agreement, Participating Landowners and LCWMD and their respective directors, officers, managers, members, agents and employees from claims and damages that may arise out of, be caused by or result from the performance of Engineering Design Services under this Agreement, whether by Consultant, by a subcontractor or by anyone directly or indirectly employed by them to perform the Auditing Services, or by anyone for whose acts any of them may be liable.

C. Workers' Compensation Insurance in amounts required by Maine law and Employer's Liability Insurance, as necessary, as required by Maine law.

D. Professional Liability Insurance in the amount of not less than Two Million Dollars ($2,000,000), per occurrence, to protect the Consultant, any subcontractor performing Engineering Design Services under this Agreement, Participating Landowners and LCWMD and their respective directors, officers, managers, members, agents and employees from claims and damages that may arise
out of, be caused by or result from negligent acts or omissions or intentional misconduct in the performance of Engineering Design Services under this Agreement, whether by Consultant, by a subcontractor, by anyone directly or indirectly employed by them to perform the Engineering Design Services, or by anyone for whose acts any of them may be liable.

E. All such insurance policies shall name Participating Landowners, LCWMD and their respective directors, officers, managers, members, agents and employees as additional insureds, except for workers' compensation insurance and Professional Liability Insurance. Consultant, prior to commencement of Engineering Design Services under this Agreement, shall deliver to LCWMD certificates satisfactory to LCWMD evidencing such insurance coverages, which certificates shall state that Consultant must provide written notice to LCWMD at least thirty (30) days prior to cancellation, non-renewal, material modification or expiration of any policies, evidenced by return receipt of United States Certified Mail. Replacement certificates shall be delivered to LCWMD prior to the effective date of cancellation, termination, material modification or expiration of any such insurance policy. Consultant shall not commence Engineering Design Services under this Agreement until it has obtained all insurance coverages required under this subparagraph and such insurance certificates have been approved by LCWMD. All such insurance policies shall have a retroactive date which is the earlier of the date of this Agreement between the Parties or Consultant’s commencement of Engineering Design Services hereunder.

4.2. Indemnification. Consultant agrees to defend, indemnify, and hold harmless Participating Landowners, LCWMD and their respective directors, officers, managers, members, agents and employees harmless from any claim(s), cause(s) of action, liability or expense, including, without limitation, costs and reasonable attorney’s fees, for personal injury (including death) and/or property damage caused by, related to, arising out of or resulting from negligent acts or omissions or intentional misconduct in the performance of Engineering Design Services under this Agreement by Consultant, its subcontractors, by anyone directly or indirectly employed by them to perform the Engineering Design Services, or by anyone for whose acts any of them may be liable. The foregoing indemnity expressly extends to claims of injury, death, or damage to employees of Consultant or of a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable. In claims against any person or entity indemnified under this Section by an employee of Consultant or subcontractor, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for Consultant or a subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts. Consultant expressly waives immunity under workers’ compensation laws for the purposes of this indemnity provision.

5. MISCELLANEOUS PROVISIONS.

5.1 Notices. All notices, demands or other communications made pursuant to this Agreement shall be in writing and shall be sent by (i) registered or certified United States mail, postage prepaid, (ii) by overnight courier, or (iii) by facsimile. Such notice shall be deemed effective upon delivery addressed as follows:

To CONSULTANT:
To LCWMD:

Long Creek Watershed Management District
c/o Cumberland County Soil & Water Conservation District
35 Main Street, Suite 3
Windham, Maine 04062
Attention: Tamara Lee Pinard, Executive Director

5.2 Entire Agreement, Modifications. This Agreement and the Exhibits A, B and C attached hereto and hereby incorporated constitute the entire agreement of the Parties, and neither Party shall be bound by any statement or representation not contained herein. This Agreement cannot be changed, amended or modified, except by another agreement in writing signed by all Parties hereto or by their respective successors in interest.

5.3 Headings. The paragraph headings contained herein are for convenience of reference only and are not intended to define, limit, or describe the scope or interest of any provisions of this Agreement.

5.4 Severability. If any section, term, covenant, or condition of this Agreement or the application thereto to any person or circumstances shall, to any extent be illegal, invalid or unenforceable because of judicial construction, the remaining sections, terms, covenants, and conditions of this Agreement, or the application of such section, term, covenant, or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each section, term, covenant, or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by Law.

5.5 Governing Law, Remedies. This Agreement shall be governed by and construed in accordance with the laws of the State of Maine. Except as otherwise agreed by the Parties in writing, all disputes, claims, counterclaims and other matters in question between LCWMD and Consultant arising out of or relating to this Agreement shall be decided by a Maine court of competent jurisdiction.

5.6 Compliance with Applicable Laws. The Consultant agrees that it and its subcontractors, if any, shall comply with all applicable federal, State and local statutes, laws, rules, regulations, codes, ordinances, orders and resolutions in the performance of Engineering Design Services under this Agreement.

5.7 Assignment. This Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably conditioned, delayed or withheld. This Agreement shall benefit and be binding upon the Parties hereto and their respective permitted successors and assigns.

5.8 Subcontracts. The Consultant shall not sublet any part of this Agreement without the prior written permission of LCWMD. The Consultant agrees that it is fully responsible to LCWMD for the acts and omissions of its subcontractors and of persons either or by anyone directly or indirectly employed by them to perform the Engineering Design Services, or by anyone for whose acts any of them may be liable, as it is for the acts and omissions of persons directly employed by it.
5.9 Force Majeure. Provided such party gives written notice to the other of such event, a party shall not be liable for its failure to perform its respective obligations under this Agreement, if prevented from so doing by any cause beyond the reasonable control of such party such as, but not limited to, strikes, lockouts, or failure of supply or inability by the exercise of reasonable diligence, to obtain supplies, parts, or employees necessary to perform such obligations, or because of war or other emergency. The time within which such obligations shall be performed shall be extended for a period of time equivalent to the delay from such cause.

5.10 Ownership of Documents. All drawings, notes, documents, plans, and specifications or other material to be developed under this Agreement shall become the property of LCWMD and be promptly delivered to LCWMD upon the completion of the Engineering Design Services under this Agreement or sooner upon LCWMD’s request or the termination of this Agreement. Consultant shall be responsible for the protection and/or replacement of any work or materials in its possession, including work or materials provided to the Consultant by the LCWMD. LCWMD agrees that it will not use the construction plans and specifications developed under this Agreement for any project other than the project specified herein without the written consent of the Consultant, which consent shall not be unreasonably withheld.

5.11 Use of LCWMD Data. Any and all data regarding the Long Creek Watershed that Consultant has gathered or received from LCWMD for review in the course of performing the Engineering Design Services is the property of LCWMD, and Consultant shall not use such data for any purpose, including but not limited to presentations, abstracts, and professional papers, other than performing the Engineering Design Services without the prior express written consent of LCWMD.

5.12 Non-Waiver. Except as expressly provided in this Agreement, the failure or waiver, or successive failures or waivers on the part of either Party hereto, in the enforcement of any paragraph or provision of this Agreement shall not render the same invalid nor impair the right of either Party hereto, its successors or permitted assigns, to enforce the same in the event of any subsequent breach thereof.

IN WITNESS WHEREOF, the Parties hereto have caused this Engineering Design Services Agreement to be executed by their duly authorized representatives as of the date first set forth above.

[CONSULTANT]

By: __________________________
    Signature

______________________________
    Print Name

Its: ____________________________ (Title)

LONG CREEK WATERSHED MANAGEMENT DISTRICT

By: __________________________
    Signature

______________________________
    Print Name
Its: ___________________________ (Title)