



OCTOBER 1, 2015

DIVISION OF CENTRAL PURCHASING  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
ROOM 338, GOVERNMENT CENTER  
200 EAST MAIN STREET  
LEXINGTON, KY 40507  
Attn: TODD SLATIN, DIRECTOR

RE: New City Hall Owner's Representative Services

Dear Mr. Slatin:

Jones Lang LaSalle Americas, Inc. (JLL) is pleased to provide the following Work Plan and Scope, Compensation Structure and Terms and Conditions to provide New City Hall Owner's Representative Services to the Lexington-Fayette Urban County Government.

**WORK PLAN AND SCOPE ("Services").**

**1. Space Planning:** Analyze current LFUCG space utilization and develop recommendations for future space planning, square footage requirements as well as best practices for office, workstation and conference room sizes.

**2. Identify and develop criteria for best alternatives for the location of new facility / facilities on property already owned by the LFUCG and on property not owned by the LFUCG:** This requirement will likely include the consultant writing, with the assistance of LFUCG, Request for Proposal(s) to obtain necessary responses which would include the following required information: Options for desired financial structures include lease, lease to own and government-financed. Options will need to consider the Government's space requirements for at least the next 10 years. Each option should include a detailed project budget which should include the cost of construction, professional services, office relocation expense during construction, demolition and related expenses. The budget will address costs in phases, namely immediate, near-term, mid-term and long-term.

**3. Identify Alternative Locations and Financing Structures for Government Center:** Assist the LFUCG in scoping and procuring key development team personnel including: architectural services, third-party engineering and testing services and, if needed, a construction manager. Evaluate lease/operating arrangements while meeting desired space needs. Represent the LFUCG in negotiations of terms or financial agreements. Identify and negotiate solutions to operational issues such as parking, vehicular loading/unloading.

**4. Provide guidance to LFUCG to determine the best alternative(s) for a future city hall:** Responsible for reviewing any related RFP responses, providing guidance to select best options and advise on finalists interviews.

**5. Owners Representative Services:** If applicable and pursuant to a separate fee arrangement, manage and oversee Construction Management pre-development work; act as the LFUCG's agent in negotiation of construction management contract and agreement. Provide coordination between outside legal counsel and accounting services with the LFUCG Department of Law and Finance Commissioner. Provide regular updates and direction as necessary to the LFUCG, elected officials, and the public.

**COMPENSATION**

Client agrees to compensate Jones Lang LaSalle for Services rendered as follows:

JLL shall be paid *one-hundred and ninety-eight thousand five-hundred dollars* (\$198,500.00) for providing the Services (the "Fee"). JLL shall issue monthly progress billings based upon the percentage of work completed, with a final billing after the Services are delivered and accepted by Client.

The provisions of this Agreement shall be governed and controlled by the terms and conditions set forth in Exhibit A which is attached hereto and incorporated by reference.

By signing below the client acknowledges and agrees that they have read and accept all of the terms herein, including but not limited to the scope of work, compensation and the terms and conditions set forth in Exhibit A

We are enthusiastic about the opportunity to work with you and your colleagues on this project. If the foregoing is acceptable, please return an executed copy to me. I will contact you shortly to address any questions you may have.

Very truly yours,

Tim Eachus  
Managing Director  
Jones Lang LaSalle Americas, Inc.

READ, AGREED AND ACCEPTED BY:

Lexington-Fayette Urban County Government

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**TERMS AND CONDITIONS**

**INDEPENDENT CONSULTANT STATUS AND SUBCONTRACTORS**

Jones Lang LaSalle Americas, Inc. ("JLL") will act solely as an independent contractor in performing the Services, and nothing in this Agreement will at any time be construed to create the relationship of employer and employee, principal and agent, partners, or joint venturers between **Lexington-Fayette Urban County Government** ("Client") and JLL, or Client's officers, directors, partners, managers, employees or agents and JLL's officers, directors, partners, managers, employees or agents. JLL shall be solely responsible for the compensation, benefits, contributions and taxes, if any, of its employees, subcontractors and agents. The terms and conditions from RFP No.41 -2015 that relate to performance are stated in Exhibit B hereto and apply to JLL's performance. To the extent that there is conflict with the terms or provisions of this Agreement or Exhibit A on the one hand, and Exhibit B on the other hand, the terms or provisions of this Agreement or Exhibit A shall prevail

**TERM AND TERMINATION OF AGREEMENT**

This Agreement shall be terminable by either party upon thirty (30) days written notice by either party. However upon a breach of this Agreement, the non-breaching party may terminate this Agreement immediately. If terminated, JLL shall only be entitled for work performed through the date of termination.

