

## CONTRACT

THIS CONTRACT, made and entered into this \_\_\_\_ day of August 2014, by and between Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, Kentucky 40507, hereinafter referred to as "LFUCG", and Cavanaugh Macdonald Consulting, LLC, 3550 Busbee Parkway, Suite 250, Kennesaw, GA 30144, hereinafter referred to as the "Actuary".

WHEREAS, LFUCG has appointed the Actuary to provide consulting actuarial services in connection with the administration of the Lexington-Fayette Urban County Government Retiree Medical Plan; and

WHEREAS, the Actuary is a reputable, qualified, and established Consulting Actuarial firm and has agreed to provide consulting actuarial services to LFUCG.

NOW, THEREFORE, it is hereby and herewith mutually agreed as follows:

1. The Actuary will perform consulting actuarial services which are described with particularity as follows:
  - (a) Actuary agrees to furnish actuarial services to LFUCG. The services will include but not be limited to providing an annual actuarial analysis report of the Lexington-Fayette Urban County Government Retiree Medical Plan (the "OPEB"), providing LFUCG with statistical information as may be required to prepare financial statements under generally accepted accounting principles (Governmental Accounting Standards Board Statements #43 and #45, incorporated by reference and hereby made a part of this contract), answer telephone requests, appear at one meeting each year to explain the annual actuarial valuation, write letters and furnish general information relating to the actuarial analysis report (the "Services").
  - (b) Actuary will perform the Services expeditiously and in a professional manner with the expertise, skill, and effort normally expected of professional actuarial consultants. Actuary will not delegate the performance of Actuary's duties to any other actuarial consultants without the Client's prior written approval.  
This contract is NOT assignable.
2. Nothing in this Contract is intended or shall be construed to give the Actuary discretionary authority or discretionary responsibility in the management of LFUCG' business operations [or administration of the LFUCG's Plan.] The relationship of the Actuary (or any of its officers, directors, or employees) to LFUCG (or any of its officers, directors, or employees) is intended to be only that of an independent contractor and service provider and not employee, agent, fiduciary or other similar relationship.

3. Actuary warrants to LFUCG that the services performed under this Contract will be performed in accordance with generally accepted industry standards. Except for this express limited warranty, Actuary makes no representations or warranties, express or implied, statutory or otherwise, with respect to the services to be provided under this agreement.
4. Actuary will be responsible to LFUCG only for Actuary's negligence, recklessness, or willful misconduct in the performance of services under this Contract and for breach of the limited warranty set forth in this Contract. Actuary will not be responsible to LFUCG for Actuary's (i) failure to perform any services other than those agreed to pursuant to this Contract or; (ii) actions or failures to act based on instructions or directions from LFUCG, or from its agents; or (iii) failure to provide the services listed in Section 1 above primarily because of (a) any error or omission in the data, documents, or information provided by or on behalf of LFUCG or (b) any event of force majeure as set forth in Section 5 below.
5. Notwithstanding the foregoing, a party's failure to perform any of its obligations under this Contract shall be excused if and to the extent (and only for so long as) such failure arises out of causes beyond the reasonable control and without the fault or negligence of the non-performing party including, but not restricted to, failure of Internet or communication lines, telephone or other interconnect problems, errors, configuration problems or incompatibility of computer hardware or software; voluntary shutdown of the server to address computer viruses, or other similar problems; or severe weather, earthquakes, labor disputes, fire, flood, explosion, act of God, terrorist act, war, insurrection, riot, government regulation or act, vandalism, strike, quarantine, failure of transmission or power supply.
6. Actuary may not disclose to any third party any LFUCG member specific information that it may receive intentionally or unintentionally as a result of performing its duties under this contract, unless required by applicable law or LFUCG provides its written approval.
7. The period in which subject services are to be performed is July 1, 2014 to June 30, 2015. However, the contract may be terminated or cancelled by LFUCG at any time upon thirty (30) days written notice to the Actuary.
8. For the services to be rendered by the Actuary, LFUCG shall pay the following fees:
  - Valuation services enumerated in Section 1 (a):  
\$17,000 per valuation
  - Consultation/Advisory Services - Sec.1 (b):  
\$116/hour - \$396/hour depending upon staff involvement
  - Travel and related expenses outside of those necessary for the meeting called for in 1 (a) will be billed separately as they are incurred.

Request for payment shall be monthly in arrears. Annual fees are to be billed upon presentation of the reports to LFUCG. Hourly fees are to be itemized and billed by specific service performed during each month.

9. At the expiration of its term, this contract may, at the option of the parties hereto, be renewed by negotiation for further periods not to exceed 12 months for each such renewal.
10. All questions as to the execution, validity, interpretation, construction, and performance of this agreement shall be construed in accordance with the laws of the Commonwealth of Kentucky, without regard to conflict of laws or principles thereof. The Actuary hereby consents to the jurisdiction of the courts of the Commonwealth of Kentucky and further consents that venue shall lie in the Lexington County Circuit Court located in Lexington County, Kentucky. To the extent that in any jurisdiction the Actuary may now or hereafter be entitled to claim for itself or its assets immunity from suit, execution, attachment (before or after judgment) or other legal process, the Actuary, to the extent it may effectively do so, irrevocably agrees not to claim, and it hereby waives, same.
13. The undersigned, Jim Gray, is Mayor of Lexington Fayette Urban County Government and as such, has been duly authorized by the LFUCG to sign this contract on behalf thereof, therefore, binding LFUCG to the provisions of this contract.
14. The undersigned, Todd B. Green, is a Principal of Cavanaugh Macdonald Consulting, LLC, and as such is duly authorized to sign this contract on behalf thereof, thereby binding the Actuary to the provisions of this contract.
15. This contract may not be assigned by the Actuary without the written consent of LFUCG. Any sale, pledge, assignment or other transfer of controlling interest in the Actuary shall be deemed an assignment under this clause. Further, the obligations of the Actuary under this contract shall be considered personal obligations of the Actuary, performable solely by the Actuary and the Actuary may not delegate its duties hereunder to any entity other than an employee of the Actuary without the written consent of LFUCG.

BY: \_\_\_\_\_

Mayor  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
In behalf of LFUCG

BY: \_\_\_\_\_

Todd B. Green  
Principal and Consulting Actuary  
Cavanaugh Macdonald Consulting, LLC  
3550 Busbee Parkway, Suite 250  
Kennesaw, GA 30144  
In behalf of Actuary