

**AMENDMENT TO AGREEMENT FOR
SOLE SOURCE PURCHASE**

THIS CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **DEPARTMENT OF FIRE**, herein referred to as “**METRO GOVERNMENT**”, and **XEROX GOVERNMENT SYSTEMS, LLC d/b/a FIREHOUSE SOFTWARE** with offices located at ^{2900 100th St. Ste. 309}~~3345 106th Circle~~, Urbandale, Iowa 50322, herein referred to as “**CONTRACTOR**”,

WITNESSETH:

WHEREAS, the Metro Government and Contractor executed a Sole Source Contract for the purchase and use of fire department management and reporting software; and

WHEREAS, the Metro Government would like to continue licensure and support of this software;

WHEREAS, the Contractor has been determined by the Metro Government to be a sole source to provide those services,

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

I. SCOPE OF SERVICES

A. The services of Contractor shall include but not be limited to the following:

1. The licensure and maintenance of software and support described in Attachments A, B and C attached hereto and fully incorporated herein.

The parties agree that, in the event of a conflict between the terms of the Attachments and this Agreement, this Agreement shall govern.

C. The work product or deliverables of Contractor shall include but not be limited to the following:

1. Those described in the Attachments.

II. FEES AND COMPENSATION

A. Contractor shall be reimbursed for products and services rendered according to the terms of this Agreement as described on Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **FORTY FIVE THOUSAND DOLLARS (\$45,000.00)**.

C. The Metro Government shall not reimburse out of pocket expenses under this Agreement.

III. DURATION

A. This Agreement shall begin March 1, 2014 and shall continue through and including February 28, 2015.

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.

IV. EMPLOYER/EMPLOYEE RELATIONSHIP

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Contractor 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

Contractor 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 Contractor'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 Contractor shall include (without limitation): (a) payroll records accounting for total time distribution of Contractor'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 Contractor'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

Contractor agrees to indemnify, hold harmless, and defend the Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors in interest from all claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Contractor's (or Contractor's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to

personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act or omission of the Louisville/Jefferson County Metro Government or its elected and appointed officials and employees acting within the scope of their employment. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Contract.

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. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

VIII. 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.

IX. AUTHORITY

The Contractor, 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.

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

Contractor 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. Contractor 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 Contractor performs work under this Agreement. Contractor 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.

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

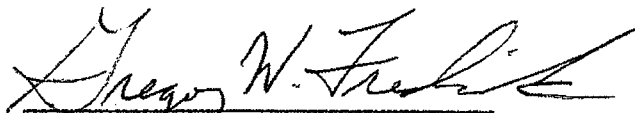


MARIAN SALMON, DIRECTOR,
PURCHASING DEPARTMENT

Date: _____

Date: 9/8/14

DEPARTMENT OF FIRE



GREG FREDERICK
CHIEF

Date: 9-8-14

XEROX GOVERNMENT SYSTEMS, LLC
d/b/a ACS FIREHOUSE SOFTWARE

By: SANDY KACASA

Title: V.P.

Date: 7/29/14

Taxpayer Identification No.
(TIN): 16-0468020

Louisville/Jefferson County
Revenue Commission Account
No.: _____

ATTACHMENT A

FIREHOUSE Software License Agreement

ACS FIREHOUSE Software

2900 100th St

Urbandale, Iowa 50322

Software License Agreement

Serial Number: [_____]

Customer: [_____]

Number of Users: [_____]

Carefully read the following terms and conditions before opening the package. Only an Authorized Representative of the purchaser should open the package. Opening this package indicates acceptance of these terms and conditions. ACS Government Systems, Inc. (ACS) and the party who opens this package hereby agree as follows:

- 1). **Materials:** This package contains program diskette(s) and/or CDs and applicable manual(s).
- 2). **License:** ACS hereby grants a revocable, non-exclusive, non-transferable license to use the materials on a single microcomputer or on a predetermined number of network workstations, in the United States of America, subject to the terms hereof. You agree not to (a) rent, lease, sublicense, or otherwise transfer any of the materials or your rights thereunder, (b) remove or obscure our proprietary notices, (c) translate, alter, decompile or disassemble any of the materials, (d) copy any of the materials without our prior written consent, (e) use the software for other agencies. You shall have no right to access, copy or otherwise use the source code for software licensed under this license. You are prohibited from causing or permitting the reverse engineering, disassembly or decompilation of the software licensed under this license. You are prohibited from modifying, improving or otherwise enhancing the software licensed under this license.
- 3). **Terms:** This license is effective until terminated (the evaluation is effective for 90 days from the date of installation). You may terminate it at any time by destroying the materials and all copies of any material made from the original materials and notify ACS immediately. This license terminates automatically upon breach of any of the conditions of this license. Upon termination you agree to destroy all copies of the materials. Use of the materials without a valid license of the materials is unauthorized and may subject you to monetary penalties.
- 4). **Confidentiality:** By accepting this license you receive the right to use the materials as specified herein, but you do not become the owner of the materials. The materials are protected by trade secret, copyright, and trademark law. You acknowledge that the materials are ACS property and contain valuable, confidential, unpublished information developed by ACS at a great expense. You agree to protect the materials from unauthorized reproduction, distribution, disclosure, or use of publication. You may not transfer any materials or software to anyone or entity without the written consent of ACS authorized personnel.
- 5). **U.S. Government Restricted Rights:** The software and documentation were developed at private expense and are provided with "RESTRICTED RIGHTS". Use, duplication, or disclosure by the Government is subject to restrictions as set forth in FAR 52.227-14 and DFAR 252.227-7013 et seq. or its successor.
- 6) **Export Laws:** You agree that the distribution and export/reexport of the software is in compliance with laws, regulations, orders or other restrictions of the U.S. Export Administration Regulations.
- 7). **Warranty:** We warrant the enclosed diskette(s) and/or CDs and printed materials to be free from material defect in normal use for 90 days from the date of receipt of materials. We do not warrant the error free operation of the software contained on the diskette or that such software will meet your requirements. The software is developed "as is". We will however attempt to correct or bypass any actual reproducible and significant error in the software described to us in writing within 90 days from the date of receipt of the materials by providing to you at our option either a corrected copy or work around instructions within a reasonable time. This does not cover altered software or require us to customize our software to meet your hardware or operating system requirements. Section 8 is your exclusive remedy for any breach by us of this section. No dealer, company, or person is authorized to expand, alter this section or any other provision of this agreement. Any such agreement will not bind ACS. **ACS MAKES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH REGARD TO THE ENCLOSED SOFTWARE LICENSED UNDER THIS LICENSE, IN WHOLE OR IN PART. ACS EXPLICITLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE. ACS EXPRESSLY DOES NOT WARRANT THAT THE LICENSED SOFTWARE, IN WHOLE OR IN PART, WILL BE ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION OR WILL BE COMPATIBLE WITH ANY HARDWARE OR SOFTWARE OTHER THAN THE EQUIPMENT. LICENSEE WAIVES ANY CLAIM THAT THE LIMITED WARRANTY SET FORTH IN THIS SECTION OR THE REMEDY FOR BREACH OF SUCH LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.**
- 8). **Limitation of Liability:** ACS' LIABILITY IN CONNECTION WITH THE SOFTWARE LICENSED UNDER THIS LICENSE, OR ANY OTHER MATTER RELATING TO THIS LICENSE WILL NOT EXCEED THE FEE THAT YOU ACTUALLY PAID TO ACS FOR THE SOFTWARE GIVING RISE TO THE LIABILITY. REGARDLESS WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE, IN NO EVENT WILL ACS BE LIABLE TO YOU FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT ACS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. YOU ACKNOWLEDGE THAT ACS HAS SET ITS FEES AND ENTERED INTO THIS LICENSE IN RELIANCE UPON THE LIMITATIONS OF LIABILITY AND THE DISCLAIMERS OF WARRANTIES AND DAMAGES SET FORTH IN THIS LICENSE, AND THAT THE SAME FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

9). **Remedy:** In the event that ACS breaches this agreement, your sole remedy is to notify us of such breach within the applicable warranty period and we will at our sole option, either cure the breach or refund the license fee paid to us for the materials. In no event will ACS be responsible for any damage beyond the amount of the license fee or for any indirect, special, incidental, consequential or similar damages or profits to you or any other person, or entity, regardless of the legal basis. Even if ACS has been advised of the possibility of such damages, except to the extent applicable state law specifically prohibits such exclusion.

10.) **General (System Only):** All prior correspondence oral or written including without limitation, all understandings with respect to materials are hereby superseded. This license constitutes your and our agreement and understanding regarding the materials. **General (Evaluation Only):** This evaluation program is provided free of charge to the registered requestor of the evaluation software and is to be used solely as an evaluation copy.

11.) **Software Maintenance Agreement.** 90 days free phone support is provided with purchase of FIREHOUSE Software. A separate software maintenance contract is available for an additional charge. This contract is not mandatory but highly recommended. The annual maintenance contract includes phone support and program updates. The cost of the software maintenance contract is based on the type and number of modules installed. After the 90 days of free support has expired and no software maintenance contract has been established, per call fee will be billed to the customer for telephone technical support.

A primary contact person will be designated for departments with 5 user licenses and higher. This primary contact person will collect user questions and problems and direct them to ACS technical support department for resolution.

ATTACHMENT B

FIREHOUSE Software Software Maintenance Agreement

THIS AGREEMENT (hereinafter "Agreement") is made, and entered into this xx day of XXXXX, 2010 by and between ACS Government Systems, located at 2900 100th St Urbandale, Iowa 50322 (hereinafter "ACS" or "Vendor"), and XXXXXXX Fire Department, located at XXXXXXX, XXXXXXX (hereinafter "Customer").

WHEREAS, Vendor and Customer have entered into a certain license agreement (the "License Agreement") pursuant to which Vendor agrees to license to Customer a software system known as FIREHOUSE Software (the "System") as specified in the License Agreement; and

WHEREAS, Vendor desires to maintain, and Customer desires to obtain the maintenance of, the System on the terms and conditions hereinafter provided.

NOW, THEREFORE, Vendor and Customer agree as follows:

1. Maintenance Services

The maintenance services to be hereunder (the "Maintenance Services") shall consist of: (a) technical or operation assistance provided by Vendor to Customer relating to the System (FIREHOUSE) or enhancements thereto and (b) distribution by Vendor to Customer at no charge of enhancements to the System which may be developed from time to time by Vendor.

2. Maintenance Fees

During the term commencing on the Acceptance Date, as defined in the License Agreement, and continuing as long as all software maintenance agreement fees are current, Vendor shall provide the Maintenance Services to Customer for a fee payable annually on each Anniversary Date in advance. At least thirty (30) days prior to each Anniversary Date Vendor shall notify Customer of the yearly maintenance fee to be charged by Vendor for the next succeeding year, whereupon, unless Customer notifies Vendor in writing that this Agreement shall terminate on the Anniversary Date, this Agreement shall be extended and renewed for an additional period of one year at the fee so specified by Vendor.

3. Additional Services

At the request of Customer, and with the consent of Vendor, Vendor may also provide technical, operational or other assistance or consulting to Customer in excess of the amount included as the Maintenance Services at Vendor's standard hourly rates then in effect.

4. Conditions

The termination of the License Agreement, or of the license granted therein, shall automatically result in the termination of this Agreement. VENDOR MAKES NO WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OF ANY KIND WHATSOEVER, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED BY VENDOR AND WAIVED BY CUSTOMER. VENDOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR PUNITIVE DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY EVENT VENDOR'S MAXIMUM LIABILITY TO CUSTOMER HEREUNDER SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY CUSTOMER TO VENDOR HEREUNDER DURING THE IMMEDIATELY PRECEDING TWELVE MONTHS.

5. Confidentiality

Vendor acknowledges that in the course of providing the Maintenance Services or other services provided hereunder, Vendor, or its employees or consultants, may be supplied with or come into possession of information which is proprietary to Customer including information as to customers, methods of doing business or operations. Vendor hereby agrees that it will keep all such information confidential, and will disclose such information to no other person. In addition, Vendor agrees to take such action as may be necessary or appropriate by way of agreement with, and instruction to, its employees so as to maintain the confidentiality of such information of Customer.

VENDOR

By: 

CUSTOMER

By: 
9-8-14

ATTACHMENT C

ACS FIREHOUSE Software
 2900 100th St Suite 309
 Urbandale, Iowa 50322
Contact: Forrest Nace
 Phone: 800-285-8685
 Fax: 724-283-9086
 E-Mail: forrest.nace@acs-inc.com



Quote: Q2013LouisvilleJeffersonMetroKY0528

<u>Sales Rep</u>	<u>Terms</u>	<u>Quote Date</u>	<u>Valid For</u>
Forrest Nace	Net 15	5/28/2013	60 Days

To:
 Louisville / Jefferson County Metro Government
 Josh Steele
 502-574-3809 / joshua.steele@louisvilleky.gov

<u>Item/Description:</u>	<u>Qty:</u>	<u>Price Per:</u>	<u>Total:</u>
FIREHOUSE Software Annual Maintenance for the CAD Monitor Interface Utility & Stored Procedures Utility from 8/1/13-7/31/14 for:	1	\$17,005.00	\$17,005.00
Anchorage Fire & EMS Ballardsville Fire & Rescue Buechel Fire Protection District Eastwood Fire Protection Fairdale Fire Dept Fern Creek Fire Dept. Harrods Creek Fire Dept High View Fire Dept. Jeffersontown Fire Protection Lake Dreamland Fire Dept.			
Louisville Fire & Rescue Lyndon Fire & Rescue McMahan Fire Department Middletown Fire Protection Okolona Fire Department Pleasure Ridge Park Fire District Shivley Fire Dept. St. Matthews Fire Protection District Worthington Fire Dept.			
		TOTAL:	\$17,005.00