

RESOLUTION NO. 110, SERIES 2017

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED SOLE SOURCE CONTRACT – (LINKEDIN CORPORATION, - \$50,000.00).

SPONSORED BY: COUNCIL MEMBER MARY WOOLRIDGE

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

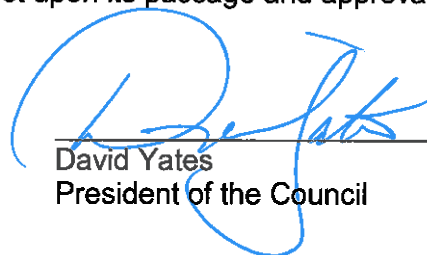
SECTION I: The following appropriation for the listed contract is hereby approved:


LIBRARY

\$50,000.00 for a noncompetitively negotiated Sole Source Contract with LinkedIn Corporation for databases for use by Library patrons from July 1, 2017 through June 30, 2018.

SECTION II: This Resolution shall take effect upon its passage and approval.


H. Stephen Ott
Metro Council Clerk


David Yates
President of the Council


Greg Fischer
Mayor

10/30/17
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell
Jefferson County Attorney



BY: 



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

Department	Library	Department Contact.	Belinda Catman
Contact Email	belinda.catman@lfpl.org	Contact Phone	502-574-1845

Contract Type: check one	<input checked="" type="checkbox"/> New	<input type="checkbox"/> Amendment		
		Additional Funds	Time Extension	Scope
Professional Service				
Sole Source (goods/services)	<input checked="" type="checkbox"/>			
	Start	End		
Requested Contract Dates (MM/DD/YYYY)	07/01/2017	06/30/2018		

VENDOR INFORMATION

Vendor Legal Name	LinkedIn Corporation			
DBA	lynda.com from LinkedIn			
Point of Contact	Marianne Robinson	Email	mrobinson@linkedin.com	
Street	2029 Stierlin Court			
Suite/Floor/Apt		Phone	1-888-335-9632 ext. 645	
City	Mountain View	State	CA	Zip Code 94043
Federal Tax ID#		SSN# (if sole proprietor)		
Louisville Revenue Commission Account #				
Human Relations Commission Certified Vendors	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

FINANCIAL INFORMATION

Not to Exceed Contract Amount	\$50,000		(including reimbursement expenses, if applicable)		
Fund Source: General Fund	<input checked="" type="checkbox"/>				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	730	5822	591270	521114
Payment Rate		per hour		per day	per service
		per month		Other	
Payment Frequency		Monthly		Upon Completion / Delivery	
		Quarterly	<input checked="" type="checkbox"/>	Other	Annual



**Office of Management and Budget
Division of Purchasing
Non-Competitive Contract Request Form**

CONTRACT SCOPE and PURPOSE (Attach additional documentation if necessary)

Amendments: Describe the circumstances under which a time extension or scope change is needed.

New: Be specific about the work to be performed / product to be purchased including but not limited to: scope of work; description of service; work product created; why the service / product is necessary; and benefit to Louisville Metro Government.

Lynda.com—a premier online learning resource offering more than 4,000 courses covering technical skills, creative techniques, business strategies, and more, LFPL offers it free to patrons.
This service is also used by Metro Government employees as a training service.

JUSTIFICATION FOR NON-COMPETITIVE GOOD/SERVICE (Attach additional documentation if necessary)

Provide justification including but not limited to: a description of the unique features that prohibit competition; research conducted to verify the vendor as the only known source (sole source); why the service (PSC) is not feasible to be provided by LMG staff or expertise does not exist; known compatibility, proprietary and/or timing issues.

The learning resource is only available through LinkedIn.

AUTHORIZATIONS: Per KRS 45A.380, I have determined that competition is not feasible for the above described good / service and there is a single source within a reasonable geographical area of the good / service to be procured; or the resulting contract is for the services of a licensed professional, technician, artist, or other non-licensed professional service.

