

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of February 12, 2013, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and O'Brien & Gere Engineers, Inc. with offices located at 2333 Alexandria Drive, Lexington, KY 40504 (**CONSULTANT**). **OWNER** intends to proceed with the Category 2 (Dig and Replace Pipeline Projects) Professional Engineering Services Program as described in the attached Exhibit A, "RFP #33-2012 Request for Qualifications (RFQ) for Professional Engineering Services." The services are to include customary civil, sanitary, geotechnical, mechanical, structural, and electrical engineering services as related to completion and submission of reports and deliverables as described in Exhibit A, detailing the findings of all field inspections, inventory and required analysis completed by the **CONSULTANT**. 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, mechanical, electrical and sanitary engineering services incidental thereto.

1.2. Project Phase

After written authorization to proceed, **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. The **CONSULTANT** must perform all duties necessary to fully complete the deliverables described in attached Exhibit A "RFP #33-2012 Request for Qualifications (RFQ) for Professional Engineering Services" (including Addendum 1), and attached Exhibit C the "Proposal of Engineering Services and Related Matters" (the **CONSULTANT's** response to RFP #33-2012), and

**amendments to the CONSULTANT'S proposal included in attached Exhibit D
"Further Description of Basic Engineering Services and Related Matters."**

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

- 1.2.3** The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.2.4.** The **CONSULTANT** shall post all initial draft work products on the project document management portal. If the project document management portal is not functional on the draft posting date, the **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT**. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.2.5.** After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall post all draft final work products on the project document management portal. If the project document management portal is not functional on the draft posting date, the **CONSULTANT** shall five (5) copies (hardcover). One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy.
- 1.2.6** Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** 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).

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 in the performance of this Agreement. See attached Exhibit D "Further Description of Basic Engineering Services and Related Matters" for the 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.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
 - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to

OWNER for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.

- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule/Final Task Order 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 **OWNER** of any of its other rights in the Agreement.
- 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT**/Final Task Order within ninety (90) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Task Order or otherwise adjusting the scope of the services or work and any related fees.
- 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “DISPUTES” of this Agreement shall apply.

4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will reasonably attempt to resolve the delay. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “DISPUTES” of this Agreement shall apply. If the above type of delay would prevent complete performance of the **PROJECT**/Final Task Order within ninety (90) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Task Order or otherwise adjusting the scope of the services or work and any related fees.

SECTION 5 - PAYMENTS TO CONSULTANT

5.1. Methods of Payment for Services of CONSULTANT.

5.1.1. For Basic Services

OWNER shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

- 5.1.1.a Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.
- 5.1.1.b Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.
- 5.1.1.c Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said

work. The **OWNER's** designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

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 for which it has not already been paid 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 for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

SECTION 6 - GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. CONSULTANT may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.

6.1.2. The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT**.

6.2. Ownership and Reuse of Documents

All documents, including raw data, reports, 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 that in any manner affect the services of this Agreement.
- 6.3.2.** In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. 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 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, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

6.4. Successors and Assigns

- 6.4.1.** **CONSULTANT** binds himself and his partners, successors, executors, administrators, assigns and legal representatives to this Agreement in respect to all covenants, agreements, and obligations of this Agreement. **CONSULTANT** shall not assign any interest, obligation or benefit in this Agreement. **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 of the work. 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 hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality & Public Works, whose decision 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 raw data, reports, Drawings and Specifications have been accepted by the **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no 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 within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement.

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** unless required by law

6.8. Access to Records

The **CONSULTANT** 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 Agreement period and for three (3) years from the date of final payment under the Agreement 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 Agreements.

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 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

CONSULTANT shall defend, indemnify, and hold harmless **OWNER** from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including 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** (or subcontractors or subconsultants of any tier) performance or breach of the Agreement provided that such claim, damage, loss or expense 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 negligent acts, errors or omissions or willful misconduct; provided however, that **CONSULTANT** shall not be required to indemnify for damages caused solely by the negligent act or omission or willful misconduct of **OWNER**. 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. 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. This Indemnification and Hold Harmless Provision 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 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 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. The cost of such insurance shall be included in any proposal:

<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, \$2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. OWNER shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by OWNER.
- c. The General Liability Policy shall include a Pollution Liability endorsement unless it

is deemed not to apply by OWNER.

