

## ENGINEERING SERVICES AGREEMENT

**THIS IS AN AGREEMENT** made as of February 12, 2013, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and HDR Engineering, Inc. with offices located at 2517 Sir Barton Way, Lexington KY, 40509 (**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:**

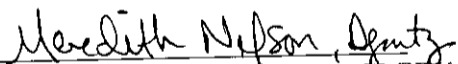
**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

**HDR ENGINEERING, INC.**

BY:   
JIM GRAY, MAYOR

BY:   
BEN R. EDELEN, P.E.  
VICE PRESIDENT

**ATTEST:**

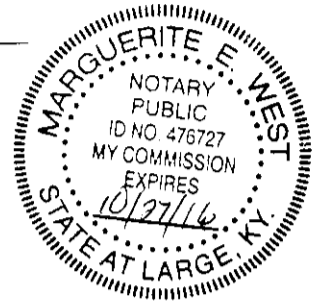
  
URBAN COUNTY COUNCIL CLERK )  
COMMONWEALTH OF KENTUCKY )

COUNTY OF FAYETTE

)

The foregoing Agreement was subscribed, sworn to and acknowledged before me by BEN R. EDELEN, as the duly authorized representative for and on behalf of HDR Engineering, on this the 20th day of Dec., 2012.  
My commission expires: 10/27/16.

M. E. West  
NOTARY PUBLIC





# CERTIFICATE OF LIABILITY INSURANCE

6/1/2013

DATE (MM/DD/YYYY)

11/6/2012

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 Lockton Companies, LLC-1 Kansas City 444 W. 47th Street, Suite 900 Kansas City MO 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A : Hartford Fire Insurance Company		19682
INSURER B : St. Paul Fire and Marine Insurance Company		24767
INSURER C : Sentinel Insurance Company, Ltd.		11000
INSURER D : Zurich American Insurance Company		16535
INSURER E :		
INSURER F :		

COVERAGES HDRIN01 SA CERTIFICATE NUMBER: 12061983 REVISION NUMBER: XXXXXXXX

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	ADDL INSR	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 <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL LIAB GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC	Y	Y	37CSEQU0950	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/POP AGG \$ 2,000,000 \$
A A A	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS	Y	Y	37CSEQU0951 (AQS) 37CSEQU0952 (HI) 37MCPQU1160 (MA)	6/1/2012 6/1/2012 6/1/2012	6/1/2013 6/1/2013 6/1/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 2,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
B	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB DED RETENTIONS	N	N	ZUP-10R64084-12-NF (EXCLUDES PROF. LIAB)	6/1/2012	6/1/2013	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$ XXXXXXXX
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	N/A	91WBOH1000	7/1/2012	7/1/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS <input type="checkbox"/> 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	ARCH & ENG PROFESSIONAL LIABILITY	N	N	EOC92600026-05	6/1/2012	6/1/2013	PER CLAIM: \$2,000,000 AGGREGATE: \$2,000,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
RE: 33-2012 PROFESSIONAL ENGINEERING SERVICES - LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ARE NAMED AS ADDITIONAL INSURED ON GENERAL LIABILITY AND AUTO ON A PRIMARY, NON-CONTRIBUTORY BASIS, AS PER WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES WHERE ALLOWABLE BY LAW.

**CERTIFICATE HOLDER****CANCELLATION**

<p>12061983 LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ATTENTION: DIVISION OF RISK MANAGEMENT 200 E. MAIN STREET LEXINGTON KY 40509</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <p>AUTHORIZED REPRESENTATIVE</p> <p><i>Ronald J. Foster</i></p>
--	---

**AFFIDAVIT**

Comes the Affiant, HDR Engineering, Inc., and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Ben R. Edelen and he/she is the individual submitting the proposal or is the authorized representative of HDR Engineering, 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."
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.

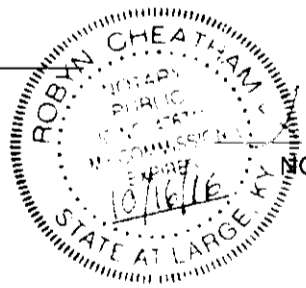
Further, Affiant sayeth naught.