Department Director _____

Lee Burchfield
Signature
Lee Burchfield
Printed Name

Date 6-15-17

Purchasing Director _____

Joel Neaveill
Signature
Joel Neaveill

Date 6/20/17



LINKEDIN SUBSCRIPTION AGREEMENT

This LinkedIn Subscription Agreement ("LSA"), governs any ordering document executed by the customer identified in that ordering document ("Customer") and the LinkedIn company identified in that ordering document ("LinkedIn"). This LSA, the applicable ordering document, and any other incorporated terms, comprise the complete understanding between the parties on the subject matter ("Agreement").

This LSA is designed to address the unique concerns of a Public Sector Entity and is not applicable to private entities. "Public Sector Entity" means any federal, state, or local government unit, agency, political subdivision or instrumentality. If Customer is not a Public Sector Entity, then LinkedIn's standard terms and conditions located at: <http://business.linkedin.com/lsa> will supersede this LSA and govern all ordering documents between the parties.

1. ORDERING

- 1.1 Ordering Services.** Customer may access and use the subscription services offered via LinkedIn's websites to the extent and for the term stated in the ordering document ("Services"). Customer may allow its Affiliate to order Services under the terms of this LSA only if Customer informs LinkedIn in writing of the specific Affiliate authorized to do so. That authorized Affiliate will be (a) deemed a "Customer" for that order only; and (b) jointly and severally liable with Customer for its use of the Services and compliance with the Agreement. "Affiliate" means an entity that controls, is controlled by, or is under common control with, a party.
- 1.2 Payment and Taxes.** Customer will pay the fees for the Services in accordance with the payment terms stated in the ordering document. For Services that require payment by credit card, LinkedIn will charge Customer's credit card upon receipt of the credit card information and upon renewals. Customer's purchases are non-cancelable and payment for Services is non-refundable, except as otherwise stated in this LSA. Customer will pay or reimburse LinkedIn for all federal, state, and local taxes, including sales, use, gross receipts, VAT, levy, GST, or similar transaction taxes imposed on Customer's purchase of Services, unless Customer provides LinkedIn with a valid tax exemption certificate. All taxes payable by Customer will be separately stated and exclusive of the fees. Customer will have no liability for taxes that are statutorily imposed on LinkedIn, including taxes or fees measured by LinkedIn's net or gross income.

2. RESPONSIBILITIES

- 2.1 Use of Services.** Customer will use the Services solely for its intended purpose, and as outlined in LinkedIn's service-specific terms <https://legal.linkedin.com/service-specific-terms> ("Service-Specific Terms"). Unless otherwise stated in the Agreement, only Customer-designated employees and contractors are authorized to use the Services ("Customer User"). A Customer User must also be a Member when accessing Services through [linkedin.com](https://www.linkedin.com). A "Member" is an individual who signs-up to use LinkedIn's services under LinkedIn's user agreement, currently available at <https://www.linkedin.com/legal/user-agreement>, as amended by LinkedIn from time to time ("User Agreement"). The terms of the User Agreement are incorporated into this LSA. Customer will ensure that Customer Users comply with the User Agreement when using the Service in a non-personal capacity. Customer may only use the Services for Customer's internal use. Customer will not provide access to the Services to any third party, except that Customer may allow its Affiliates to access and use the Services if Customer is fully liable for its Affiliates' use of the Services and compliance with the Agreement. Customer will notify LinkedIn immediately upon learning of any unauthorized use of the Services or any other breach of security related to the Services. Customer may use information about Members that it collects in connection with its use of the Services only as needed for use of the Services and as expressly permitted in this LSA. LinkedIn may communicate to Customer Users about the Services, including how to use the Services.
- 2.2 Provision of Services.** Customer is responsible for providing LinkedIn with the information necessary for LinkedIn to provide the Services. Customer is solely responsible for the accuracy, quality and legality of such information. If a Service must integrate with third-party systems or applications used by Customer (e.g. an applicant tracking system, "ATS" or a customer relationship management system, "CRM"), Customer is solely responsible for the integration and related activities. LinkedIn disclaims any and all liability for the use of third-party systems or applications residing outside

LinkedIn's systems.