- d. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by OWNER. (OWNER does not need to be named as additional insured).
- e. 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.
- f. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, 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.
- g. 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. Right to Review, Audit and Inspect

CONSULTANT understands and agrees that OWNER may review, audit and inspect any and all of CONSULTANT'S 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. DEFINITION OF DEFAULT

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

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.

7.2.1. 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. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (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. The **OWNER'S** designee will be identified in each

approved Task Order. 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. This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents 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**

O'BRIEN & GERE ENGINEERS, INC.

BY: _____

JIM GRAY, MAYOR

ATTEST: _____

BY: _____

TIMOTHY W. KRAUS, P.E., VICE PRESIDENT

URBAN COUNTY COUNCIL CLERK)

COMMONWEALTH OF KENTUCKY)

COUNTY OF FAYETTE)

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. DEFINITION OF DEFAULT

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

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.
- 7.2.1. 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.

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- 8.1. This Agreement is subject to the following provisions.
 - 8.1.1. Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (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. The **OWNER'S** designee will be identified in each

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Timothy W. Kraus, as the duly authorized representative for and on behalf of Orange County on this the 20th day of December, 2012.

My commission expires: 4-12-2015.

Annika M. Baker
NOTARY PUBLIC



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
12/20/2012

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

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

PRODUCER Willis of Pennsylvania, Inc. c/o 26 Century Blvd. P. O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME:	
	PHONE (A/C. NO. EXT):	877-945-7378
	FAX (A/C. NO.):	888-467-2378
	E-MAIL ADDRESS:	certificates@willis.com
	INSURER(S) AFFORDING COVERAGE	NAIC#
	INSURER A: Greenwich Insurance Company	22322-001
INSURED O'Brien & Gere Engineers, Inc. 333 W. Washington Street P.O. Box 4873 Syracuse, NY 13202	INSURER B: XL Specialty Insurance Company	37885-002
	INSURER C: XL Specialty Insurance Company	37885-001
	INSURER D: Indian Harbor Insurance Company	36940-001
	INSURER E:	
	INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 19105589

REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADD'L INSRD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PRO-JECT LOC	Y		CGD7409177	1/1/2013	1/1/2014	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG \$ 3,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	Y		CAH7409178	1/1/2013	1/1/2014	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB OCCUR EXCESS LIAB CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	N/A	CWD7409176	1/1/2013	1/1/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Professional & Pollution Liability			CEO7420047	1/1/2013	1/1/2014	\$2,000,000 Each Claim \$2,000,000 Aggregate

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

Re: Engineering Services - RFP #33-2012. OBG Contact: Cole Mitcham.

Lexington-Fayette Urban County Government (Owner) is included as an Additional Insured as respects to General Liability and Auto Liability where required by written contract.

It is further agreed that such insurance as is afforded shall be Primary and Non-contributory with any other insurance in force for or which may be purchased by Additional Insured where required by written contract.

CERTIFICATE HOLDER

CANCELLATION

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

ENDORSEMENT #001

This endorsement, effective 12:01 a.m., 1/1/2013 forms a part of
Policy No. CAH7409178 issued to O'Brien & Gere Engineers, Inc.
by XL Specialty Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

Name of Person(s) or Entity(ies)	Mailing Address:	Number of Days Advanced Notice of Cancellation:
On file with company	On file with company	30

All other terms and conditions of the Policy remain unchanged.

ENDORSEMENT #001

This endorsement, effective 12:01 a.m., 1/1/2013 forms a part of
Policy No. CGD7409177 issued to O'Brien & Gere Engineers, Inc.
by Greenwich Insurance Company.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

Name of Person(s) or Entity(ies)	Mailing Address:	Number of Days Advanced Notice of Cancellation:
On file with Company	On file with company	30

All other terms and conditions of the Policy remain unchanged.

