

PURCHASE OF SERVICE AGREEMENT

THIS PURCHASE OF SERVICE AGREEMENT, made and entered into on the 22 day of February 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and Ernst & Young, LLP, a limited liability partnership, ("Organization") with offices located at One Manhattan West, New York, NY 10001-8604.

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **EFFECTIVE DATE; TERM.** This Agreement shall commence on February 27, 2022 and shall last for a period of one year(s) unless terminated by LFUCG at an earlier time.
2. **RELATED DOCUMENTS.** This Agreement shall consist of the terms herein as well as the following additional documents, which are attached hereto as exhibits and incorporated herein by reference as if fully stated:
 - a. Exhibit "A" – LFUCG RFP Document
 - b. Exhibit "B" – Addendum of Services
 - b. Exhibit "C" – Consultant Proposal
 - c. Exhibit "D" - Dispute Resolution Procedures

To the extent that there is any express conflict between or among any of these documents, the terms and provisions of this Agreement shall prevail, followed by terms and provisions of Exhibit "A", "B", "C", and "D" in that order.

3. **SCOPE OF SERVICES.** Organization shall perform the services outlined in the attached Exhibit "A" and Exhibit B for LFUCG in a timely, workmanlike and professional manner (the "Services").
4. **PAYMENT.** LFUCG shall pay Organization a total amount not to exceed two hundred and fifty thousand dollars (\$250,000) for the performance of the Services. Such payments shall be made in three installments as set forth in the scope of work. The funds are limited to the services provided herein and may not be spent by the Organization for any other purpose without the prior written consent of LFUCG. Absent

any additional written agreement stating otherwise any travel or other expenses are included in the above payment.

a. LFUCG shall make payment under this Agreement upon timely submission of an invoice(s) from Organization specifying that the Services have been performed, accompanied by data satisfactory to LFUCG to document entitlement to payment for the Services performed to date. LFUCG shall have thirty (30) days from the date of receipt of the invoice to pay the invoice amount. LFUCG reserves the right to delay payment if it is reasonably determined by LFUCG that the Services performed or materials provided for the Services are inadequate or defective. If LFUCG determines that the Services were performed or materials provided for the Services are inadequate or defective, LFUCG shall provide Organization advance written notice and a reasonable period of time to cure the breach of no less than thirty (30) days. Failure to cure may result in default of this Agreement by Organization and termination by LFUCG as provided in Section 5.

b. LFUCG also reserves the right to reject any invoice submitted for services more than sixty (60) days after the services were rendered.

5. TERMINATION. Except with regard to provisions that survive the termination of the Agreement, this Agreement shall terminate upon completion of the Services or as set forth below. LFUCG, through the Mayor or the Mayor's designee, may terminate this Agreement for any reason whatsoever by providing Organization with at least thirty (30) days advance written notice. Organization shall be entitled for payment of all work performed through the effective date of the termination, calculated on a reasonable basis.

a. In the event of a termination based upon a material condition of non-performance or default by Organization, LFUCG shall provide Organization advance written notice and a reasonable period of time to cure the breach of no less than thirty (30) days.

b. Organization may terminate this Agreement based upon LFUCG's failure to timely pay for properly invoiced and accepted work. Organization shall provide LFUCG with at least thirty (30) days advance written notice and an opportunity to cure prior to termination. Organization may also terminate this Agreement, or any particular Services, immediately upon written notice to LFUCG if it reasonably determines that it can no longer provide the Services in accordance with applicable law or professional obligations. Organization shall be entitled for payment of all work performed through the effective date of termination, calculated on a reasonable basis.

c. Organization acknowledges that LFUCG is a governmental entity, and that the validity of this Agreement is based upon the availability of appropriated funding. In the event that such funding is not appropriated in a future fiscal year, LFUCG's obligations under this Agreement shall automatically expire without penalty to the LFUCG thirty (30) days after written notice to Organization. LFUCG shall exercise any application of this provision in good faith.

6. REPORTING. Organization shall provide LFUCG with timely reports and updates related to the provisions of the Services in the form and manner reasonably specified by LFUCG.

7. REGISTRATION; COMPLIANCE; AUTHORITY TO SIGN. Organization shall be lawfully registered or authorized to do business in the Commonwealth of Kentucky and Lexington-Fayette County and shall at all times comply with any and all applicable federal, state, and local laws, ordinances, and regulations. LFUCG may request proof that Organization has timely filed federal, state, or local tax forms which shall be provided by Organization on a timely basis. The person signing this Agreement on behalf of Organization is fully authorized to do so.

8. INSURANCE; INDEMNITY.

The risk management provisions of RFP No. 65-2022 attached hereto are edited as follows. Copies of the required Certificates of Insurance shall be provided to the LFUCG as required therein.