- 2.3 Handling of Personal Data.** If Customer uploads or otherwise provides LinkedIn with Personal Data (defined below) in connection with its use of the Services ("Customer Personal Data"), then LinkedIn, in providing the Services, processes Customer Personal Data on behalf of Customer. Customer is the controller of Customer Personal Data and LinkedIn will process Customer Personal Data (i) in accordance with applicable Data Protection Laws (defined in section 2.4); (ii) in compliance with the written instructions received from Customer including, as applicable, sub-processing as necessary; and (iii) only for the purpose of providing, supporting and improving the Services (including to provide insights and other reporting), using appropriate technical and organizational security measures. "Personal Data" means information about an individual that (a) can be used to identify, contact or locate a specific individual, including data that Customer chooses to provide to LinkedIn from services such as ATSS or CRMS; (b) can be combined with other information that is linked to a specific individual to identify, contact or locate a specific individual; or (c) is defined as "personal data" or "personal information" by applicable laws or regulations relating to the collection, use, storage or disclosure of information about an identifiable individual.
- 2.4 Compliance with Laws.** The parties will comply with all applicable international, federal, state, provincial and local laws relating to (a) corruption practice, bribery, and acts contrary to the public administration including the US Foreign Corrupt Practices Act of 1977, 15 U.S.C. § 78dd-1, et seq.; (b) discrimination against employees or job applicants based on race, color, religion, sex, national origin, veteran status or disability; and (c) the privacy, confidentiality, security and protection of Personal Data including the EU Data Protection Directive 95/46/EC as amended and as implemented in the various European Economic Area countries or any similar and applicable legislation enacted outside of the European Economic Area and security breach notification laws ("Data Protection Laws"). LinkedIn complies with the U.S.-Swiss Safe Harbor Framework as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of Personal Data from Switzerland. With respect to any Customer Personal Data of European Union residents, LinkedIn Corporation (as data importer) and Customer (as data exporter) will comply with the applicable standard contractual clauses located at: <https://business.linkedin.com/c/15/10/eu-ssc>. LinkedIn is enrolled in the U.S. Department of Homeland Security's E-Verify program regarding the immigration and employment eligibility of newly hired employees.

3. CONFIDENTIAL INFORMATION

- 3.1 Definition.** "Confidential Information" means any information disclosed under the Agreement that (a) if tangible, is clearly marked as "Confidential" or with a similar designation; (b) if intangible, is identified as "Confidential" by discloser at the time of disclosure and confirmed in writing to recipient as being Confidential Information; or (c) from the relevant circumstances should reasonably be known by recipient to be confidential (e.g. pricing, non-public Personal Data, etc.). Confidential Information does not include any portion of the information that recipient can prove (a) was rightfully known to recipient before receipt from discloser; (b) was generally known to the public on the Effective Date; (c) becomes generally known to the public after the Effective Date, through no fault of recipient; (d) was received by recipient from a third party without any confidentiality obligation; or (e) was independently developed by recipient without breach of this section 3. For Customers located in the United States, LinkedIn acknowledges that Customer is subject to certain mandatory disclosure requirements under applicable federal and state freedom of information laws, including the Freedom of Information Act, 5 U.S.C. § 552, et seq., as amended. For all other Customers, LinkedIn acknowledges that Customer is subject to certain mandatory disclosure requirements under applicable freedom of information laws in Customer's home jurisdiction. Customer acknowledges that certain information provided by LinkedIn during the performance of this Agreement may contain trade secrets and confidential commercial or financial information exempt from the mandatory disclosure requirements under applicable freedom of information laws.
- 3.2 Limited Use and Non-Disclosure.** Recipient will (a) use Confidential Information only for the purposes of furthering the business relationship between the parties; (b) protect Confidential Information using the same degree of care it uses to protect its own confidential information of a like nature, but in no event less than a reasonable degree of care; (c) not disclose Confidential Information to any third party except (1) to Affiliates or employees, consultants, and agents who (i) have a need to know it in order to carry out their obligations under the Agreement, and (ii) are under written confidentiality and non-use obligations at least as restrictive as those stated in this LSA or (2) as required by law; and (d) not modify, reverse engineer, decompile, create other works from, or disassemble any Confidential Information, to the extent applicable, unless authorized in writing by discloser.


