

## **AGREEMENT**

**THIS AGREEMENT** is made and entered into as of the \_\_\_ day of December, 2012, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter "Government"), and **COMMONWEALTH INSPECTION BUREAU INC.**, a Kentucky corporation with offices located at 501 Darby Creek Road, Suite 63, Lexington, Kentucky 40509 (hereinafter "Organization").

### **W I T N E S S E T H:**

**WHEREAS**, Government issued Request for Proposals No. 32-2012 (the "RFP") seeking proposals for electrical inspection services; and

**WHEREAS**, Organization timely submitted its response to the RFP dated \_\_\_\_\_, 2012 and Government accepted Organization's response as the best value for the Government bid and authorized the execution of this Agreement;

**NOW, THEREFORE**, for and in consideration of the mutual promises and covenants contained herein, the receipt and sufficiency of which are acknowledged, Government and Organization hereby agree as follows:

1. **TERM.** Government hereby contracts with Organization for the provision of electrical inspection services for the period beginning December \_\_\_\_, 2012, and continuing thereafter for one (1) year from that date, unless earlier terminated. Government may terminate this Agreement by giving Organization thirty (30) days prior written notice of termination. The term of this

Agreement shall automatically renew for up to five (5) additional terms of one (1) year each unless either party gives written notice of nonrenewal or termination to the other party prior to the expiration of the original or any renewal term of this Agreement.

2. **Consideration.** In consideration of Organization performing the services required by this Agreement, Organization is to be paid the fees authorized by section 4.10 of the RFP and Sections 5-67 and 5-76 of the Urban County Government Code of Ordinances, as may be amended. Payment shall be made in the manner specified by the RFP.

3. **Performance.** Organization shall perform all duties and services required by this Agreement faithfully and satisfactorily at the time, place and for the duration described herein. Organization shall keep itself fully informed of all national and state laws and regulations and all local ordinances, resolutions and regulations in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances or regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify Government, its officers, agents and employees against any claim or liability arising from and based on Organization's violation of any such laws, ordinances or regulations.

4. **Services.** Organization shall provide the services required by the RFP as well as the following additional services:

A. Organization shall perform electrical inspections for all Government departments and divisions at no charge to Government.

B. Organization shall employ, at all times, a minimum of three (3) full-time electrical inspectors unless requested in writing by Government's Director of Building Inspection to increase the number based upon an increase in electrical permit issuances as provided in Section 3.6.6 of the RFP. Upon any increase in the minimum number of full-time electrical inspectors selected, Organization shall correspondingly increase the number of motor vehicles required in Section 3.6.3 of the RFP.

C. Organization shall have at least one (1) full-time electrical inspectors available to respond to service requests twenty-four (24) hours per day, seven (7) days per week.

D. Organization shall prepare and submit written reports of its activities and services to Government's Division of Building Inspection and to such other Government departments, divisions, boards or committees that may request such reports. Such reports shall be submitted on a quarterly basis and as otherwise requested.

E. Organization shall attend, at the request of the Home Builders Association of Lexington, including both the home builder and remodeler members, educational seminars for local builders and remodelers to inform and instruct them regarding relevant electrical codes, code enforcement issues and code interpretations. Organization shall not be precluded from charging such associations or organizations a reasonable fee for such services.

F. Organization shall, at the request of the Kentucky Electrical Contractors Association or any other professional electrical contractor organization for electrical contractors, attend seminars to discuss code enforcement and code interpretation issues and changes in the electrical code. Organization shall not be precluded from charging such associations or organizations a reasonable fee for such services.

G. Organization shall have an office open and available to the public on a full-time basis (at least forty hours per week). If necessary based upon the workload demand the office shall be open and available to the public for at least some hours on Saturdays.

H. Organization shall employ a secretary on a full-time basis (at least forty hours per week).

5. **Reporting.** Organization shall, at the request of Government's Division of Building Inspection, submit a report containing the items required by section 4.0 of the RFP. Such reports shall be submitted on a quarterly basis and as otherwise requested.

