

ENGINEERING SERVICES AGREEMENT

THIS IS AN AGREEMENT made as of May 19, 2014, between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (**OWNER**) and H.W. Lochner, 1040 Monarch Street Suite 300, Lexington, KY 40513 (**CONSULTANT**). **OWNER** intends to proceed with the _____ as described in the attached Exhibit A, "Request for Qualifications for Professional Engineering Services, Contract 4, RFP #13-2014." The services are to include customary civil, sanitary, geotechnical, mechanical, structural, and/or 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/or 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 "Request for Proposals/Scope of Engineering Services and Related Matters, Contract 4, RFP# 13-2014" (including Addenda 1-3), and attached Exhibit B the "Proposal of Engineering Services and Related Matters" (the CONSULTANT's response to RFP# 13-2014), and amendments to the CONSULTANT'S proposal included in**

attached Exhibit C “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 C**, and then **EXHIBIT B**.

- 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 submit three (3) copies (hard copies) 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 deliver five (5) copies (hard copies). One electronic copy of 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 (hard copies) 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 or approvals necessary 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 C "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 Project Assignment 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 Project Assignment within ninety (90) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Project Assignment 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 Project Assignment within forty-five (45) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT**/Final Project Assignment 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 Project Assignments for each work assignment performed under this agreement by **CONSULTANT** or its sub-consultant(s). Each Project Assignment shall contain scope of work, fee and schedule for performance of the work. Individual Project Assignments shall be of the form included in Exhibit C.

5.1.1.a Fee payable to **CONSULTANT** under individual Project Assignments shall be developed using hourly rates included in Exhibit C or as amended in accordance with provisions herein.

5.1.1.b Terms of payment to **CONSULTANT** shall be specified in each Project Assignment. For assignments with defined scope, lump sum assignments shall be issued. Otherwise Project Assignments shall include time and materials payment terms.

5.1.1.c Each Project Assignment 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 Kentucky law, and that venue of any legal action shall only 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, 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 Planning, Preservation & Development, 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 or subconsultants 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

- a.** 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** 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.
- b.** **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** 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 **OWNER**.

- c. 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.
- d. 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.
- e. These provisions 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 Section 6.9 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 at its cost and expense 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**.

<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. 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. A copy of the certificates shall be submitted to **OWNER** and attached as Exhibit "D" to this Agreement.
- b. **OWNER** shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- c. The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- d. The General Liability Policy shall include a Pollution Liability endorsement unless it is deemed not to apply by **OWNER**.
- e. 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).

- f. **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.
- g. 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**.
- h. 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 A. Bradley Frazier, P.E., Director of the Division of Engineering (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. 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:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: _____
JIM GRAY, MAYOR

CONSULTANT:

__H. W. Lochner

BY: _____
 Jerry Leslie, 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 _____, as the duly authorized representative for and on behalf of _____, on this the ____ day of _____, 2014.

My commission expires: _____.

NOTARY PUBLIC

EXHIBIT A

**REQUEST FOR PROPOSALS/
SCOPE OF ENGINEERING SERVICES
AND RELATED MATTERS**

RFP# 13- 2014

EXHIBIT B

CERTIFICATE OF INSURANCE

Client#: 39357

HWLOC

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/28/2014

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). If Waiver of Subrogation is applicable, it only applies to the extent allowed by law.


PRODUCER Construction - Remegi Team Mesriow Insurance Services 353 N. Clark Street Chicago, IL 60654	CONTACT NAME: Salina Rivera PHONE (A/C, No, Ext): 312 595-8105 E-MAIL ADDRESS: srivera@mesriowfinancial.com	FAX (A/C, No): 312-595-6381
	INSURER(S) AFFORDING COVERAGE	
INSURED H. W. Lochner, Inc. 225 West Washington, 12th Floor Chicago, IL 60606	INSURER A : Travelers Indemnity Co. of Amer	NAIC # 25666
	INSURER B : St. Paul Fire & Marine Insuranc	NAIC # 24767
	INSURER C : Phoenix Insurance Company	NAIC # 25623
	INSURER D : Charter Oak Fire Insurance Comp	NAIC # 25615
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		P6608451B877TIL14	05/01/2014	05/01/2015	EACH OCCURRENCE \$1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					DAMAGE TO RENTED PREMISES (Ea occurrence) \$1,000,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000
D	AUTOMOBILE LIABILITY		P8108451B877TIA14	05/01/2014	05/01/2015	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	<input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> Drive Oth Car <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/> Physical Dam					BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ 1,000 Comp. \$1,000 Coll.
B	UMBRELLA LIAB		ZUP10P6385414NF	05/01/2014	05/01/2015	EACH OCCURRENCE \$10,000,000
	<input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$10000	<input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		PNUB8976P38714	05/01/2014	05/01/2015	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below Y/N N N/A					E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE - EA EMPLOYEE \$1,000,000 E.L. DISEASE - POLICY LIMIT \$1,000,000
A	Leased/Rented Equipment		P6608451B877TIA1	05/01/2014	05/01/2015	150,000 500 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
Job#000010176 Contract 4 Structures RFP#13-2014
LFUCG is included as an additional insured with respects to General Liability as required by written contract.

CERTIFICATE HOLDER LFUCG 200 East Main Street Lexington, KY 40507	CANCELLATION 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 
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HWLOCHN-01

SUHANDAJ

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

5/27/2014

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

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

PRODUCER Willis of Illinois, Inc. c/o 26 Century Blvd P.O. Box 305191 Nashville, TN 37230-5191	CONTACT NAME: certificates@willis.com PHONE (A/C, No, Ext): (877) 945-7378 E-MAIL ADDRESS:	FAX (A/C, No): (888) 467-2378																				
	<table border="1"> <tr> <th colspan="2">INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td colspan="2">INSURER A : Lexington Insurance Company</td> <td>19437</td> </tr> <tr> <td colspan="2">INSURER B :</td> <td></td> </tr> <tr> <td colspan="2">INSURER C :</td> <td></td> </tr> <tr> <td colspan="2">INSURER D :</td> <td></td> </tr> <tr> <td colspan="2">INSURER E :</td> <td></td> </tr> <tr> <td colspan="2">INSURER F :</td> <td></td> </tr> </table>		INSURER(S) AFFORDING COVERAGE		NAIC #	INSURER A : Lexington Insurance Company		19437	INSURER B :			INSURER C :			INSURER D :			INSURER E :			INSURER F :	
INSURER(S) AFFORDING COVERAGE		NAIC #																				
INSURER A : Lexington Insurance Company		19437																				
INSURER B :																						
INSURER C :																						
INSURER D :																						
INSURER E :																						
INSURER F :																						
INSURED H.W. Lochner, Inc. Mr. Paul Blachowicz 225 West Washington, Suite 1200 Chicago, IL 60606																						


COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

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

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE	\$
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$
							MED EXP (Any one person)	\$
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$
							PRODUCTS - COMP/OP AGG	\$
								\$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	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 <input type="checkbox"/> N/A						PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$
A	Professional Liab.			044177432	5/1/2014	5/1/2015	Per Claim/Agg: 2,000,000	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Job No.: 000010176 - Contract 4 Structures RFP #13-2014

CERTIFICATE HOLDER**CANCELLATION**

LFUGG 200 East Main Street Lexington, KY 40507	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE 
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EXHIBIT C

**PROPOSAL OF ENGINEERING SERVICES
AND RELATED MATTERS**

EXHIBIT D

**FURTHER DESCRIPTION OF BASIC
ENGINEERING SERVICES AND
RELATED MATTERS**

LFUCG PROJECT ASSIGNMENT NO. _____
UNDER LFUCG AGREEMENT WITH _____ FOR

CONSULTANT

OWNER

Name	H.W. Lochner	Lexington Fayette Urban County Government
Street Address	1040 Monarch Street Suite 300	200 East Main Street
City, State, Zip	Lexington, KY 40503	Lexington, KY 40507
Contact Person	Jerry Leslie	Brad Frazier
Telephone	859-224-4476	859-258-3410
Fax	859-224-9828	859-258-3458
E-Mail	jleslie@hwlochner.com	bfrazier@lexingtonky.gov

Project Assignment Date: _____

Task Name: _____

Task ID: _____

SCOPE OF WORK/DELIVERABLES

SCHEDULE OF WORK

FEE

ACCEPTED BY:

AUTHORIZED BY:

Consultant's Authorized Signature

Owner's Authorized Signature

Date Signed

Date Signed

Two originals of this work order shall be executed by the Owner and returned to _____. A fully executed copy will be returned to the Owner.