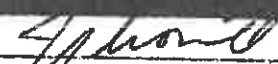
4. **INTELLECTUAL PROPERTY RIGHTS AND OWNERSHIP.** No right, title or interest in any intellectual property right transfers to the other party, except for the limited rights stated in the Agreement. Customer is not obligated to provide LinkedIn or its Affiliates with any suggestions, enhancement requests, or other feedback about the Services or related technology. However, if Customer does provide any feedback to LinkedIn, LinkedIn may use and modify it without any restriction or payment.
5. **TERM AND TERMINATION**
- 5.1 **Term.** This LSA is effective on the date the first ordering document is executed by Customer and LinkedIn ("Effective Date") and remains in effect until terminated.
- 5.2 **Termination and Suspension.** Either party may terminate this LSA or an ordering document if the other party materially breaches the Agreement and fails to cure the breach within 30 days after receiving notice of the breach. LinkedIn may suspend Customer's access to the Services if Customer is in breach of the Agreement and the suspension will continue for as long as reasonably necessary for Customer to remedy the breach. If all ordering documents under this LSA have expired or been terminated, then either party may terminate this LSA for convenience by providing written notice to the other party.
- 5.3 **Effect of Termination.** Termination of this LSA or an ordering document will not relieve Customer from its obligation to pay LinkedIn any fees stated in an ordering document, excluding termination by Customer for LinkedIn's uncured material breach of this LSA. If Customer terminates this LSA or an ordering document because of LinkedIn's uncured material breach, LinkedIn will refund a pro-rata share of any pre-paid fees under the applicable ordering document. Customer will notify Customer Users that their access to the applicable Services has terminated and LinkedIn may remove or discard all content that Customer uploaded or otherwise made available to LinkedIn in accordance with LinkedIn's policies. Termination of an ordering document does not terminate this LSA; however, termination of this LSA will result in the immediate termination of all ordering documents. The provisions of this LSA that by their nature extend beyond the termination of this LSA will survive termination of this LSA.
6. **LIMITED WARRANTY; DISCLAIMER.** LinkedIn makes other representation or warranty about the Services, including any representation that the Services will be uninterrupted or error-free. To the fullest extent permitted under applicable law, LinkedIn disclaims any implied or statutory warranty, including any implied warranty of title, non-infringement, merchantability or fitness for a particular purpose.
7. **LIABILITY**
- 7.1 **LinkedIn Liability.** LinkedIn will be responsible for any damages resulting from (a) the negligent acts or omissions of LinkedIn, its employees, or agents; and (b) the Services' infringement of a third party's intellectual property right.
- 7.2 **Customer Liability.** To the extent legally liable and permitted by law, Customer will be responsible for any damages resulting from (a) the negligent acts or omissions of Customer, its Customer Users, or agents; (b) claims made or brought against LinkedIn by a third party alleging that (i) the Customer Personal Data or LinkedIn's transmission or hosting of the Customer Personal Data infringes or violates the rights of the third party; or (ii) Customer's use of the Services in violation of the Agreement infringes or violates the rights of the third party; or (c) Customer's failure to comply with applicable laws, rules or regulations in its performance under the Agreement.
8. **LIMITATION OF LIABILITY**
- 8.1 **Damages Waiver.** Neither party, including its respective Affiliates, will be liable to the other in connection with the Agreement for lost profits or lost business opportunities, loss of data, or any indirect, incidental, consequential, special or punitive damages.
- 8.2 **Liability Cap.** Neither party, including its respective Affiliates, will be liable to the other in connection with the Agreement for an amount that exceeds the total fees paid or payable to LinkedIn during the 12-month period before the event giving rise to the liability. Subject to section 8.3 (b), LinkedIn will not be liable for any unauthorized third party access to Customer's content, data, programs, information, network, or systems (excluding unauthorized third party

access directly resulting from the negligent acts or omissions of LinkedIn).

