

## **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 TECHNOLOGY SERVICES**, herein referred to as “**METRO GOVERNMENT**”, and **UNISYS CORPORATION**, with offices located at 801 Lakeview Drive, Suite 100, Blue Bell, Pennsylvania 19422, herein referred to as “**CONTRACTOR**”,

### **WITNESSETH:**

**WHEREAS**, the Metro Government wishes to purchase maintenance and support services for proprietary Unisys Infolmage software used by the Louisville Metro Revenue Commission; and

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

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

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

**A.** Contractor shall, at the request of the Metro Government, provide services under the terms of this Agreement. This Agreement consists of the following documents:

1. The terms and conditions of this Agreement.
2. Agreement Number 97050023 which is attached hereto and fully incorporated herein as Attachment A.
3. The documents entitled “Support Services Schedule and Support Services Addendum” attached hereto and fully incorporated herein as Attachment B.

**B.** In the event of a conflict between the language in this Agreement and either Attachment A or Attachment B, this Agreement shall govern. In the event of a conflict between the language of Attachment A and Attachment B, Attachment A shall govern.

**C** If from time to time Contractor needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Contractor shall notify the proper agent of the Metro Government 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 understanding of both parties.

**D** The Contractor shall provide the following services:

1. Maintenance and support for proprietary Unisys Infolmage software used by the Louisville Metro Revenue Commission as described on Attachment B.

## **II. FEES AND COMPENSATION**

**A.** The Metro Government shall pay Contractor for services rendered pursuant to and as described in Attachment B. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **FIFTY THOUSAND DOLLARS (\$50,000.00)**.

**B.** Payment shall be made pursuant to Attachment A.

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

## **III. DURATION**

**A.** This Agreement shall begin January 1, 2014 and shall continue through and including December 31, 2014.

**B.** Either party may terminate this Agreement in the event of material breach by the other party upon thirty (30) days prior written notice of intent to terminate the Agreement, which notice shall specify such default or failure in such detail to allow the alleged breaching party the opportunity to cure such default. The alleged breaching party

shall have thirty (30) days from its receipt of such notice to remedy said default. If the breach is not remedied during such cure period, the termination will become effective. 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.

#### **IV. 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 charges to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time and upon reasonable written notice, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it, subject to such firm executing a confidentiality agreement acceptable to Contractor. This Section supersedes Section 7 of the terms of Agreement 97050023.

#### **V. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of Contractor in accordance with Attachment C attached hereto.

#### **VI. HOLD HARMLESS AND INDEMNIFICATION CLAUSE**

Consultant 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 third party claims, damages, losses and expenses including attorneys' fees, caused by the Consultant's negligence in the performance of the contract provided that such claim, damage, loss, or expense is (1) personal injury, bodily injury,

death, or damage to or destruction of tangible personal property, including the loss of use resulting therefrom caused by the negligent acts, errors or omissions of Contractor in the performance of services under this Agreement; 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. This Section replaces Section 27.3 of Agreement 97050023 for the purposes of 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. 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. Subject to Section 31 of Agreement 97050023, 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.

## **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. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

## **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.

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**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**

\_\_\_\_\_  
**CRAIG BOWEN, DIRECTOR, PURCHASING DEPARTMENT**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**DEPARTMENT OF TECHNOLOGY SERVICES**

\_\_\_\_\_  
**BETH NIBLOCK, DIRECTOR**

Date: \_\_\_\_\_

**UNISYS CORPORATION**

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Taxpayer Identification No. (TIN):** \_\_\_\_\_

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

**ATTACHMENT A**

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ATTACHMENT B

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## ATTACHMENT C

### INSURANCE REQUIREMENTS

#### I. INSURANCE REQUIREMENTS

Prior to commencing work, Contractor shall obtain or maintain 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. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of standard Accord certificates thereof are submitted to the Louisville/Jefferson County Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor 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. The Louisville/Jefferson County Metro Government may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance.

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

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 to the extent of Unisys liabilities under Section VI of this Agreement."

B. The insurance to be maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract:

1. **COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury and Property Damage, 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. The Contractor shall maintain at their own expense a **PROFESSIONAL LIABILITY (Errors and Omissions Liability)** insurance policy, which includes a **minimum** limit of liability of **\$15,000,000** for each Wrongful Act. In the event that the Contractor's policy is written on a "Claims Made" Form, the Contractor 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 Contractor 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.

### III. ACCEPTABILITY OF INSURERS

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

### IV. MISCELLANEOUS

- A. The Contractor shall maintain insurance policies as described herein and for which the Louisville/Jefferson County Metro Government shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include provisions stating that the policies may not be cancelled without the Louisville/Jefferson County Metro Government having been provided at least (30) thirty days written notice. The Certificates shall identify the Contract to which they apply and 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 the Louisville/Jefferson County Metro Government before the expiration date.

- B. Certificates of Insurance as required above shall be furnished, as called for to:

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

- C. The Contractor agrees that it will not materially alter any of the insurance policies currently in force and relied on under this agreement. Further, the Contractor will not reduce any coverage amount below the limits required in this agreement

- D. Approval of the insurance by the Louisville/Jefferson County Metro Government shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that the Louisville/Jefferson County Metro Government 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 the Contractor.