Ben R. Edelen

STATE OF Kentucky  
COUNTY OF Fayette

The foregoing instrument was subscribed, sworn to and acknowledged before me by Ben R. Edelen on this the 13th day of November, 2012.

My Commission expires: 10/16/2016



Robyn Cheatham  
NOTARY PUBLIC, STATE AT LARGE



www.hdrinc.com

**WORKFORCE ANALYSIS**

**WORKFORCE ANALYSIS FORM**

Name of Organization: HDR Engineering, Inc./Kentucky Department

Date: 11/5/2012

Categories	Total	White		Latino		Black		Other		Totals	
		M	F	M	F	M	F	M	F	M	F
Administrators and Managers	15	13	2							13	2
Professionals	62	53	9							53	9
Superintendents											
Supervisors											
Foreman											
Technicians*	22	21				1				22	
Protected Service											
Para-Professionals											
Office/Clerical	7		6				1				7
Skilled Craft											
Service/Maintenance											
<b>Total</b>	<b>106</b>	<b>87</b>	<b>17</b>			<b>1</b>	<b>1</b>			<b>88</b>	<b>18</b>

\*Includes temporaries

Prepared by: Patty Van Vooren, Kentucky Diversity Officer





## Equal Employment Opportunity Policy Statement

HDR, Inc. and its subsidiaries, hereinafter referred to as HDR, have been and will continue to be equal opportunity employers. We are dedicated to maintaining a work environment which extends equal opportunity for employment and employment-related benefits to all individuals. HDR will recruit, hire, compensate, upgrade, train and promote employees in all job classifications and will insure that all personnel actions such as compensation, benefits, layoffs, return from layoffs, transfers, company sponsored training, education, tuition assistance, social and recreation programs and other terms, conditions and privileges of employment are administered without regard to race, color, sex, sexual orientation, religion, national origin, age, creed, veteran, citizenship status, marital status, public assistance, disability status or Vietnam Era Veteran, except where these are essential bona fide occupational qualifications. Compensation for services will not be reduced because of any disability income, pension or other benefits the applicant or employee receives from another source. Towards this objective, HDR has adopted affirmative action programs to assure equal opportunity and compliance with Federal, and local legislation.

Physical and/or mental job qualifications are applied in the selection of employees for hire, promotion and transfer only if they are directly job-related and consistent with business necessity and the performance of the job. Any information obtained relating to a person's physical or mental condition shall be kept confidential except to extent that supervisors and managers may be informed of work limitations or reasonable accommodations necessary, first aid and safety personnel may be informed if emergency precautions or treatment might be necessary and information may be released to Government officials investigating compliance.

Employees are requested to complete a voluntary disclosure form to assist HDR in identifying reasonable accommodations, which could enable more effective and safe performance. Reasonable accommodations such as special equipment, job restructure, modified work schedule or other accommodations will be made to the physical and mental abilities of employees and applicants, provided the accommodation does not impose an "undue hardship" on the company.

HDR strongly disapproves of any form of discrimination or harassment of individuals placed through this policy, and furthermore, seeks to make employees at all levels sensitive to the issue and inform them of their equal employment rights.

Concerns or suggestions regarding HDR's Equal Employment Opportunity Policies and their application should be directed to your supervisor, your Department Manager or Regional Director, or Richard A. O'Gara, Vice President of Human Resources and Corporate EEO Officer (HDR, Inc., 8404 Indian Hills Dr., Omaha, NE 68114, 402/399-1000). All allegations of harassment or discrimination will be investigated in as confidential a manner as possible and corrective action, including discipline or discharge, taken where appropriate. Retaliation against employees filing a complaint is strictly prohibited, as are false charges of discrimination or harassment.

All employees are encouraged to take an active role in promoting our affirmative action efforts. The Affirmative Action Program is available for your inspection during regular business hours by appointment with your Department Manager or Managing Principal.

