

## **LFUCG Contractor Agreement with Wardega Consulting Inc.**

This Agreement is effective as of the date of the party last signing below by and between the Lexington-Fayette Urban County Government (LFUCG) with offices at 200 East Main Street, Lexington, KY 40507 and Wardega Consulting (Contractor), having an address at 8650 Bradford Lane, Brecksville, OH 44141.

LFUCG and the Contractor agree as follows:

### **Article 1. Contract Service**

1. The Contractor will develop Federal Tax Information Management System (FTIMS) using modern software development tools and technologies. FTIMS functionality is explained in detail in Exhibit A.
2. The Contractor will furnish equipment to deploy FTIMS at LFUCG.
3. The Contractor will deploy FTIMS at LFUCG and provide consulting services to integrate FTIMS with LFUCG core tax system.
4. The Contractor Provide will provide version upgrades and post-implementation production support for FTIMS.
5. The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Request for Proposal No. 13-2017 (Exhibit "B"), Certificates of Insurance (Exhibit "C"), and Contractor's Scope of Work (Exhibit "A").

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of EXHIBIT B, then EXHIBIT A.

### **Article 2. Time of Completion**

In the 1<sup>st</sup> year, the Contractor will deliver FTIMS in phases described in detail in Exhibit A.

In the following years, the Contractor will deliver a major upgrade once a year, near the time when IRS IMF/IRTF extracts become available (September or October). Yearly major upgrades will contain new functionality and will support the latest format of IRS extracts.

The Contractor will deliver minor upgrades, if LFUCG logs a work order that requires a software fix.

### **Article 3. The Contract Price**

The first year all-inclusive cost is \$52,000 and all-inclusive cost in the following years is \$10,000 per year. The Contractor will market FTIMS to other local government entities in order to keep consistent all-inclusive maintenance cost year after year.

### **Article 4. Payments**

In the 1<sup>st</sup> year payments will be made monthly upon submission of an invoice and, if requested by LFUCG, a written summary of the associated deliverable(s) or deliverable worked on for the invoice period.

In the following years, payments will be made once a year upon submission of an invoice following the major upgrade and, if requested by LFUCG, a written summary of the associated deliverable(s) worked on for the invoice period.

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The LFUCG shall respond to Contractor's monthly statements within thirty (30) days, either denying payment or making payment.

### **Article 5. Performance**

In performance of this Contractor Agreement, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

- 1) The Contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of its computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- 2) Any spoilage or any intermediate hard copy printout that might result during the processing of IRS data will be given to LFUCG or its designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide LFUCG or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- 3) All computer systems processing, storing, or transmitting Federal Tax Information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- 4) No work involving Federal Tax Information furnished under this Contractor Agreement will be subcontracted without prior written approval of the IRS.
- 5) The Contractor will maintain a list of employees authorized access. Such list will be provided to LFUCG and, upon request, to the IRS reviewing office.
- 6) LFUCG will have the right to void the Contractor Agreement if the Contractor fails to provide the safeguards described above.
- 7) The Agreement may be terminated by either party for any reason whatsoever, with or without cause, at any time upon sixty (60) days written advance notice to the other party.

### **Article 6. Criminal/Civil Sanctions**

- 1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any returns or return information made available in any format shall be used only for the purpose of carrying out the provisions of this

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Contractor Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contractor Agreement. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

3) Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to Contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

### **Article 7. Inspection**

The IRS and LFUCG shall have the right to send its officers and employees into the offices of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contractor Agreement. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with contract safeguards.

### **Article 8. Other Provisions**

1. All changes to the scope of the Contract Service shall be in writing and signed by LFUCG and the Contractor, which writing then shall be incorporated in and become a part of this Agreement.

2. It is a condition of this Agreement that Contractor not disclose any confidential information that Contractor, its officers, agents, employees or subcontractors, may obtain or have access to as a result of this agreement, including but not limited to confidential taxpayer information as defined by Ohio or United States law. In this regard, the Contractor will not disclose Confidential Information to others without the prior written consent of LFUCG, except the Contractor will not be prevented from disclosing information that (i) can be shown by contemporaneous documentation to have been in the Contractor's possession prior to the disclosure by LFUCG; (ii) at the time of the disclosure is, or thereafter becomes, through no fault of the Contractor, part of the public domain; or (iii) is furnished to the Contractor by a third party after the time of the disclosure without the breach of any duty to LFUCG. However, in no event is Contractor permitted to disclose taxpayer information and Contractor acknowledges that it is subject to criminal and civil sanctions by doing so. In addition, the Contractor will keep separate and segregated from other work all documents, records, notebooks, correspondence and the like arising from the Contract Services. The undersigned Contractor further acknowledges that violation of this non-disclosure agreement shall constitute grounds for immediate termination of

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this contract in addition to any other rights, which LFUCG may have by reason of such violation by the undersigned including, but not limited to, recovery of damages from Contractor for which LFUCG may be found liable as a result of any such disclosure.

