

## AGREEMENT

**THIS PROFESSIONAL SERVICE CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through **OFFICE OF THE MAYOR** herein referred to as “**METRO GOVERNMENT**”, and **THE UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC.**, with offices located at 300 E. Market St., Louisville, Kentucky 40202-1959, herein referred to as “**U of L**”,

### WITNESSETH:

**WHEREAS**, the Metro Government wishes to engage Consultant to provide professional services for a merger review study (“Study”) to be conducted on behalf of the Louisville Metro Comprehensive Review Commission created pursuant to Chapter 201 of the 2022 Kentucky Acts; and

**WHEREAS**, Consultant has the experience, expertise and qualifications necessary to provide these services; and

**WHEREAS**, pursuant to KRS 45A.380, the Metro Government has determined that competition is not feasible, and that this Agreement is for sole source services:

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF PROFESSIONAL SERVICES**

**A.** U of L shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. U of L’s work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

**B.** U of L, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of UofL. However, such use must be documented in the monthly invoice submitted for those services rendered.

**C.** If from time to time U of L needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then U of L shall notify the Louisville Metro Office of Management and Budget of this need and arrangements may be made for that contingency. However, at no time shall the Metro Government make available its resources without the full consent and understandings of both parties.

**D.** The services of U of L shall include but not be limited to those described on Attachment A attached hereto and fully incorporated herein.

## **II. FEES AND COMPENSATION**

**A.** Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement as set forth in Attachment A. Total compensation payable to Consultant for services rendered pursuant to this Agreement shall not exceed **NINETY-TWO THOUSAND FIVE HUNDRED THIRTY TWO DOLLARS (\$92,532.00)**.

**B.** Payment for services will be made, upon receipt of U of L's detailed monthly invoices. Payment shall only be made pursuant to a detailed invoice, which invoice shall indicate a descriptive accounting of the services performed under this Agreement and the particular nature of such service. Should the agreement be terminated or canceled prior to completion of the work to be performed hereunder, Metro Government agrees to pay U of L for all work performed up to and including the date of termination, including any non-cancelable obligations.

**C.** U of L shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this contract. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

**D.** U of L, to the extent that it provides the same or related services to other parties agrees that it will not charge Metro Government for services or expenses for which it is also billing other parties which are of benefit to the other parties. Should services rendered to Metro Government under this agreement be such that those services also benefit another party during the term of this agreement, U of L agrees to pro-rate its billings and expenses to Metro Government appropriately and to provide documentation to all parties to verify the pro-ration of such billings. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work or expense).

**III. DURATION**

**A.** This Agreement shall begin October 14, 2022 and shall continue through and including June 30, 2023.

**B.** This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

**C.** In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed as invoiced by U of L, including any non-cancelable obligations. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall

deliver notice to U of L of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

**IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause U of L to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

**V. RECORDS-AUDIT**

U of L shall maintain during the course of the work, and retain not less than three years from the date of final payment on this Agreement, complete and accurate records of all of U of L's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by U of L shall include (without limitation): (a) payroll records accounting for total time distribution of U of L's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as documentation of electronic payroll deposits, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for U of L's stores stock or capital items; and (c) paid invoices and canceled checks (if applicable) or procurement card supporting documentation for materials purchased and for subcontractors' and any other third parties' charges.

**VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

U of L, although vested with sovereign immunity, is subject to the Claims Commission Act, KRS 49.010-49.180. Claims against U of L relating to personal injury or property damage may be filed and decided under the provisions of the Act. To the extent permitted by that Act and other applicable law, U of L, shall defend, indemnify and hold harmless the Metro Government from and against any and all claims against the Metro Government which may result from any error or omission arising out of U of L's performance under this Agreement.

**VII. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. U of L agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. U of L further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue. Metro Government acknowledges U of L's assertion that it is a non-profit tax-exempt corporation.

**VIII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be Franklin Circuit Court, Frankfort, Kentucky. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Agreement or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.

**IX. AUTHORITY**

The U of L, by execution of this Agreement, does hereby certify and represent that it is qualified to do business in the Commonwealth of Kentucky, has full right, power and authority to enter into this Agreement. Further, U of L certifies that it has the authority to contract for these services with Metro Government for UofL.