HDR, Inc.

8404 Indian Hills Drive  
Omaha, NE 68114-4049

Phone (402) 399-1000  
Human Resources Fax (402) 548-5002  
<http://hr.intranet.hdr/>

09.05.04

**HDR Engineering, Inc.**  
**Affirmative Action Plan**

As supported in our policy statement and Affirmative Action Plan, HDR is dedicated to maintaining and improving a work environment that extends equal opportunity to all individuals. HDR policy encourages recruitment and appointment to the work force of qualified minority and female candidates.

The employment/recruitment process is supervised by a corporate Human Resources staff to ensure compliance with Affirmative Action. Our workforce is predominantly professional/technical, representing 83 percent of our total staff. Because availabilities in these fields are low, women and minorities are given every consideration.

All advertising encourages affirmative action, with most advertising placed in large metropolitan or technical publications. Where appropriate, positions are also advertised in minority and female publications. Job service and other employment referral agencies are used. Each position description is reviewed to ensure that it is not discriminatory in any way.

Utilization is reviewed at least quarterly, at the corporate level. This review is forwarded to all levels of management. Rather than detail procedures required in the Affirmative Action Plan, we have listed below those that are particularly helpful or effective. If required, we can furnish you with the entire plan.

**Employee Referral Program** - Cash bonuses are paid to employees who refer qualified candidates who are subsequently hired. This provides an effective tool in the recruitment of minority and female employees.

**Tuition Reimbursement** - Employees are encouraged to further their education to allow for promotions. HDR assists in this process by reimbursing tuition costs.

**Job Posting** - All vacancies are posted, the majority nationally. Through the postings, employees are provided an opportunity for advancement and are able to refer candidates from the outside to apply for those positions.

**Performance Appraisal and Development Program** - A formalized performance appraisal system helps ensure fairness in evaluating employees for promotions and salary increases.

Through this corporate wide effort, we are progressing in our affirmative action goals. Our California staff has increased its percentage of female professional staff since 1988. HDR intends to recognize the worth of each individual based solely upon his or her performance, qualifications, and contribution to the success of the company.

**HDR Engineering, Inc.**



# CERTIFICATE OF LIABILITY INSURANCE

6/1/2013

DATE (MM/DD/YYYY)

11/6/2012

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 Lockton Companies, LLC 414 W. 47th Street, Suite 900 Kansas City, MO 64112-1906 (816) 960-9000	CONTACT NAME		FAX (A/C No. Ext)	
	PHONE (A/C No. Ext)	E-MAIL ADDRESS		(A/C No.)
INSURER(S) AFFORDING COVERAGE				NAIC #
INSURED 1014392 HDR ENGINEERING, INC 8404 INDIAN HILLS DRIVE OMAHA NE 68114	INSURER A	Hartford Fire Insurance Company	19682	
	INSURER B	St. Paul Fire and Marine Insurance Company	24767	
	INSURER C	Sentinel Insurance Company, Ltd.	11000	
	INSURER D	Zurich American Insurance Company	16535	
	INSURER E			
INSURER F				