3. The Contractor will not disclose to LFUCG any information of third parties that the Contractor does not have the right to disclose.

4. This Agreement may be terminated by a non-breaching party, in addition to any other remedy, for a breach of any term of the Agreement effective upon written notice to the breaching party; upon which event all rights of the breaching party shall terminate. In either event, notice shall be given by registered mail, prepaid and properly addressed as follows:

If to LFUCG:

Todd Slatin  
LFUCG Purchasing Director  
Room 338, Government Center  
200 East Main Street

If to the Contractor:

Tomek Wardega  
President  
Wardega Consulting  
8650 Bradford Lane

5. The terms and obligations of Article 5, Article 6 and Article 7, and Paragraph 2 of this Article 8 shall survive and remain in full force and effect after termination of this Agreement regardless of the cause of such termination.

6. This Agreement is the entire agreement of the parties relating to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, understandings, and agreements of the parties relating to the subject matter hereof. It may be amended only by an agreement in writing, signed by both parties.

7. The Contractor, its officers, agents, employees and subcontractors, are not employees or agents of LFUCG. The Contractor, its officers, agents, employees and subcontractors, shall be entitled to no benefits or compensation from LFUCG and shall in no event be entitled to any fringe benefits payable to employees of LFUCG. The Contractor shall be solely responsible for the payment of all taxes due on the income received for performing the Contract Services. LFUCG is not responsible for Contractor's obligations relating to social security, income tax withholding, unemployment insurance, worker's compensation and similar matters.

8. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Kentucky (regardless of the choice of law principles in Kentucky or any other jurisdiction).

9. The Risk Management Provisions of RFP No. 13-2017 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to LFUCG as required therein. Personal automobile liability may be substituted for commercial automobile liability as specified in the Risk Management Provisions.

In witness whereof, the parties have executed this Agreement as of the date of the party last signing below.

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LFUCG

By: Jim Gray

Jim Gray  
Mayor

Date: 22-Jun-17

Contractor:

By: Tomek Wardega

Tomek Wardega  
President

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

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## Exhibit A

FTIMS Functionality and deployment timeline as of June 2017 is described below.

Wardega Consulting Inc. will develop a commercial off-the-shelf application for processing and managing FTI extracts – FTIMS. The application will be developed using modern software technologies, utilizing relational databases and, for the most parts, Microsoft development tools and programs.

The functionality and design of FTIMS will reflect Wardega Consulting's 7 years of experience working with FTI data. FTIMS will be an easy system to use and learn – FTIMS is going to be a targeted application for FTI audits as opposed to a vast tax system application tailored to FTI audits (and therefore containing a lot extraneous, unused functionality). FTIMS will allow FTI personnel at LFUCG to audit potential non-filers and under-reporters. The application will prioritize FTI audits based on estimated potential collections and send 1<sup>st</sup> letters (with a request for information regarding audited years) and, after at least 30 days, 2<sup>nd</sup> letter with tax, penalty and interest assessments.

The application will implement security measures required for handling IRS extracts. The application will run on a stand-alone network to prevent from co-mingling of FTI and non-FTI data. It will implement an audit trail of FTI data access. The application will create reports of access violations. FTI and sensitive data about Tax Payers will be securely stored.

This application will implement LFUCG 'rules-of-the-road' for crediting collections to actions of FTI department. The application will generate a monthly FTI action report with aggregated summary of the number of letters sent, liabilities established, and payments received following FTI letter campaigns.

After the initial software development, Wardega Consulting Inc. will deliver major releases with new functionality once a year, around the time when IRS IMF/IRTF extracts become available (September/October of each year). Each new major release will add support for the latest format of IRS extracts (IMF/IRTF and IRMF, or its future equivalents).

Wardega Consulting Inc. will market FTIMS to other local government entities, since it provides generic functionality for identifying non-filers and under-reporters. Wardega Consulting Inc. will keep yearly maintenance costs consistent (allowing for inflation fluctuations). Yearly maintenance payments will cover the cost of major/minor software releases, application support and loading of latest IRS extracts.

Wardega Consulting will deliver minor releases with bug fixes if customers discover problems that require a software fix.

FTIMS will allow loading all IMF/IRTF and IRMF extracts from IRS into a secure staging area. Only authorized users will be able to access the data in the staging area. Data will be encrypted, to protect FTI data in case theft of the equipment.

Wardega Consulting will furnish the equipment to run FTIMS application on a stand-alone network, in order to protect from co-mingling of FTI with non-FTI data. For more details, please see the section below: **Hardware and 3<sup>rd</sup> Party Software**.

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Wardega Consulting Inc. will develop code for retrieving extracts of LFUCG local returns from the core tax system - in order to compare to FTI and identify non-filers and under-reporters. FTI department personnel will run these extracts periodically and move extracts on a flash-drive to FTI stand-alone network in order to load to FTIMS application.

FTIMS will identify potential non-filers and under-reporters by comparing FTI to local returns for LFUCG Tax Payers. For tax years before the migration to the latest LFUCG core tax system, where the information allows to check whether tax forms were filed but the exact amounts are not known, LFUCG will be able to indicate that FTIMS should look for non-filers only. Therefore, LFUCG will be able to utilize all FTI extracts that are available, within the statute of limitations.

FTIMS application will load data about potential non-filers and under-reporters from the secure staging area to the FTI-Audit database in order to carry out FTI audits. FTIMS will implement data analysis routines to prioritize FTI audits by unreported amounts.

FTIMS will provide functions to assign accounts to FTI auditors. The application will maintain an audit trail for each access of FTI records. FTI supervisor will be able to run reports to monitor account access and to verify that FTI auditors access accounts assigned to them. The audit trail report will be available for IRS audit of FTI data usage.

In the initial part of the FTI audit, FTIMS will generate the first FTI letter for identified action years of non-filing or under-reporting. The first letter will request additional information from Tax Payers for tax years in question.

FTIMS will generate the second Tax Liability letter to Tax Payers who failed to respond to the first letter within 30 days. The Tax Liability letter will indicate estimated unpaid tax, penalty and interest. FTIMS will assess the total due amount automatically, but FTI auditors will have the option to re-assess unpaid tax, penalty and interest and reprint selected Tax Liability letters.

FTIMS will implement tax, penalty and interest calculator to allow automatic calculation of tax, penalty and interest based on unreported amounts for each action year.

The application will provide mail-merge functionality to print batches of letters. The application will allow choosing the maximum number of letters to print; it will also allow selecting accounts assigned to a specific FTI auditor. As a result, FTIMS will allow throttling FTI audits based on the availability of FTI auditors to respond to calls and letters from Tax Payers. Letter templates will be created and maintained in Microsoft Word.

FTIMS will provide screens to view details for each audited account and show which tax years are under audit, and for what unreported amounts.

FTIMS will provide account management functions, for instance: posting comments on audited accounts, changing mail address on the account, altering unreported amounts for each audited year based on feedback from Tax Payer, and changing the account status. Each account change will create an audit trail record and auto-generate a comment on the account.

FTIMS will allow marking accounts for which mail came back as undeliverable and to indicate through account status and status change date the destruction of mailed letters. FTIMS will provide a report of Undeliverable Mail – Shredded mail for the purpose of IRS audit. FTIMS will provide functionality for re-opening accounts if a newer Mail-To address is available.

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FTIMS will provide functions to mark accounts in bankruptcy or where legal action is taken outside of the FTI department - that will put the FTI audit of this account on hold (no new letters generated). FTIMS will use a different screen color when showing accounts in legal status or in bankruptcy.

FTIMS will mark FTI items on the screen in a different color to alert FTI auditors that marked pieces of information are FTI.

FTIMS will allow rendering federal 1040, Schedules and W2 information for each year where FTI is available.

Wardega Consulting Inc. will document the 'rules of the road' for actions and collections that can be credited to FTI department activity. After LFUCG signs-off on the 'rules of the road', Wardega Consulting Inc. will implement the FTI Action report – a monthly aggregate report that can be shown outside of the FTI department, containing the number of accounts loaded, letters printed, liabilities established and payments received that can be credited to FTI actions.