**X. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein; or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation,

preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

## **XI. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. If there is a conflict between the terms of this Agreement and any Attachment, the terms of this Agreement shall control.

**XII. OCCUPATIONAL HEALTH AND SAFETY**

U of L agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 *U.S.C. 650 et. seq.*, as amended, and KRS Chapter 338.

**XIII. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

**XIV. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

**XV. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

**XVI. CALCULATION OF TIME**

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, U of L is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XVII. CAPTIONS**

The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

**XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS**

The U of L shall reveal any final determination of a violation by the U of L or any subcontractor performing work under this Agreement (“Subcontractor”) within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the U of L or Subcontractor. The U of L shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the U of L or Subcontractor for the duration of the contract.

**XIX. CONFIDENTIALITY OF PRELIMINARY WORK PRODUCT**

Metro Government recognizes that under UofL policies, the results of the Study must be publishable and agrees that UofL and UofL faculty have the right to publish and otherwise publicly disclose any information gained in the course of the Study; provided, however that the parties agree that all preliminary work related to the Study, which term shall include but not be limited to data, draft reports, analysis, communications between the parties and all non-public information related to the Study, shall be held confidential and, subject only to the requirements of law, including Kentucky attorney general opinions that carry the force of law, shall not be disclosed to any third party without the written agreement of the parties until the earlier to occur: publication of the final Study deliverables or, in the event of contract termination prior to provision of the final Study deliverables, August 31, 2024. The parties further agree, however, that such information may be disclosed to the parties’ employees

and independent contractors who need to have such information to perform the duties required of them.

**WITNESS** the agreement of the parties hereto by their signatures affixed hereon.

**APPROVED AS TO FORM AND  
LEGALITY CONTINGENT  
UPON APPROVAL OF  
OF THE APPROPRIATION FOR  
THIS CONTRACT BY THE  
METRO COUNCIL**

**LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT**

DocuSigned by:  
*Paul Rutherford*  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

DocuSigned by:  
*Barbara Sexton Smith*  
BARBARA SEXTON SMITH  
DEPUTY MAYOR

Date: 2/1/2023

Date: 2/1/2023

**UNIVERSITY OF LOUISVILLE**

DocuSigned by:  
*Haylee Ralston*  
By: Haylee Ralston, Director  
Office of Sponsored Programs Administration

Date: 2/1/2023

**Taxpayer Identification No.  
(TIN):61-1029626**

**Louisville/Jefferson County  
Revenue Commission Account  
No.:**

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## **ATTACHMENT A**

### **The Distribution of Local Public Services and Revenues in Jefferson County, Kentucky**

by

Paul Coomes, Ph.D.

Emeritus Professor of Economics  
University of Louisville

William Hoyt, Ph.D.

Professor of Economics  
University of Kentucky

Matthew Ruther, Ph.D.

Associate Professor of Urban and Public Affairs  
and Kentucky State Demographer  
University of Louisville

*January 18, 2023*

#### **Introduction**

The 2022 Kentucky General Assembly enacted House Bill 314, establishing a Comprehensive Review Committee to conduct a study of governance, services and taxes inside Jefferson County<sup>1</sup>. The objective is to review the state of relations among the various government entities, as a consequence of the merger of the City of Louisville and Jefferson County Fiscal Court. The merger was approved by voters in 2000, and enacted in 2003<sup>2</sup>. These entities include the county-wide Metro Government, the Urban Services District, the 80 suburban cities, and unincorporated areas. This note provides a scope of work and budget for the necessary research.

#### **Scope, Measurement, Complexity**

This is a complex measurement challenge, due to the vast array of public services, taxes, and districts in Jefferson County. Local governments provide services ranging across police, fire, EMS, sanitation, streets, libraries, health, parks and recreation, and much more. The primary revenue sources are real estate and personal property taxes, occupational and net profits taxes, insurance

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<sup>1</sup> See <https://apps.legislature.ky.gov/recorddocuments/bill/22RS/hb314/bill.pdf>. Section 8 establishes “the Louisville Metro Comprehensive Review Commission...the Louisville Metro Government shall provide the necessary administrative support for the commission...Commission shall submit its findings and any recommendations to the Legislative Research Commission for referral to the appropriate committee or committees by September 15, 2023.”

<sup>2</sup> For a summary, see [https://en.wikipedia.org/wiki/Government\\_of\\_Louisville,\\_Kentucky](https://en.wikipedia.org/wiki/Government_of_Louisville,_Kentucky) .

premium taxes, plus an array of fees and other revenue sources such as parking space rentals and dividends from the Louisville Water Company (at the time of merger, the City of Louisville wholly-owned the Louisville Water Company; that \$19 million dividend belongs to the USD). And there are 83 municipalities in the County, including the overarching county-wide Louisville Metro Government. Some of those municipalities are large enough to have their own police. However, the suburban cities with police departments need help from LMPD to handle homicide crime scenes. And Jeffersontown, Prospect, St. Matthews, Shively, and West Buechel levy their own occupational tax on payrolls.

We propose to acquire and analyze all relevant and available databases that measure where people live and work, how much in the way of taxes they pay, what services they receive, and which local jurisdictions are involved. Geographic Information System tools will be used to keep track of the data at the most micro level available, with the ability to aggregate results to Metro Council districts, municipalities, and zip codes.

Given the impact of COVID and COVID-related public policies, we will need to pay special attention to the reference time period for the study. Good data on government revenues and expenditures are available for fiscal year 2021, and in many cases fiscal year 2022. As researchers, we are always attempting to use the most recent reference period for which measures are available. However, one could argue that fiscal year 2019 was the last 'normal' period of operations. Only the last few months of fiscal year 2020 (July 2019 to June 2020) were affected by Covid. We will have to use our professional judgment as we go through the various categories to make sure the analysis and conclusions are representative of normal operations.

#### **Measurement of Local Government Services - Examples**

Below are some illustrative examples of the way we intend to measure the geographic distribution of local government services.

**Police:** allocate Metro police services to neighborhoods based on budget to divisions/precincts of officer assignments and incident responses. For the other municipalities, police services are assumed to be evenly distributed across their jurisdictions. However, we will need to account for the fact that Metro Government police are supporting suburban city police on a daily basis, and suburban cities also assist LMPD on cases, other than homicides.

**Corrections:** there is only one jail in Jefferson County, and it is funded by taxpayers county-wide. Expenditures are related to the home address of the incarcerated persons Youth Detention Services is a related category that will be treated in a similar way. Transportation of the youth will be the responsibility of Louisville Metro Government.

**Fire:** allocate fire service using the districts' address data on calls. This includes the USD and all the suburban fire districts.

EMS: allocate ambulance service using the districts' address data on runs. This includes suburban fire districts, most of which also run an EMS system.

Sanitation: solid waste, street cleaning, snow plowing: every household and business has garbage pickup. Metro Government provides pickup for both regular garbage and recyclables inside the Urban Services District, and snow plowing throughout the County. The state contracts with Metro for snow removal on state (non-interstate) roads. The other municipalities offer similar services, though only Metro actually does so using public employees. Elsewhere, suburban cities, homeowners' associations, and individuals contract with private garbage pickup services, with the price varying by place. Not all suburban cities or residents of formerly unincorporated areas participate in recycling. There is wide variation in snow plowing protocols among suburban cities and homeowner associations, with some plowing a light snowfall, others waiting for accumulation. The expenses will be allocated geographically based on the jurisdictions of the residents.

Health department: allocate services using the department's database on users and their addresses. The core focus will be on patients of the County Health Department and the Family Health Center. Special care will need to be taken to account for the effects of COVID.

Transportation: streets, sidewalks, beautification, lighting. Metro Government has responsibility for streets in the USD and the unincorporated areas. The USD also provides street lighting and sidewalk maintenance. Metro Government will need to provide an annual summary of expenditures by street segment or some other fine-grained geography.

Libraries: this is a county-wide agency. Expenditures will be allocated to parts of the County based on a database of patrons by residence address.

Parks and Recreation: this involves a mixture of USD and suburban cities. Metro Government manages all the USD city parks and the public golf courses throughout the County. Some of the larger suburban cities have their own parks, e.g., St. Matthews, Prospect, Anchorage. Since all parks are available for use by anyone, and there is no monitoring of individual usage, expenditures will be allocated based on the distribution of the population.

