

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. INSURANCE REQUIREMENTS

Insurance coverage shall be required of Attorney in accordance with Attachment A attached hereto and fully incorporated herein.

VII. HOLD HARMLESS AND INDEMNIFICATION CLAUSE

The Attorney 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 Attorney's (or Attorney'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 or willful misconduct 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.

VIII. 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.

IX. 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.

X. 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.

XI. 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.

XII. 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.

XIII. 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.

XIV. SUCCESSORS

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

XV. 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.

XVI. 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.

XVII. 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.

XVIII. 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.

XIX. 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**

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

Jonathan Ricketts

GREG FISCHER, MAYOR

Date: _____

Date: _____

METRO COUNCIL

DAVID JAMES, PRESIDENT

Date: _____

SONYA HARWARD, CLERK OF
THE COUNCIL

Date: _____

PENCE AND WHETZEL PLLC

By: _____

Title: _____

Date: _____

**Taxpayer Identification No.
(TIN):**_____

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

ATTACHMENT A

**HOLD HARMLESS AGREEMENT AND INDEMNIFICATION CLAUSE AND
INSURANCE REQUIREMENTS**

Hold Harmless and Indemnification Clause

All insurance requirements including performance and payment bonds shall be furnished the day a contract issued pursuant to this Bid is awarded.

The Contractor shall 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 breach of contract, and (2) not caused by the negligent act or omission or willful misconduct 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.

INSURANCE REQUIREMENTS

Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to Louisville/Jefferson County Metro Government's Purchasing Division and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. Contractor shall not allow any subcontractors to commence work until the insurance required of such subcontractors has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this

agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractors insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

A. The following clause shall be added to Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

B. The insurance to be procured and maintained and minimum Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Contractor's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

- 1. COMMERCIAL GENERAL LIABILITY, via the Occurrence Form, primary, non contributory ,with a \$1,000,000 Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including:**
 - a. Premises - Operations Coverage**
 - b. Products and Completed Operations**
 - c. Contractual Liability**
 - d. Broad Form Property Damage**
 - e. Independent Contractors Protective Liability**
 - f. Personal Injury**

- 2. PROFESSIONAL LIABILITY coverage insurance policy, which includes a minimum limit of liability of \$1,000,000 for each Wrongful Act, and \$2,000,000 aggregate limit. In the event that the Consultant's policy is written on a "Claims Made" Form, the Consultant shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that the Consultant has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.**

- 3. Workers' Compensation (if applicable) insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and Employers' Liability - \$100,000 Each Accident/\$500,000 Disease - Policy Limit/\$100,000 Disease - Each Employee.**

ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

MISCELLANEOUS

- A. Contractor shall procure and maintain insurance policies as described herein and for which the Louisville/Jefferson County Metro Government's Purchasing Division shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least fifteen (15) days prior to the expiration of any policy(s).**
- B. Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

**Louisville/Jefferson County Metro Government
Office of Management and Budget
Purchasing Division
611 West Jefferson Street
Louisville, Kentucky 40202**

- C. Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

**Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202**

- D. Cancellation or Material change of coverage: Contractor shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro's Risk Management Division within two (2) business days. If Contractor fails to notify Metro as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**
- E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Contractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or**

coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Contractor.