INDEMNITY:

- a) For damages caused by professional negligence of Organization, it is understood and agreed by the parties that Organization hereby assumes the entire responsibility and liability for direct damages to the extent caused by the negligent or willful misconduct of Organization or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "ORGANIZATION") under or in connection with this Agreement.
- b) ORGANIZATION shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, and successors in interest (hereinafter "LFUCG") from and against any third party claims and resulting damages, costs and losses, including but not limited to, reasonable attorney's fees, to the extent allowable by law and to the extent caused by the negligent or willful misconduct of ORGANIZATION in the performance of this Agreement including, but not limited to, liability attributable to bodily injuries, death, or property damage, or its performance of professional services.
- c) In the event LFUCG is alleged to be liable based upon 8(b) above, ORGANIZATION shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses.

- d) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- e) LFUCG is a political subdivision of the Commonwealth of Kentucky. ORGANIZATION acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the ORGANIZATION in any manner.

INSURANCE: Organization shall maintain for the duration of this Agreement:

<u>Coverage</u>	<u>Limits</u>
General Liability million aggregate	\$1 million per occurrence, \$2 million aggregate
(Insurance Services Office Form CG 00 01 or equivalent) combined single limit	or \$2 million
Worker's Compensation	Statutory
Employer's Liability	\$100,000
Professional (E & O) Liability	\$1 million per claim
Excess/Umbrella Liability	\$1 million per occurrence

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms or equivalent blanket additional insured endorsement.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by LFUCG.
- d. The Policy shall include Umbrella/Excess Liability coverage in the amount of \$1 million per occurrence, \$1 million aggregate, unless it is deemed not to apply by LFUCG.
- e. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are

canceled or non-renewed.

- f. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

Renewals: After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Organization understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions may constitute default and that LFUCG may elect to suspended or terminate the Agreement and/or pursue other remedies through the Dispute Resolution Procedures set forth herein.

This section shall survive the termination of this Agreement.

9. RECORDS. Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support the fees charged and expenses incurred in its performance of the services for a period of at least five (5) years following the expiration or termination of this Agreement, or as otherwise required depending upon the source of funds. Books of accounts shall be kept by Organization and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of Organization related to this Agreement and shall be made available to LFUCG upon request.

- a. LFUCG shall be the owner of all final documents, data, studies, plans, reports, and information prepared by Organization under this Agreement, subject to the restrictions of Sections 20 and 21.

- b. Organization understands and agrees that this Agreement and any related documents may be subject to disclosure under the Kentucky Open Records Act and will comply with any reasonable request by LFUCG to provide assistance with such a request.

10. ACCESS. Organization shall allow LFUCG any necessary and reasonable access to monitor its performance under this Agreement.

11. CONTRACTUAL RELATIONSHIP ONLY. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

12. EQUAL OPPORTUNITY; FAIRNESS ORDINANCE. Organization shall provide equal opportunity in employment for all qualified persons, and shall (a) prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation, gender identity, or handicap, (b) promote equal employment through a positive, continuing program of equal employment, and (c) cause any subcontractor or agency receiving funds provided pursuant to this Agreement to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices. Organization agrees to comply with LFUCG's Fairness Ordinance (Ordinance No. 201-99) and all sources of applicable law, including those specified in any Exhibit attached to this Agreement and incorporated herein by reference.

13. SEXUAL HARASSMENT. Organization must adopt or have adopted a written sexual harassment policy, which shall, at a minimum, contain a statement of current law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at all locations where Organization conducts business. The policy shall be made available to LFUCG upon request.

14. ANNUAL AUDIT. Organization agrees that all revenue and expenditures related to this Agreement shall be audited at least annually by independent certified public accountants who shall express an opinion as to whether or not revenue and expenditures during the year audited have conformed to state and local law and regulation. A copy of this audit, or clean audit opinion letter from an independent certified public accountant, shall be submitted to LFUCG each year of the Agreement.

15. INVESTMENT. Any investment of the funds received pursuant to this Agreement must fully comply with any restrictions imposed by law.

16. NO ASSIGNMENT. Organization may not assign any of its rights and duties under this Agreement without the prior written consent of LFUCG.

17. NO THIRD PARTY RIGHTS. This Agreement does not create a contractual relationship with or right of action in favor of a third party against either Organization or LFUCG.

18. KENTUCKY LAW, VENUE, AND DISPUTE RESOLUTION. This Agreement shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in the Circuit Court of Fayette County, Kentucky. Prior to seeking court action, any dispute relating to this Agreement or the Services shall first be mediated in accordance with the terms and conditions set forth in Exhibit D.

LFUCG shall not make a claim or bring proceedings relating to the Services or otherwise under this Agreement against any other EY Firm or Organization's or its subcontractors, members, shareholders, directors, officers, partners, principals or employees ("EY Persons"). LFUCG shall make any claim or bring proceedings only against Organization.