### **Measurement of Local Government Revenues - Examples**

Property taxes: acquire and analyze the PVA database on assessed value of property by address, plus the Sheriff's database on taxes paid. The PVA data is a good source for predicting the distribution of real estate taxes paid throughout the County, but does not have information on tangible personal property, such as business equipment or motor vehicles. We will need the Sheriff's data to allocate the business tangible property taxes to addresses. And we will need the County Clerk's office to provide data on motor vehicle property taxes by address.

Occupational taxes: the Metro Revenue Commission cannot accurately allocate revenues to places of work, as accounting firms may make lump payments for multiple locations, e.g., Walmart, Humana or food franchisees. We will use the Census Bureau’s OnTheMap program and other federal sources to estimate the jobs, payroll, and occupational taxes at the census tract level. These will be reconciled to the actual collections received by Metro Council and the five other municipalities that levy an occupational tax.

Net profits taxes: this is almost impossible to measure precisely. Even if one knows the location of every business, there is no way to know how profitable the businesses are each year. We will assume that taxes are distributed based on the location of employees.

Insurance premiums taxes: the insurance tax is levied by almost all city jurisdictions in Jefferson County. The tax is levied on homeowners’, vehicle, life, and liability insurance policies; and in many jurisdictions also on health insurance policies. Good data on insurance premium tax receipts for the 80+ cities in Jefferson County are available annually from the Kentucky Department of Local Government’s UFIR program.

### **Deliverables, Timeline, Team, Budget**

The result will be a first-ever measurement of the geographic distribution of local public revenues and services/expenditures. All data will be compiled at the lowest level of geography possible, given the underlying information available, and then aggregated to larger geographies for policy analysis – including, but not limited to, Urban Service District, suburban cities, formerly unincorporated areas, Metro Council districts, zip codes, neighborhoods and housing market areas. A website will be developed to store the empirical results, as well as documentation of methods and sources. All results will be accessible to the public.

#### **Timeline**

We anticipate the project will require about six months, with usable results for policy consideration by July or August 2023. We intend to brief the Committee as needed, but certainly at the midpoint of the project – in May.

#### **Team we have assembled**

Paul Coomes, principal investigator

William Hoyt, principal investigator

Matthew Ruther, principal investigator

Barry Kornstein, data acquisition, data quality, analysis

Chris Butz, GIS expert for databases and maps

Graduate student, research support, modeling

Web site developer, not yet identified

**Budget**

<b>Merger Review Study Budget</b>					
<b>UofL Personnel</b>	<b>Annual</b>	<b>Effort</b>	<b>Salary</b>	<b>Fringe</b>	
<b>Matthew H. Ruther</b>	<b>\$105,203</b>	<b>9.00%</b>	<b>\$9,468</b>	<b>\$2,698</b>	<b>\$12,167</b>
<b>Web Developer (TBD)</b>			<b>\$3,716</b>	<b>\$284</b>	<b>\$4,000</b>
					<b>\$16,167</b>
<b>Supplies and Expenses (PSC Consultants)</b>					
<b>Paul Coomes</b>					<b>\$12,000</b>
<b>Barry Kornstein</b>					<b>\$18,750</b>
<b>Christopher Butz</b>					<b>\$15,000</b>
					<b>\$45,750</b>
<b>Subaward (UK)</b>					
<b>William Hoyt</b>					<b>\$6,000</b>
<b>Lucas Taulbee</b>					<b>\$9,000</b>
					<b>\$15,000</b>
<b>UK Indirect Costs</b>	<b>10%</b>				<b>\$1,500</b>
<b>UL Direct Costs</b>					<b>\$78,417</b>
<b>UL Indirect Costs</b>	<b>18%</b>				<b>\$14,115</b>
<b>Total Cost</b>					<b>\$92,532</b>

An itemized budget is provided below. Billing will not exceed \$92,532. With approval, in February 2023, we will submit an invoice for work performed to date.

**Institutional home**

The project and results will be housed at the University of Louisville's Urban Studies Institute, which is directed by Dr. Ruther. We are still working on how the finances will be handled, as only two members of the team are employees of the University.

This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto.