

**RESOLUTION NO. 022, SERIES 2020**

**AN EMERGENCY RESOLUTION TO RETAIN THE PROFESSIONAL SERVICES OF DAVID BEYER TO ASSIST WITH THE INVESTIGATION ADOPTED IN RESOLUTION NO. 021, SERIES 2020.**

**SPONSORED BY: COUNCIL PRESIDENT DAVID JAMES AND COUNCIL MEMBERS ACKERSON AND PIAGENTINI**


**WHEREAS**, the severity of allegations against the former Executive Director of Transit Authority of River City ("TARC") necessitate immediate action by Metro Council to investigate the allegations of sexual harassment and other misconduct, which requires the enactment of this Resolution as an emergency under Metro Council Rule 7.01.

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

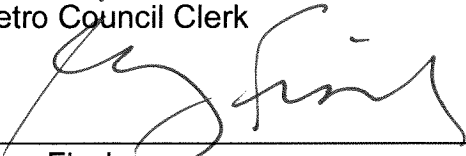
**SECTION I:** Louisville Metro Council hereby resolves to retain the professional services of David Beyer to assist with the Government Oversight and Accountability Committee with the investigation adopted in Resolution No. 021, Series 2020. The contract for professional services with David Beyer is appropriate up to, but is not to exceed, \$30,000. David Beyer will conduct the investigation at the direction of the Chair (and Vice Chair in the Chair's absence) of the Government Oversight and Accountability Committee and in compliance with Metro Council Rule 4A.04(b).

**SECTION II:** The Purchasing Department is hereby directed to process the attached contract pursuant to Louisville Metro's standard policies and procedures.

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

  
\_\_\_\_\_  
Sonya Harward  
Metro Council Clerk

  
\_\_\_\_\_  
David James  
President of the Council

  
\_\_\_\_\_  
Greg Fischer  
Mayor

3/3/2020  
\_\_\_\_\_  
Approval Date

**APPROVED AS TO FORM AND LEGALITY:**

Jonathan Ricketts

BY:   
R-034-20

**LOUISVILLE METRO COUNCIL  
ADOPTED**  
*February 20, 2020*

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **LOUISVILLE METRO COUNCIL** herein referred to as “**METRO GOVERNMENT**”, and **PENCE AND WHETZEL PLLC**, with offices located at 9300 Shelbyville Road, Suite 1205, Louisville, Kentucky 40222 herein referred to as “**ATTORNEY**”,

### **WITNESSETH:**

**WHEREAS**, the Metro Government is in need of certain professional services with respect to matters related to the Transit Authority of River City (“TARC”); and

**WHEREAS**, the Attorney 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.** Attorney shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Attorney’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.** Attorney, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Attorney. However, such use must be documented in the monthly invoice submitted for those services rendered.

C. The services of Attorney shall include but not be limited to those described Louisville Metro Council Resolution Numbers R-033-20 and R-034-20.

II. **FEES AND COMPENSATION**

A. Attorney shall be reimbursed for professional services rendered according to the terms of this Agreement in an amount equal to **ONE HUNDRED FIFTY DOLLARS (\$150.00)** per hour for a partner, **EIGHTY FIVE DOLLARS (\$85.00)** per hour for an associate and **FIFTY DOLLARS (\$50.00)** per hour for a paralegal or law clerk. Total compensation payable to Attorney for services rendered pursuant to this Agreement, including out-of-pocket expenses, shall not exceed **THIRTY THOUSAND DOLLARS (\$30,000.00)** from all sources of funds. Hours of service shall be billed based on increments of no less than one/tenth of an hour and shall represent actual time spent, rather than a standard charge for the activity performed.

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 Attorney's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Attorney's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

C. Attorney 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.** Attorney, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties 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 or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

### **III. DURATION**

**A.** This is a professional service contract which shall begin February 18, 2020 and shall continue through and including June 30, 2020.

**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 at the rates identified in this Agreement. 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 Attorney 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 Attorney 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.

The attorney client privilege notwithstanding, the parties agree that due to the sensitive nature of this investigation, Attorney shall keep every aspect of the investigation confidential to Metro Council during the course of the investigation. This agreement to keep matters confidential shall apply equally to David Beyer, the staff, and attorneys at PENCE AND WHETZEL PLLC. Attorney acknowledges the importance and necessity of the confidentiality obligations set forth herein, and specifically recognizes that the independence and integrity of the investigation are of the utmost importance.

#### **V. RECORDS-AUDIT**

Attorney shall maintain during the course of the work, and retain not less than five years from the date of final payment on the contract, complete and accurate records of all of Attorney'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 Attorney shall include (without limitation): (a) payroll records accounting for total time distribution of Attorney'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 Attorney'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. 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 Attorneys. Attorney agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Attorney further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**VII. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. In the event of any proceedings regarding this Agreement, the Parties agree that the venue shall be the state courts of Kentucky or the U.S. District Court for the Western District of Kentucky, Louisville Division. 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.

**VIII. AUTHORITY**

The Attorney, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**IX. CONFLICTS OF INTEREST**

**A. 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 Attorney 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.

**B.** Unless otherwise agreed to in writing by the Metro Government, neither Contract Attorney, nor the partners or associates or persons sharing office space with Contract Attorney, shall have any interest in any matter requiring legal advice or consultation adverse to the Metro Government, its agencies, departments, legal subdivisions or employees acting within the scope of their employment. Conflicts of

interest shall include any criminal defense work where a Metro Louisville police officer is a witness, or an arresting or investigating officer.

Unless disapproved by the Metro Government, this provision does not apply to a matter with respect to the collection of Metro Louisville taxes or open records or open meetings matters if Contract Attorney reports such matter in writing to the Metro Government and Contract Attorney's services for Metro Louisville do not relate to collecting Metro Louisville taxes or advising Metro Louisville with regard to open records or open meetings matters, as the case may be.

**X. 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.

**XI. OCCUPATIONAL HEALTH AND SAFETY**

Attorney 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. Attorney also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Attorney performs work under this Agreement. Attorney agrees to indemnify, defend

and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**XII. SUCCESSORS**

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

**XIII. 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.

**XIV. 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.

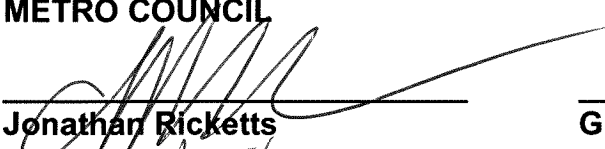
**XV. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first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

**XVI. 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.

**XVII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Attorney shall reveal any final determination of a violation by the Attorney or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Attorney or subcontractor. The Attorney shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Attorney 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 CONTINGENT UPON APPROVAL OF OF THE APPROPRIATION FOR THIS CONTRACT BY THE METRO COUNCIL**

  
Jonathan Ricketts

Date: 2/25/2020

**LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**

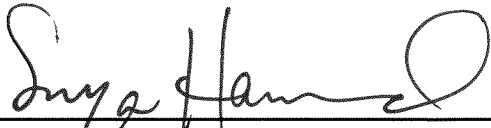
  
GREG FISCHER, MAYOR

Date: 3/3/2020

**METRO COUNCIL**

  
DAVID JAMES, PRESIDENT

Date: 2-25-2020

  
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SONYA HARWARD, CLERK OF  
THE COUNCIL

Date: February 25, 2020

PENCE AND WHETZEL PLLC

By:   
\_\_\_\_\_

Title: Of Counsel  
\_\_\_\_\_

Date: 2/25/2020  
\_\_\_\_\_

Taxpayer Identification No.  
(TIN): 81-2714919  
\_\_\_\_\_

Louisville/Jefferson County  
Revenue Commission Account  
No.: \_\_\_\_\_