ENDORSEMENT #001

This endorsement, effective 12:01 a.m., January 1, 2013 forms a part of
 Policy No. CWD7409176 issued to O'BRIEN & GERE LIMITED
 by XL SPECIALTY INSURANCE COMPANY.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANCELLATION NOTIFICATION TO OTHERS ENDORSEMENT

This endorsement modifies insurance provided under the following:

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY

In the event coverage is cancelled for any statutorily permitted reason, other than nonpayment of premium, advanced written notice will be mailed or delivered to person(s) or entity(ies) according to the notification schedule shown below:

Name of Person(s) or Entity(ies)	Mailing Address:	Number of Days Advanced Notice of Cancellation:
On file with company	On file with company	30

All other terms and conditions of the Policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective January 1, 2013 Policy No. CWD7409176 Endorsement No. 001
 Insured O'BRIEN & GERE LIMITED Premium: Included

Insurance Company
 XL SPECIALTY INSURANCE COMPANY Countersigned by _____

EXHIBIT C

**PROPOSAL OF ENGINEERING SERVICES
AND RELATED MATTERS**

AFFIDAVIT

Comes the Affiant, Timothy W. Kraus, PE, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Timothy W. Kraus, PE and he/she is the individual submitting the proposal or is the authorized representative of O'Brien & Gere Engineers Inc., the entity submitting the proposal (hereinafter referred to as "Proposer").

2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.

3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.

4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.

5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.

6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

Continued on next page

7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

Timothy W. Kraus

STATE OF Kentucky

COUNTY OF Adham

The foregoing instrument was subscribed, sworn to and acknowledged before me by Timothy W. Kraus on this the 13th day of November, 2012.

My Commission expires: April 12, 2015 ID# 440937

George M. Sakon
NOTARY PUBLIC, STATE AT LARGE

EQUAL OPPORTUNITY AGREEMENT

The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

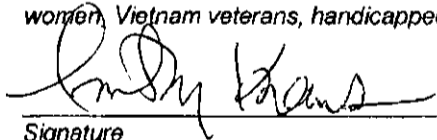
The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

Bidders

I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.



Signature

O'Brien & Gere Engineers Inc.

Name of Business



Lexington-Fayette Urban County Government
DEPARTMENT OF FINANCE & ADMINISTRATION

Jim Gray
Mayor

Jane C. Driskell
Commissioner

ADDENDUM #1

RFP Number: **33-2012**

Date: November 6, 2012

Subject: **RFO for Professional Engineering Services**

Please address inquiries to:
Betty Landrum (859) 258-3320

TO ALL PROSPECTIVE BIDDERS:


Please be advised of the following clarifications to the above referenced RFP:

Questions	Answers
Footnote 2, page 7, paragraph 6, Selection Criteria, implies that private projects completed in accordance with the LFUCG Sanitary Sewer and Pump Station Manual and the LFUCG Stormwater Manual are equal in standing to those public projects completed under specific government contracts. Is that correct?	Each project will be evaluated on its individual merits. The proposer should use his/her discretion in selecting projects relating to the specific category that will best demonstrate the proposer's experience.
Can you provide examples of similar type projects that will be included in Category 4?	Examples of projects in Category 4 would be any type of trenchless pipeline and /or manhole rehabilitation projects, e.g., Cured In Place Pipeline Rehabilitation (CIPP), pipe bursting, sliplining, or manhole rehabilitation with various coatings or injection systems.
Do the one-page resumes for key project team members that are requested in the Project Team section count toward the specified page limit (i.e. are they to be counted in the 6 pages)?	Yes – Resumes should be one page maximum. Proposers should use their discretion in providing the information requested in six pages maximum.
From reviewing the minutes of the meeting, Mr. Martin made the statement encouraging teaming to maximize local participation. Then in answer to the first question he said that only the qualifications of the Prime would be scored. Then in answer to another question he said that relevant projects by subs would count. Since there seems to be some question here related to scoring of prime and not sub, the following question is posed. If a firm had a local office and wanted to be prime, but wanted to subcontract with a smaller local firm for an experienced	Yes -- Scoring of the Project Manager is maximized by project experience and being located locally (locally defined as being within the Bluegrass Area Development District boundaries).