FTIMS will allow creating tickler notes and dates on accounts and running account tickler reports for selected date ranges and selected FTI auditor. Tickler reports will open in Microsoft Excel and serve as a reminder system for accounts that need intervention on specific dates.

### Hardware and 3<sup>rd</sup> Party Software

Wardega Consulting Inc. will supply hardware and 3<sup>rd</sup> party software for the stand-alone network running FTIMS application. This stand-alone network will comprise:

- A fast, multi-core desktop system capable of running a database server and FTIMS application, 64-bit Window 10 Pro OS (\$1000 estimate).
- Battery backup (\$100 estimate)
- HP laser printer with Ethernet connection (\$200 estimate).
- MS Office Pro 2016 license for one PC (\$200 estimate).
- Gigabit Ethernet switch (\$100 estimate).
- NAS backup with Ethernet connection, with a large hard drive and encryption software for backups (\$300 estimate).
- Cables and accessories (\$100 estimate).

In total: \$2000 of the 1<sup>st</sup> year all-inclusive price is allocated for hardware and 3<sup>rd</sup> party software purchases.

### Update Cycle (Major and Minor Releases)

Wardega Consulting will develop FTIMS application in 5 phases and it will take about 10 months:

- In Phase 1: FTI extracts will be loaded to staging databases. In the same phase, Wardega Consulting Inc. will generate test files to facilitate off-site software development. LFUCG will need to contact their IRS liaison to verify if Wardega Consulting needs a special certification to handle FTI loads at LFUCG. **Phase 1** will take about **6 weeks**.
- In Phase 2: Wardega Consulting Inc. will develop software for creating extracts with



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LFUCG local returns from the core tax system. LFUCG address verification for FTIMS will use ZIP codes. The code for identifying non-filers and under-reporters, and scoring of accounts based on unreported amounts will be also developed in this phase. **Phase 2** will take about **10 weeks**.

- In Phase 3: First and second letter templates will be prepared and verified with LFUCG. In this phase, all account management functions, the Accounts screen, and Mail-Merge functions for mass mailing will be developed. At the end of this phase: users in the FTI department will receive training on FTIMS. **Phase 3** will take about **12 weeks**.
- In Phase 4: FTI extracts for 2017 will be loaded to FTIMS. **Phase 4** will take about **4 weeks**.
- In Phase 5: FTI Action report development after LFUCG signs-off the 'rules of the road' for giving credit to FTI actions. Also in this phase: the development of 1040, Schedules and W2 viewers. **Phase 5** will take about **12 weeks**.

First year all-inclusive cost is \$52,000, out of which \$50,000 cover the initial software application fees and \$2,000 are reserved for supplying hardware and 3<sup>rd</sup> party software licenses.

Wardega Consulting Inc. will deliver major releases with new functionality with support for the latest IRS extracts once a year, around September/October. Minor releases with bug fixes will be scheduled as needed. FTIMS software updates, modules for loading latest IRS extracts, and support for loading IRS extracts are included in the yearly maintenance cost of \$10,000.

### Training and Support

Training will be performed after Phase 3 (when the application will be functional and FTI auditors may start sending 1<sup>st</sup> and 2<sup>nd</sup> letters). The second training session will be conducted after Phase 5 (to cover reports and custom queries).

In the first year, Tomasz Wardega will visit LFUCG FTI department at least at the end of each development phase.

After the 1<sup>st</sup> year, training documentation will accompany each major software release to highlight new functions available in FTIMS. Software support will be available by phone and email.

'In person' visits after the 1<sup>st</sup> year will be done around the time new IRS extracts are available for loading to FTIMS.

### Benefits

FTIMS will be easy to use and it will provide functionality to give at-a-glance information about FTI audit for all action years with unreported amounts.

FTIMS will automate tax, penalty and interest calculations and allow to print batches of 1<sup>st</sup> and 2<sup>nd</sup> letters with minimal input from users. As a result, a small FTI department will be able to analyze FTI and audit all non-filers and under-reporters.

FTIMS will help LFUCG to enforce compliance for filing local tax returns.

FTIMS will score FTI audit accounts to prioritize accounts with highest potential returns.

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FTIMS will generate simple FTI Action Report based on the 'rules-of-the-road' approved by LFUCG to document collections and actions of FTI department.