19. LIMITATION OF LIABILITY. To the extent permitted by law, LFUCG (and any others for whom Services are provided) may not recover from Organization, nor may Organization recover from LFUCG, in contract or tort, under statute or otherwise, any consequential, incidental, indirect, punitive or special damages in connection with claims arising out of this Agreement or otherwise relating to the Services, including any amount for loss of profit, data or goodwill, whether or not the likelihood of such loss or damage was contemplated.

To the extent permitted by law, LFUCG (and any others for whom Services are provided) may not recover from Organization, nor may Organization recover from LFUCG, in contract or tort, under statute or otherwise, aggregate damages in excess of the fees actually paid, or in the case of non-payment payable, for the Services or otherwise relating to the Services. This limitation will not apply to losses caused by a Party's fraud or willful misconduct or to the extent prohibited by professional regulations.

Neither LFUCG nor Organization shall be liable for breach of this Agreement (other than payment obligations) caused by circumstances beyond the Party's reasonable control.

20. REPORTS. Subject to the below, any information, advice, recommendations or other content of any reports, presentations or other communications Organization provides under this Agreement ("Reports"), other than information provided by or on behalf of LFUCG ("Client Information"), are for LFUCG's internal use only (consistent with the purpose of the Services). LFUCG may not rely on any draft Report, and Organization shall not be required to update any final Report for circumstances of which Organizations becomes aware of, or events occurring, after its delivery.

Except where prohibited by applicable law, LFUCG may not disclose a draft Report (or any portion or summary of a draft Report) externally (including to your affiliates), except:

- a. to the extent, and for the purposes, required by subpoena or similar legal process (of which LFUCG will promptly notify Organization);
- b. to other persons internally (including your affiliates)
- c. to the extent it contains Tax Advice, as defined below; or
- d. in response to a request under the Kentucky Open Records Act, subject to any applicable redactions (including those relating to preliminary documents).

Any final report shall be a public document, subject to any applicable redactions being made pursuant to the Kentucky Open Records Act. The Parties agree that the final Report may be discussed, including being shared, internally, as well as in a duly convened public meeting of the Urban County Council or a committee thereof.

In the event LFUCG receives a request for release of a Report, or related information, under the Kentucky Open Records Act or other applicable law, LFUCG shall use all reasonable efforts to limit any such disclosure to the maximum extent permitted by applicable law and shall notify Organization in writing prior to such disclosure unless prohibited by applicable law.

If LFUCG is permitted to disclose a Report (or a portion thereof) externally, it shall not alter, edit or modify it from the form provided by Organization, except any redactions made pursuant to the Kentucky Open Records Act. LFUCG may disclose to anyone a Report (or any portion or summary thereof) to the extent that it relates to tax matters, including tax advice, tax opinions, tax returns, or the tax treatment or tax structure of any transaction to which the Services relate ("Tax Advice"). With the exception of tax authorities, LFUCG shall inform those to whom it discloses Tax Advice that they may not rely on it for any purpose without Organization's prior written consent.

LFUCG may incorporate the information, advice, recommendations or other content from Organization's Reports provided to LFUCG on a white paper/unbranded basis into any memorandum, report, summary or compilation, whether oral or written, produced by LFUCG or on LFUCG's behalf ("County Documents") and provide such County Documents to third parties without Organization's further consent or obtaining an access letter from such third parties.

21. OWNERSHIP OF PRE-EXISTING MATERIALS. Organization may use data, software, designs, utilities, tools, models, systems and other methodologies and know-how that it owns or licenses ("Materials") in performing the Services. Notwithstanding delivery of any Reports, Organization retains all intellectual property rights in the Materials (including any improvements or knowledge developed related to those Materials while performing the services), and in any working papers compiled in connection with the services (but not Client information reflected in them). Upon payment for particular services and subject to the other terms of this contract, LFUCG may use the deliverables relating to those services, as well as any Materials owned by Organization that are included therein, solely to the extent necessary to use the deliverables.

22. AMENDMENTS. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

23. NOTICE. Any written notice required by the Agreement shall be delivered by certified mail, return receipt requested, to the following:

For Organization:

Ernst & Young, LLP
One Manhattan West
New York, NY 10001-8604
Attn: Catherine von Seggern

For Government:

Lexington-Fayette Urban County Government
200 East Main Street
Lexington, Kentucky 40507
Attn: _____

24. WAIVER. The waiver by either party of any breach of any provision of this Agreement shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision.

25. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This Agreement shall replace any previous agreement between the parties on the same subject matter.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT)

Signature:

Linda Gorton

Linda Gorton, Mayor

Date: 4/2/22/2023

ATTEST:

Charlene Stock

Deputy Clerk of the Urban County Council

ORGANIZATION (ERNST & YOUNG LLP)

Signature:

Catherine von Seggern

Printed Name: Catherine von Seggern

Date: 2/9/23

ATTEST:
