

RESOLUTION NO. _____, SERIES 2014

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED NEW PROFESSIONAL SERVICE CONTRACT (UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC. - \$85,000.00).

Sponsored By: _____

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

OFFICE OF PERFORMANCE IMPROVEMENT

\$85,000.00 for a noncompetitively negotiated new Professional Service Contract with the University of Louisville Research Foundation, Inc. for professional services regarding customized project management training from March 1, 2014 through June 30, 2014

SECTION II: This Resolution shall take effect upon its passage and approval.

H. Stephen Ott
Metro Council Clerk

Jim King
President of the Council

Greg Fischer
Mayor

Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney

BY: 

AGREEMENT

THIS PROFESSIONAL SERVICE AGREEMENT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **OFFICE OF PERFORMANCE IMPROVEMENT**, herein referred to as "**METRO GOVERNMENT**", and **THE UNIVERSITY OF LOUISVILLE RESEARCH FOUNDATION, INC.**, a Kentucky non-profit corporation and agent of the University of Louisville ("UofL") for the receiving grants, research agreements and other sponsored agreements from external funding sources and which owns and controls intellectual property on behalf of UofL, with offices located at University of Louisville, Jouett Hall, Louisville, Kentucky 40292, herein referred to as "**ULRF**",

WITNESSETH:

WHEREAS, the Metro Government is in need of certain professional services with respect to customized project management training; and

WHEREAS, the University of Louisville's Center for Professional Development has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services.

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

I. SCOPE OF PROFESSIONAL SERVICES

A. ULRF shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The ULRF'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. ULRF, 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 ULRF needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then ULRF 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 ULRF shall include but not be limited to the following:

To provide customized management training for approximately 45 Metro Government employees. The training course consists of training on practical application and project management professional exam preparation.

II. FEES AND COMPENSATION

A. ULRF shall be reimbursed for professional services rendered according to the terms of this Agreement as described on Attachment A attached hereto and fully incorporated herein. Total compensation payable to ULRF for services rendered pursuant to this Agreement, including out-of-pocket expenses, shall not exceed **EIGHTY FIVE THOUSAND DOLLARS (\$85,000.00)**.

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate a descriptive daily accounting

of the hours expended in service under the contract, the particular nature of such service and out-of-pocket expenses. Copies of invoices or receipts for out-of-pocket expenses and other third party charges must be included with the ULRF's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, ULRF's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. ULRF 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. ULRF, to the extent that it provides the same or related services to other parties agrees that it will not charge Metro Government for services 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, ULRF agrees to pro-rate its billings and out of pocket expenses to Metro Government appropriately and to provide documentation to all parties to verify the pro-ration of such billings and expenses. 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 March 1, 2014 and shall continue through and including June 30, 2014.

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 ULRF. 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 ULRF 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 ULRF 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

ULRF shall maintain during the course of the work, and retain not less than five years from the date of final payment on this Agreement, complete and accurate records of all of ULRF'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 ULRF shall include (without limitation): (a) payroll records accounting for total time distribution of ULRF's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for ULRF's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

ULRF, as an agent of the University of Louisville (U of L), although vested with sovereign immunity, is subject to the Board of Claims Act, KRS 44.070-44.160. Claims against ULRF 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, ULRF as agent for the University of Louisville, 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 ULRF'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. ULRF agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. ULRF 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 ULRF'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 ULRF, 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, ULRF 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.

XII. OCCUPATIONAL HEALTH AND SAFETY

ULRF 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, ULRF 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 ULRF shall reveal any final determination of a violation by the ULRF 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 ULRF or Subcontractor. The ULRF shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the ULRF or Subcontractor for the duration of the contract.

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

APPROVED AS TO FORM AND LEGALITY:

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

Theresa M Reno-Weber
THERESA RENO-WEBER, CHIEF
OF PERFORMANCE IMPROVEMENT

Date: _____

Date: 3/14/14

Delphi
UNIVERSITY OF LOUISVILLE RESEARCH
FOUNDATION, INC. *Center*

By: Lee Rhodes

Title: ASSOCIATE PROVOST

Date: 3/7/14

Taxpayer Identification No.

(TIN): _____

**Louisville/Jefferson County
Revenue Commission Account**

No.: _____

Approved as to form and legality:

PSC 2014-xxxx Office of Performance Improvement with ULRF 021314 - [pr]

ATTACHMENT A

CONTRACT DATA SHEET

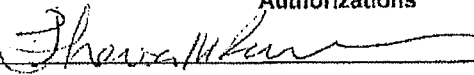
PSC Type (check one): New Addendum Sole Source: Yes No

Contractor Information	
1. Legal Name of Contractor:	<u>University of Louisville</u>
2. Address:	<u>2301 S. 3rd Street</u>
3. City, State, & Zip:	<u>Louisville, KY, 40208</u>
4. Contact Person Name & Telephone Number:	<u>Virginia Denny (502) 582-5581; Main # 1-800-334-Uofl.</u>
5. LeAP Supplier #:	<u>2737</u>
6. Revenue Commission Taxpayer ID#:	<u>[REDACTED]</u>
7. Federal Tax ID # (SSN if sole proprietor):	<u>[REDACTED]</u>

Department Information	
8. Requesting Department:	<u>Office of Performance Improvement</u>
9. Contact Person Name & Telephone:	<u>Daro Mott, (Cell) (502) 608-3577; (Work) (502) 574-2512</u>

Contract Information	
10. Not to exceed amount:	<u>\$ 85,000</u>
11. Are expenses reimbursed?	<u>Yes</u>
12. If yes list allowable expenses and maximum amount reimbursable:	<u>Books, PMP Binders, no more than \$6,000</u>
13. Beginning and ending date of the contract:	<u>March 2014 to June 30 2014</u>
14. Coding:	<u>1101 - 111 - 1180 - 118000 - 521109</u>
15. Funding Source	<u>General Fund</u> Federal Funds yes no
16. Scope & Purpose of the contract:	<p>To provide customized project management training for approximately 45 Louisville Metro Government employees. The course consists of training on practical application and project management professional exam preparation. Participants will receive project management coaching and feedback from a team of certified project management instructors. The range for the duration of the course is 18 weeks, ending June 30th.</p>

Attach all justification documentation to this form, along with signed Written Findings Form.

Authorizations	
Department Director:	<u></u> Date: <u>2/10/1</u>
Department certifies:	
<input checked="" type="checkbox"/>	Funds are available
<input checked="" type="checkbox"/>	Contractor is registered and in good standing with the Revenue Commission
<input checked="" type="checkbox"/>	Human Relations Commission registration requirements have been met
<input checked="" type="checkbox"/>	Contractor's status regarding Federal Debarment has been verified per Metro Procurement Policy Section VII -- Federally Funded Contracts & Agreements
_____ Purchasing: Approval of Sole Source Designation	Date: _____
_____ Risk Management: Certifies Insurance requirements satisfied.	Date: _____
_____ County Attorney:	Date: _____
The County Attorney has written the attached Professional Service Contract or Sole Source Contract and has approved that document as to the legality of the Instrument itself only and as to its form.	

WRITTEN FINDINGS

EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

_____ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **** Mayors Approval required for emergency purchases exceeding \$10,000.**

_____ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

_____ C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

_____ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

_____ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

_____ F. The contract is for proprietary items for resale.

_____ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.

_____ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

_____ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

_____ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

_____ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

_____ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

Sharon M. Powell 2/10/14
Requesting Department Director Date

Craig A. Bowen 2/10/14
OMB/Purchasing Approval Date

**Mayor Date

**Signature is required only for Written Finding A