**INDEMNIFICATION**

JLL shall indemnify, defend and hold Client harmless from any and all claims, demands, causes of action, losses, damages, fines, penalties, liabilities, costs and expenses, including reasonable attorney's fees and court costs, sustained or incurred by or asserted against Client by a third party by reason of or arising out of JLL's gross negligence or willful misconduct with respect to JLL's duties and activities within the scope of this Agreement.

**CONFIDENTIALITY**

Both parties shall treat as confidential property and not disclose to others during or subsequent to the term of this Agreement, except as necessary to perform this Agreement (and then only on a confidential basis satisfactory to both parties), any information and documents (including without limitation any environmental information, reports or data) which are received from the other party and identified as "Confidential Client shall automatically treat JLL's "copyrighted" work product and proprietary software programs as "Confidential" and shall not reuse or share such Confidential information with other outside consultants, or third parties, without the prior written consent of JLL or as otherwise required by law.

Nothing above, however, shall prevent either party from disclosing to others or using in any manner information which that party can demonstrate:

- A. Has been published and has become part of the public domain other than by acts, omissions or fault of the party to this Agreement receiving such Confidential information, their employees, agents, contractors and/or consultants; or,
- B. Has been furnished or made known to the party to this Agreement receiving the Confidential information by a third party (other than those acting directly or indirectly for or on behalf of JLL or Client) as a matter of legal right without restrictions on its disclosure; or,

C. Was in either party's possession prior to disclosure thereof by the other party.

D. Must be disclosed pursuant to any statute, law, regulation, ordinance, order or decree of any governmental authority having jurisdiction over the party to this Agreement receiving the Confidential information or any of its employees, agents, contractors and/or consultants.

The foregoing obligations of confidentiality in this Agreement shall survive for a period of one (1) year from the mutual execution of this Agreement.

#### **LIMITATION OF LIABILITY**

Each party's liability hereunder shall be limited to its assets; and no partner, director, officer, agent, servant, employee, representative or affiliate of either party shall have any personal liability in connection with this Agreement. Neither party shall be liable to the other for, and each party hereby waives any and all rights to claim against the other party, any special, indirect, incidental, consequential, punitive or exemplary damages in connection with this Agreement, including, but not limited to, lost revenue or profits, even if a party has knowledge of the possibility of such damages; and in no event shall JLL's liability to Client hereunder exceed the annual fee paid to JLL pursuant to this Agreement.

#### **NON-SOLICITATION OF EMPLOYEES**

Client agrees not to, directly or indirectly, attempt to persuade or solicit any employee of JLL to terminate such employment with JLL, and agrees not to hire any employee of JLL while such employee is employed with JLL and for a period of one (1) year after termination of employment with JLL, including without limitation, engaging such JLL employee or former employee as an independent contractor or as an employee of any person other than JLL or any affiliate of JLL.

#### **USE OF WORK PRODUCT AND RELIANCE**

JLL shall not be referred to in any public documents without JLL's prior written consent, which may be given in its sole discretion. **This shall not apply to this Agreement or its Exhibits or any final deliverable documents provided hereunder.**

The data, documentation, and assumptions derived from information supplied by Client, published information prepared by other industry sources will not be independently verified by JLL for purposes of this Agreement. JLL will not be responsible for the accuracy of such data and information, and for any assumptions derived therefrom. However, JLL's performance will be based on JLL's professional evaluation of all such available sources of information. Client acknowledges and agrees that there may be differences between projected and actual results because events and circumstances frequently do not occur as predicted, and those differences may be material and hereby releases JLL from any claims or liability arising from these differences.

The parties understand and agree that neither JLL's fees nor the payment thereof by Client is contingent upon the results, conclusions or recommendations provided by JLL.

#### **INTELLECTUAL PROPERTY**

Client shall be the sole and exclusive owner of all Work Product and all Intellectual Property Rights therein, whether considered works made for hire or otherwise. Work Product shall be delivered to Client in a form reasonably specified by Client. For purposes of this Agreement, "Work Product" means any reports,

memoranda, notes, project files, documents, manuals, and other materials developed pursuant to this Agreement, including equipment inventories, maintenance schedules, equipment repair/replacement records, designs, drawings, specifications. Work Product does not include (i) any materials or Intellectual Property Rights owned or licensed by JLL prior to the effective date of this Agreement (“Effective Date”); (ii) any Intellectual Property Rights created or licensed by or on behalf of JLL after the Effective Date; (iii) JLL’s information technology systems or software; or (iv) derivatives, modifications, or improvements of the foregoing created by or on behalf of JLL or its third party suppliers whether prior to or after the Effective Date. The materials described in clauses (i) through (iv) above are the “JLL Materials.” For purposes of this Agreement, “Intellectual Property Rights” means any patents, patent applications, and patent rights, rights associated with works of authorship, moral rights, copyrights and all exclusive rights, rights relating to the protection of trade secrets and confidential information, rights associated with designs, rights related to the possession, use or exploitation of signs, trademarks, service marks, trade dress and related goodwill, rights analogous to the foregoing and any other industrial or intellectual property rights, and any divisions, continuations, renewals, reissues, and extensions of the foregoing (as applicable) now existing or hereafter filed, issued or acquired.

JLL hereby grants Client a non-exclusive, perpetual, irrevocable, fully-paid-up, non-transferable, royalty-free license under all Intellectual Property Rights in and to any and all JLL Materials that are (i) incorporated in any Work Product, or (ii) necessary for the use of any Work Product, to make use, import, reproduce, and display such JLL Materials solely for the purpose for which the Work Product is intended hereunder. This Section shall survive any termination or expiration of this Agreement.

**WAIVER**

A Waiver on the part of Client or JLL of any term, provision or condition of this Agreement shall not constitute a precedent or bind either Party to a waiver of any succeeding breach of the same or any other term, provision or condition of this Agreement.

**NOTICE**

Any information or notices required to be given in writing under this Agreement shall be deemed to have been sufficiently given if delivered either personally, by certified mail or overnight to the address of the respective party set forth below, or to such other address for either party as that party may designate by written notice.

**For Client:**

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

**For JLL:**

Jones Lang LaSalle Americas, Inc.  
1801 K Street NW  
Suite 1000  
Washington DC 20006  
Attn: Public Institutions

**INVOICES AND PAYMENTS**

At least once a month JLL shall invoice Client for its fees, expenses and costs incurred during that month, including reimbursable expenses. Client agrees to pay each invoice within thirty (30) days of receipt. However, if Client objects to all or any portion of any invoice, Client shall so notify JLL within fifteen (15) days from receipt, give reasons for the objection, and pay that portion of the invoice not in dispute within thirty (30) days of receipt of the invoice in question. Unless otherwise directed, all invoices shall be submitted for payment to the “Notice” address above. Payment of an invoice is indicative of that portion of work being complete and the revenue earned.

## **INTEREST ON LATE PAYMENTS AND LITIGATION**

Delinquent payments hereunder shall earn interest at the rate of one and one-half percent (1-1/2%) per month from the date due until paid.

## **MISCELLANEOUS**

This Agreement, including any Exhibits and any addenda thereto, constitutes the entire agreement between JLL and Client. It supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the Services set forth in this Agreement. This Agreement may be amended only by a written instrument signed by both parties. However for modifications to this Agreement involving non-material changes in scope and fees, consent to such modification may be given via email and shall be binding upon the parties to this Agreement.

If any term or provision of this Agreement is construed or held to be void, invalid or unenforceable by order, decree or judgment of a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby but shall remain in full force and effect.

To the extent the terms and conditions on this Exhibit A conflict with the attached agreement, the terms and conditions of Exhibit A shall prevail.

This Agreement shall be governed and interpreted pursuant to the laws of the Commonwealth of Kentucky.

## **Exhibit B**

### **Laws and Regulations**

All applicable state laws, municipal ordinances and regulations of all authorities having jurisdiction over the project shall apply to the contract, and shall be deemed to be incorporated herein by reference.

### **Equal Employment Opportunity**

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal employment through a positive, continuing program from itself and each of its subcontracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

### **Kentucky Equal Employment Opportunity Act**

The Kentucky Equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any "county, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, or national origin;
- (2) The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age, or national origin;
- (3) The contractor will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provision of the nondiscrimination clauses required by this section; and
- (4) The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses."