- 8.3 Exclusions.** The limitations of liability stated in sections 8.1 and 8.2, do not apply to a party's (a) confidentiality obligations; (b) liability for fraud, gross negligence or intentional misconduct; (c) liability for death or personal injury; or (d) violation of the other party's intellectual property rights.
- 8.4 Sovereign Immunity.** The parties recognize that Customer is a Public Sector Entity, and nothing in this LSA is intended to waive or diminish Customer's rights under principles of Sovereign Immunity, as established by law.
- 9. DISPUTE RESOLUTION.** The Agreement is governed by the laws of Customer's home jurisdiction. The prevailing party may seek to recover its legal fees and costs. If the Customer is a United Nations program, fund, or specialized agency, then any dispute or claim related to the Agreement, including a claim of breach (unless settled by direct negotiation), will be settled in accordance with the UNCITRAL Arbitration Rules. Any resulting arbitration award will be binding on the parties and final. If during a direct negotiation the parties wish to seek an amicable settlement of the dispute or claim by conciliation, the conciliation will take place in accordance with the UNCITRAL Conciliation Rules.
- 10. MISCELLANEOUS.** If a conflict exists between any of the terms in the Agreement, then this LSA will govern, followed by the ordering document, and then the User Agreement. If a conflict exists between any of the general terms in this LSA and the Service-Specific Terms, then the Service-Specific Terms will prevail to the extent of that inconsistency. Neither party relies on any undertaking, promise, assurance, statement, representation, warranty or understanding of any person relating to the subject matter of the Agreement, other than as stated in the Agreement. Notices will be provided in writing and delivered by commercial overnight courier to the address of the other party stated on the ordering document, unless otherwise stated in the Agreement. Notices are effective on the date of delivery as indicated in the records of the courier. The Agreement does not create a partnership, agency relationship, or joint venture between the parties. Neither party has the power or authority to bind the other or to create any obligation or responsibility on behalf of the other. Under no circumstances will any employee of one party be deemed to be the employee of the other. LinkedIn may name Customer as a customer of LinkedIn's in its marketing and promotional materials. Neither party will assign the Agreement in whole or in part without the other party's prior written consent. Any attempted assignment in violation of this restriction is void. The Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns. Customer will provide LinkedIn written notification if Customer is purchasing Services through a LinkedIn approved agency. If Customer is an agency binding a client under this LSA, Customer (a) represents and warrants that it has the authority to bind the client under this LSA; (b) will notify LinkedIn in writing of the name and address of its client that will access and use the Services; and (c) remains jointly and severally liable for all of Customer's obligations under the Agreement. If the Agreement is translated into a language other than English, the translation is for convenience only, and the English language version will govern. LinkedIn may remotely monitor Customer's use of the Services to ensure compliance with the Agreement. If any provision of the Agreement is unenforceable, that provision will be modified to render it enforceable to the extent possible to give effect to the parties' intentions and the remaining provisions will not be affected. The parties may amend the Agreement only in a written amendment signed by both parties, except for the User Agreement, which may be modified in accordance with its terms. If this LSA will be executed then it can be executed electronically and in counterparts, each of which is deemed to be an original and together comprise a single document. Each party represents and warrants that the individual binding a party under this LSA is authorized to do so.
- 11. KENTUCKY LAW ETHICS REQUIREMENTS.** 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.

12. **KENTUCKY LAW BUSINESS OPERATIONS REQUIREMENTS.** LinkedIn shall reveal any final determination of a violation by LinkedIn or its subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to LinkedIn or its subcontractor. LinkedIn shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to LinkedIn or its subcontractor for the duration of this Agreement.

CUSTOMER		LINKEDIN	
Signature:		Signature:	
Name:	Jim Blanton	Name:	Jennifer Morrill
Title:	Library Director	Title:	Authorized Signer
Date Signed:	9/18/17	Date Signed:	September 19, 2017