wastewater project manager, would the Prime/Team receive the points for having a local project manager?	
In the meeting minutes the answer to the first question was only the qualifications of the prime would be scored, not the subs. If a small local firm wanted to be the prime and subcontract with a larger firm to supplement their qualifications, would that preclude the small prime from receiving the benefit of having the larger firm as a sub?	No -- The intent of the evaluation process will be to identify and rank the most qualified firm or team of firms.
Does the Division of Water Quality have a list of the 82 projects, and possibly a breakdown of the projects in each category, that are anticipated to be completed with this RFQ?	Yes. See attached list titled RMP Projects. The 82 projects are those listed in the Remedial Measures Plan. There will be other projects awarded under this contract that are not listed.
Could you provide what specific items that you will require responders to submit for an affirmative action plan for the RFP #33-2012? Management in our firm considers some information proprietary, however we want to be responsive and comply with the requirements of the RFP.	Please submit your current affirmative action plan with your response and identify the pages containing proprietary information as confidential and/or proprietary. Any confidential and/or proprietary information contained in your response should be clearly identified in both hard copy and electronic versions.
A question regarding <u>Contract 4 – Pipeline, manhole, inlet, and junction chamber rehabilitation projects</u> . Does the scope of work include providing flow monitoring, smoke testing, and dye testing services?	At present, no. DWQ reserves the right to compose or revise any Scope of Work necessary to meet its needs at any time during the duration of this contract.
It would seem that to accurately compare the mean deviation of hourly rates between firms proposing, that consultants should be expected to use a standard personnel classification system for hourly rates. Does LFUCG intend to issue such a list?	Hourly Rates will no longer be considered in the evaluation process (see attached REVISED scoring sheet; however hourly rates must be submitted for the specific job classifications on the attached form that will be used at time of contract negotiation.
As an office originally founded in Lexington over 40 years ago and subsequently acquired by another out of state firm, it seems unfair that we are only entitled to a score of 3.5 or 4.0 for the "Offices status and location of employees" category. Under this scenario, a recently established prime firm with a local headquarters, small work force, and no prior experience working with LFUCG could be awarded more points than a firm founded in Lexington that has continuously served LFUCG for over 40 years. Can additional consideration be given for length of service and/or longevity of office existence in Fayette County?	No – The proposer will be able to demonstrate and score points in other categories.
Can you release the list of anticipated Remedial Measures Plan projects and their estimated costs of construction?	Yes –see attachment pdf's (G3 RMP Implementation Plan & RMP Project Maps by Sewershed)

<p>How will a firm be ranked if there is a joint venture?</p>	<p>DWQ will require that the Contract be executed with a single consultant. In the case of a team, the prime consultant must be identified and must execute the Contract. Joint Ventures will not be considered due to the contractual requirements.</p>
<p>George Woolwine (HDR) asked Mr. Martin to further define Category 2 and distinguish the work in Category 2 from Category 4. Mr. Martin said that Category 2 is dig and replace while Category 4 is rehabilitation for the purpose of reducing I&I (Inflow and Infiltration) in the collection system. Cole Mitcham (OBG) asked if the hourly rates within 15% were plus or minus, and if there was a prime that teamed how would we establish the mean rate?</p>	<p>Regarding the difference between Category Nos. 2 and 4, see the response to question No. 2 above. Regarding the question on hourly rates, see the response to question No. 9 above.</p>

SPECIAL NOTE TO PROPOSER: Please note that the Selection Criteria (attachment 2 – RFP Scoring Sheet) have been revised – hourly rates have been removed and the points assigned have been changed.



 Todd Slatin, Acting Director
 Division of Central Purchasing

All other terms and conditions of the RFP and specifications are unchanged. This letter should be signed, attached to and become a part of your RFP.

COMPANY: O'Brien & Gere Engineers Inc.

ADDRESS: 2333 Alexandria Drive, Lexington, KY, 40504

SIGNATURE OF PROPOSER: 