The Act further provides:

"KRS 45.610. Hiring minorities -- Information required

- (1) For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetables.
- (2) Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his

employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.

KRS 45.620. Action against contractor -- Hiring of minority contractor or subcontractor

(1) If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.

(2) If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 to 45.640.

(3) The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.

KRS 45.630 Termination of existing employee not required, when

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job."

It is recommended that all of the provisions above quoted be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his workforce in Kentucky is representative of the available workforce in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

### **LFUCG Non-Appropriation Clause**

Contractor acknowledges that the LFUCG is a governmental entity, and the contract validity is based upon the availability of public funding under the authority of its statutory mandate.

In the event that public funds are unavailable and not appropriated for the performance of the LFUCG's obligations under this contract, then this contract shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the LFUCG shall not activate this non-appropriation provision for its



convenience or to circumvent the requirements of this contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

In the event of a change in the LFUCG's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects the LFUCG's authority to continue its obligations under this contract, then this contract shall automatically terminate without penalty to the LFUCG upon written notice to Contractor of such limitation or change in the LFUCG's legal authority.

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITIES AND DBE CONTRACT PARTICIPATION**

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE) and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The goal for the utilization of Disadvantaged Business Enterprises as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process. Depending on the funding source, other DBE goals may apply.

**Lexington-Fayette Urban County Government  
MWDDBE PARTICIPATION GOALS**

**A. GENERAL**

- 1) The LFUCG request contractors to make a concerted effort to include Minority-Owned (MBE), Woman-Owned (WBE) and Disadvantaged (DBE) Business Enterprises as subcontractors or suppliers in their bids.
- 2) Toward that end, the LFUCG has established 10% of total procurement costs as a Goal for participation of Minority-Owned, Woman-Owned and Disadvantaged Businesses on this contract.
- 3) .

**B. PROCEDURES**

- 1) The successful Contractor will be required to report to the LFUCG, the dollar amounts of all payments submitted to Minority-Owned or Woman-Owned subcontractors and suppliers for work done or materials purchased for this contract. (See Subcontractor Monthly Payment Report)

- 2) Replacement of a Minority-Owned or Woman-Owned subcontractor or supplier listed in the original submittal must be requested in writing and must be accompanied by documentation of Good Faith Efforts to replace the subcontractor / supplier with another MWDBE Firm; this is subject to approval by the LFUCG. (See LFUCG MWDBE Substitution Form)
- 3) For assistance in identifying qualified, certified businesses to solicit for potential contracting opportunities, Contractors may contact:
  - a) The Lexington-Fayette Urban County Government, Division of Central Purchasing (859-258-3320)
- 4) The LFUCG will make every effort to notify interested MWDBE subcontractors and suppliers of each Bid Package, including information on the scope of work, the pre-bid meeting time and location, the bid date, and all other pertinent information regarding the project.

#### C. DEFINITIONS

- 1) A Minority-Owned Business Enterprise (MBE) is defined as a business which is certified as being at least 51% owned and operated by persons of African American, Hispanic, Asian, Pacific Islander, American Indian or Alaskan Native Heritage.
- 2) A Woman-Owned Business Enterprise (WBE) is defined as a business which is certified as being at least 51% owned and operated by one or more Non-Minority Females.
- 3) A Disadvantaged Business (DBE) is defined as a business which is certified as being at least 51% owned and operated by a person(s) that are economically and socially disadvantaged.
- 4) Good Faith Efforts are efforts that, given all relevant circumstances, a Contractor or proposer actively and aggressively seeking to meet the goals, can reasonably be expected to make. In evaluating good faith efforts made toward achieving the goals, whether the Contractor or proposer has performed the efforts outlined in the Obligations of Contractor for Good Faith Efforts outlined in this document will be considered, along with any other relevant factors.