COVERAGES HDRIN01 SA CERTIFICATE NUMBER: 12061983 REVISION NUMBER: XXXXXXX

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	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	Y	Y	37CSLQ0950	6/1/2012	6/1/2013	\$ AGGREGATE LIMITS: \$ 1,000,000 DAMAGE TO RENTED PREMISES (each occurrence): \$ 1,000,000 MEDICAL EXPENSES: \$ 10,000 PERSONAL & ADVERTISING: \$ 1,000,000 GENERAL AGGREGATE: \$ 2,000,000 PRODUCTS - COMPLETED OPERATIONS: \$ 2,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CONTRACT LIABILITY <input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> UMBRELLA LIABILITY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS LIABILITY <input type="checkbox"/> ARCH & ENG. PROFESSIONAL LIABILITY						
A	AUTOMOBILE LIABILITY	Y	Y	37CSLQ0951 (AOS) 37CSLQ0952 (HI) 37MCPQ1160 (MA)	6/1/2012 6/1/2012 6/1/2012	6/1/2013 6/1/2013 6/1/2013	BODILY INJURY - PERSONS: \$ 2,000,000 BODILY INJURY - PROPERTY DAMAGE: \$ XXXXXXXX PROPERTY DAMAGE - BODILY INJURY: \$ XXXXXXXX PROPERTY DAMAGE - PROPERTY DAMAGE: \$ XXXXXXXX
	<input checked="" type="checkbox"/> BODILY INJURY - PERSONS <input checked="" type="checkbox"/> BODILY INJURY - PROPERTY DAMAGE <input checked="" type="checkbox"/> PROPERTY DAMAGE - BODILY INJURY <input checked="" type="checkbox"/> PROPERTY DAMAGE - PROPERTY DAMAGE						
B	UMBRELLA LIABILITY	N	N	ZUP10R64084 (AOS) EXCLUDES PROFESSIONAL LIABILITY	6/1/2012	6/1/2013	FACILITY UMBRELLA: \$ 1,000,000 AGGREGATE: \$ 1,000,000
	<input checked="" type="checkbox"/> UMBRELLA LIABILITY <input checked="" type="checkbox"/> EXCESS LIABILITY						
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	Y/N	N/A	91WE011000	1/1/01	1/1/03	<input checked="" type="checkbox"/> WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS LIABILITY LIMIT: \$ 1,000,000 LIMIT: \$ 1,000,000 LIMIT: \$ 1,000,000
	<input checked="" type="checkbox"/> WORKERS COMPENSATION <input type="checkbox"/> EMPLOYERS LIABILITY						
D	ARCH & ENG. PROFESSIONAL LIABILITY	N	N	E009590076 (OS)	6/1/2012	6/1/2013	PER CLAIM: \$ 2,000,000 AGGREGATE: \$ 2,000,000
	<input type="checkbox"/> ARCH & ENG. PROFESSIONAL LIABILITY						

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101 - Additional Remarks Schedule, if more space is required):  
 RE-33202 PROFESSIONAL ENGINEERING SERVICES - LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT ARE NAMED AS ADDITIONAL INSURED ON GENERAL LIABILITY AND AUTO ON A PRIMARY, NON CONTRIBUTORY BASIS, AS PER WRITTEN CONTRACT. WAIVER OF SUBROGATION APPLIES WHERE ALLOWABLE BY LAW.

<b>CERTIFICATE HOLDER</b>  12061983 LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT ATTENTION: DIVISION OF RISK MANAGEMENT 200 E. MAIN STREET LEXINGTON KY 40509	<b>CANCELLATION</b>  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  

ACORD 25 (2010/05)

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## GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or

attempted to bribe an officer or employee of the LFUCG.

9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.

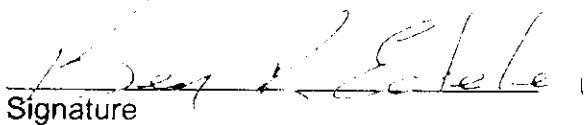
- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
  - (a) Failure to perform the contract according to its terms, conditions and specifications;
  - (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
  - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
  - (d) Failure to diligently advance the work under a contract for construction services;
  - (e) The filing of a bankruptcy petition by or against the contractor; or
  - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

#### B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. Assignment of Contract: The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. No Waiver: No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.