6. **Oversight.** Government designates its Director of the Division of Building Inspection, and such other person or persons as he may deem necessary, to monitor and evaluate the services rendered by Organization. Government, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required by this Agreement are being carried on and conducted. Inspection and monitoring of the work by

those authorities shall in no manner be presumed to relieve Organization of its responsibility or obligations.

7. **Order of Precedence.** Government's RFP, the Addenda to the RFP and Organization's bid proposal are expressly incorporated herein by reference and, together with this Agreement, constitute the contract documents. In the event of a conflict among or between the contract documents, then the documents shall control in the following order of precedence: this Agreement, the RFP, the RFP addenda, and Organization's bid proposal.

8. **Default.** In the event Organization fails to perform or satisfy each and every material term or condition of this Agreement, then such failure shall be deemed a default and Government shall be entitled to terminate this Agreement upon ten (10) days prior written notice to Organization. Upon declaration of default, Government shall be entitled to seek relief by way of any and all available remedies, including but not limited to Organization's performance bond.

9. **Miscellaneous.**

9.1 Governing Law. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

9.2 Changes and Additions. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that Government may make such changes only with the approval of its legislative authority, the Lexington-Fayette Urban County Council, and signed by its Mayor.

9.3 Entire Agreement. This Agreement, with all attachments and exhibits hereto (and as otherwise provided in paragraph 7), shall constitute the entire agreement between the parties and no representatives, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose.

9.4 Relationship of the Parties. In no event shall the parties be construed, held or become in any way for any purpose partners, associates or joint venture in the conduct of their respective endeavors or otherwise. No contractor, licensee, agent, servant employee or invitee of Government shall be, or shall be deemed to be, a contractor, licensee, agent, servant, employee or invitee of Organization and no contractor, licensee, agent, servant employee or invitee of Organization shall be, or shall be deemed to be, a contractor, licensee, agent, servant, employee or invitee of Government.

9.5 Anti-Discrimination. Each party shall provide equal opportunity and employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age or disability, shall promote equal employment and shall cause each of its respective contracting agencies to do so. This program of anti-discrimination shall apply to every aspect of the parties' employment policies and practices.

9.6. Assignability. Neither party may assign any of its rights and duties under this Agreement without the prior written consent of the other party.

9.7. Notices. All notices, requests, demands, waivers, and other communications given or required to be given under this Agreement shall be in

writing and shall be addressed to the parties at the respective addresses in the heading to this Agreement. All such communications to Government shall be directed to the attention of the Director of the Division of Building Inspection or to such person as he may designate in writing. All such communications to Organization shall be directed to the attention of Marshall Jones Jr., its President, or to such person as he may designate in writing.

9.8. Waiver. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this Agreement.

9.9. Litigation. The parties mutually acknowledge that the validity of this Agreement and the underlying bid process are the subject of litigation pending before the Fayette Circuit Court. Should a final ruling result in the bid process or this Agreement being invalidated, then this Agreement shall be null and void as of that date and Organization shall have a period of thirty (30) days within which to wind-up its affairs conducted pursuant to this Agreement and to submit to Government a final report of all services and an accounting for all fee collections.

9.10. Authorization. By their signatures below, Government and Organization hereby verify that they have been duly authorized to execute, deliver and perform this Agreement and the execution and performance of the Agreement are within the powers of the Government and the Organization and do not contravene any law, rule or regulation.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK

COMMONWEALTH INSPECTION BUREAU, INC.

BY: *M. Jones*  
MARSHALL W. JONES  
PRESIDENT

COMMONWEALTH OF KENTUCKY )  
COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Marshall W. Jones, as President, for and on behalf of Commonwealth Inspection Bureau, Inc., on this the 19<sup>th</sup> day of November, 2012.

My commission expires: 9/11/2015

*Brenda M. Litch* /JP#449079  
NOTARY PUBLIC, STATE AT LARGE, KY

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