#### D. OBLIGATION OF CONTRACTOR FOR GOOD FAITH EFFORTS

- 1) **The Contractor shall make a Good Faith Effort to achieve the Participation Goal for MWDBE subcontractors/suppliers. The failure to meet the goal shall not necessarily be cause for disqualification of the Contractor; however, Contractors not meeting the goal are required to furnish with their bids written documentation of their Good Faith Efforts to do so.**
- 2) Award of Contract shall be conditioned upon satisfaction of the requirements set forth herein.
- 3) The Form of Proposal includes a section entitled “MWDBE Participation Form”. The applicable information must be completed and submitted as outlined below.
- 4) **Failure to submit this information as requested may be cause for rejection of bid.**

#### E. DOCUMENTATION REQUIRED FOR GOOD FAITH EFFORTS

- 1) Contractors reaching the Goal are required to submit only the MWDBE Participation Form.” The form must be fully completed including names and telephone number of participating MWDBE firm(s); type of work to be performed; estimated value of the contract and value expressed as a percentage of the total Lump Sum Bid Price. The form must be signed and dated, and is to be submitted with the bid.
- 2) Contractors not reaching the Goal must submit the “MWDBE Participation Form”, the “Quote Summary Form” and a written statement documenting their Good Faith Effort to do so. If bid includes no MWDBE participation, Contractor shall enter “None” on the subcontractor / supplier form). In addition, the Contractor must submit written proof of their Good Faith Efforts to meet the Participation Goal:
  - a. Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms to participate.
  - b. Included documentation of advertising in the above publications with the Contractors good faith efforts package
  - c. Attended LFUCG Central Purchasing Economic Inclusion Outreach event
  - d. Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs of subcontracting opportunities
  - e. Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms
  - f. Requested a list of MWDBE subcontractors or suppliers from LFUCG Economic Engine and showed evidence of contacting the companies on the list(s).
  - g. Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms to work on this project. Those contacted and their responses should be a part of the Contractor’s good faith efforts documentation.
  - h. Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.
  - i. Followed up initial solicitations by contacting MWDBEs to determine their level of interest.
  - j. Provided the interested MWDBE firm with adequate and timely information about the plans, specifications, and requirements of the contract.
  - k. Selected portions of the work to be performed by MWDBE firms in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE participation, even when the prime contractor may otherwise perform these work items with its own workforce.

- l. Negotiated in good faith with interested MWDBE firms not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.
- m. Included documentation of quotations received from interested MWDBE firms which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.
- n. Contractor has to submit sound reasons why the quotations were considered unacceptable. The fact that the Contractor has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE quote. Nothing in this provision shall be construed to require the Contractor to accept unreasonable quotes in order to satisfy MWDBE goals.
- o. Made an effort to offer assistance to or refer interested MWDBE firms to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal
- p. Made efforts to expand the search for MWBE firms beyond the usual geographic boundaries.
- q. Other--any other evidence that the Contractor submits which may show that the Contractor has made reasonable good faith efforts to include MWDBE participation.

Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Contractors may include any other documentation deemed relevant to this requirement. Documentation of Good Faith Efforts are to be submitted with the Bid, if the participation Goal is not met.

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.

### **INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- (1) It is understood and agreed by the parties that Consultant hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Consultant or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "Consultant") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) Consultant shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Consultant's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Consultant; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) 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 LFUCG 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.
- (4) In the event LFUCG 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 LFUCG, which approval shall not be unreasonably withheld.

- (5) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. CONSULTANT acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the CONSULTANT in any manner.

**INSURANCE REQUIREMENTS**

Required Insurance Coverage

CONSULTANT shall procure and maintain for the duration of this contract 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 LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by CONSULTANT. The cost of such insurance shall be included in any bid:

<b><u>Coverage</u></b>	<b><u>Limits</u></b>
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, \$3 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky. LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms or JLL shall use a non-admitted license to do business carrier in Kentucky as long as AM Best Rating A-15.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or

Premises and Operations Liability endorsement and a Products Liability endorsement unless they are deemed not to apply by LFUCG.

- d. 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 LFUCG and obtain similar insurance that is commercially available and acceptable to LFUCG.
- e. LFUCG shall be provided notice via email , in the event any of the required policies are canceled or non-renewed.
- f. . 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.

#### Renewals

Evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on on an Acord certificate of insurance form. .

#### Safety and Loss Control

CONSULTANT shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

#### Verification of Coverage

CONSULTANT agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award,

#### Right to Review, Audit and Inspect

CONSULANT understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

#### **DEFAULT**

CONSULTANT understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging CONSULTANT for any such insurance premiums purchased, or suspending or terminating the work.