15. Authority to do Business: The Respondent must be a duly organized and authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.
16. Governing Law: This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. Ability to Meet Obligations: Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

  
Signature

11/13/2012

Date


Lexington-Fayette Urban County Government  
 MBE/WBE Participation Form

1) Identification of Participating MBE/WBEs

MBE/WBE Name, Address & Phone	Work to be Performed	Dollar Value of Work	% Value of Total Contract
1. ThirdRock Consultants 2526 Regency Rd, Suite 180 Lexington, KY 859-977-2000	<ul style="list-style-type: none"> <li>• Environmental Support Services</li> <li>• Permits</li> <li>• SWPPPs</li> </ul>	TBD	4%
2. Abbie Jones Consulting 1022 Fontaine Rd Lexington, KY 40502 859-559-3443	<ul style="list-style-type: none"> <li>• Permits</li> <li>• SWPPPs</li> <li>• Field Surveying</li> </ul>	TBD	4%
3. Integrated Engineering, PLLC 1716 Sharkey Way, Suite 200 Lexington, KY 40511 859-368-0145	<ul style="list-style-type: none"> <li>• Field Surveying</li> <li>• Easement Descriptions</li> </ul>	TBD	4%
4.			

The undersigned submits the above list of MBE/WBE firms to be used in accomplishing the work contained in this Bid.

Company: HDR Engineering, Inc.

By: 

Date: November 13, 2012

Title: Vice President



www.hdrinc.com



Attachment 1

Project Team Location(s)

Prime Consultant	Location (City, State)	Date Office Established	Total Number of Employees	No. of Employees expected to work on DWQ projects
Headquarters	Omaha, NE	1917	8,000	40
Local Office	Lexington, KY	1989	65	40
PM Location	Lexington, KY			
<b>Subconsultants</b> Name:	ThirdRock Consultants, Inc.	January 2000	26	3
Service Provided	Environmental, Permits, SWPPPs			
Headquarters	Lexington, KY	January 2000	26	3
Local Office	Lexington, KY	January 2000	26	3
Name:	Abbie Jones Consulting	May 2011	5	5
Service Provided	Permit, SWPPPs, Field Surveying			
Headquarters	Lexington, KY	May 2011	5	5
Local Office	Lexington, KY	May 2011	5	5
Name:	Integrated Engineering, PLLC	2006	13	6
Service Provided	Field Surveying, Easement Desc.			
Headquarters	Lexington, KY	2006	13	6
Local Office	Lexington, KY	2006	13	6

**Notes:**

1. "Headquarters" refers to the corporate office that provides project support to the local office, if applicable. If support comes from multiple locations, use the blank spaces in the form to provide relevant information.
2. Listing of sub-consultants is optional and should only be provided if the prime consultant considers the sub-consultant(s) services to be essential to meeting the required qualifications. In this event, documentation from the subconsultant(s) shall be submitted in the SOQ that provides a commitment to be a part of the prime consultant's team in providing the stated services. In such cases, for the purpose of evaluating the proposals, committed sub-consultants will be considered to be part of the prime consultant's workforce. Prime consultants face potential disqualification from future work if DWQ finds that the identified sub-consultants are not being utilized to deliver assigned work products.

**Project Team Location(s)**

<b>Prime Consultant</b>	<b>Location (City, State)</b>	<b>Date Office Established</b>	<b>Total Number of Employees</b>	<b>No. of Employees expected to work on DWQ projects</b>
Headquarters				
Local Office				
PM Location				
<b>Subconsultants</b>				
Name:	Consulting Services, Inc.	2009	41	37
Service Provided	Geotechnical Services			
Headquarters	Lexington, KY	2009	41	37
Local Office	Lexington, KY	2009	41	37
Name:				
Service Provided				
Headquarters				
Local Office				
Name:				
Service Provided				
Headquarters				
Local Office				

**Notes:**

1. "Headquarters" refers to the corporate office that provides project support to the local office, if applicable. If support comes from multiple locations, use the blank spaces in the form to provide relevant information.
2. Listing of sub-consultants is optional and should only be provided if the prime consultant considers the sub-consultant(s) services to be essential to meeting the required qualifications. In this event, documentation from the subconsultant(s) shall be submitted in the SOQ that provides a commitment to be a part of the prime consultant's team in providing the stated services. In such cases, for the purpose of evaluating the proposals, committed sub-consultants will be considered to be part of the prime consultant's workforce. Prime consultants face potential disqualification from future work if DWQ finds that the identified sub-consultants are not being utilized to deliver assigned work products.