

RESOLUTION NO. 096, SERIES 2017

A RESOLUTION PURSUANT TO THE CAPITAL AND OPERATING BUDGET ORDINANCES, APPROVING THE APPROPRIATION TO FUND THE FOLLOWING NONCOMPETITIVELY NEGOTIATED PROFESSIONAL SERVICE CONTRACT – (SIMON AND COMPANY, INCORPORATED - \$60,000.00).

SPONSORED BY: COUNCIL MEMBER 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:

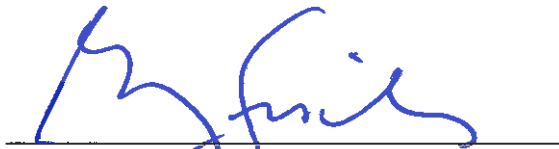
OFFICE OF MANAGEMENT AND BUDGET

\$60,000.00 for a noncompetitively negotiated Professional Service Contract with Simon and Company, Incorporated for professional services regarding federal affairs assistance 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 **PRO - TEM**

  
David Yates  
President of the Council

  
Greg Fischer  
Mayor

10/18/17  
Approval Date

APPROVED AS TO FORM AND LEGALITY:

Michael J. O'Connell  
Jefferson County Attorney

**LOUISVILLE METRO COUNCIL  
ADOPTED  
October 12, 2017**

BY: 



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

Department	OMB	Department Contact	Mike Slaton
Contact Email	mike.slaton@louisvilleky.gov	Contact Phone	574-3803

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

**VENDOR INFORMATION**

Vendor Legal Name	Simon and Company						
DBA							
Point of Contact	Stephanie McIntosh	Email	stephanie.carter@simoncompany.com				
Street	1660 L Street NW						
Suite/Floor/Apt	Suite 501	Phone	202-659-2229				
City	Washington	State	DC	Zip Code	20036		
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	<b>\$60,000</b>		(including reimbursement expenses, if applicable)				
Fund Source: General Fund	✓						
Federal Grant		Federal Granting Agency					
Other		Describe:					
Account Code String #	1101	210	5522	552203	521301		
Payment Rate		per hour		per day		per service	
	\$4,000.00	per month		Other	Expenses		
Payment Frequency	✓	Monthly		Upon Completion / Delivery			
		Quarterly		Other			



**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.

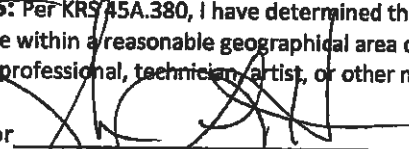
Simon and Company provides Metro with federal affairs assistance, including: developing priority federal legislative and program objectives; coordinating Washington meetings; communicating on federal issues; identifying grant opportunities, working with congressional delegation on Louisville Metro priorities, working with federal agencies to solve problems, assisting Louisville Metro in creating new ideas and solutions for governmental services; acting as a liaison with national organizations on behalf of Louisville Metro; and preparing materials for consideration by Congress and federal agencies.


**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.

This company has been working with Metro for several years and is familiar with our issues and has built relationships with federal agencies and legislators on our behalf. It would be a hindrance to Metro to bid this contract as this is a very specialized service.

**AUTHORIZATIONS:** Per KRS 15A.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  Date 8/8/17  
 Signature  
 Printed Name MODICA L. HARMON

Purchasing Director  Date 8/9/17  
 Signature  
 Printed Name Joel Neaveill

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE AGREEMENT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **OFFICE OF MANAGEMENT AND BUDGET**, herein referred to as "**METRO GOVERNMENT**", and **SIMON AND COMPANY, INCORPORATED**, with offices located at 1660 L Street Northwest, Suite 501, Washington, D.C. 20036, herein referred to as "**CONSULTANT**",

### **WITNESSETH:**

**WHEREAS**, the Metro Government is in need of certain professional services with respect to federal affairs assistance; and

**WHEREAS**, the Consultant has been determined by the Metro Government to have the necessary experience, expertise and qualifications to provide those services,

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

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

**A.** Consultant shall, at the request of the Metro Government, provide services under the terms of this professional Agreement. The Consultant's work product may be reviewed from time to time by the Metro Government for purposes of determining that the services provided are within the scope of this Agreement.

**B.** If from time to time Consultant needs to utilize the records or personnel of the Metro Government relative to performing the services required of this Agreement, then Consultant 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 understandings of both parties.

- D. The services of Consultant shall include but not be limited to the following:
  - 1. Provide Louisville Metro with Federal Affairs Assistance, including Federal agenda development to develop priority federal legislative and program objectives, coordination of Washington meetings, communications and updates on federal issues, identifying grant opportunities, work with Congressional delegation on Louisville Metro priorities, meet with administrative officials on Louisville Metro priorities, work with federal agencies to solve problems, assist Louisville Metro in creating new ideas and solutions for governmental services, liaison with national organizations on behalf of Louisville Metro priorities, and preparation of materials for consideration by Congress and federal agencies.

## II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement in an amount equal to **FOUR THOUSAND DOLLARS (\$4,000.00)** per month. Total compensation payable to Consultant for services rendered pursuant to this Agreement, including out-of-pocket expenses, shall not exceed **SIXTY THOUSAND DOLLARS (\$60,000.00)**.

B. Services shall be rendered and payment therefor shall be made at monthly intervals throughout the duration of this Agreement. Payment shall only be made pursuant to a detailed invoice presented monthly, which invoice shall indicate the particular nature of services performed and out-of-pocket expenses. Copies of invoices

or receipts for out-of-pocket expenses and other third party charges must be included with the Consultant's invoice when payment is requested.

C. Consultant shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this contract. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

D. Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings and out-of-pocket expenses to the Metro Government which are of benefit to the other parties and to provide documentation to all parties to verify the pro-ration of such billings and expenses. In no event will the Metro Government pay bills or expenses which are considered to be double billing (i.e. billing two different parties for the same work or expense).

### III. DURATION

A. This is a professional service contract which shall begin July 1, 2017 and shall continue through and including June 30, 2018.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate. This Agreement may also be terminated by any party, without notice to the non-terminating party, because of fraud, misappropriation, embezzlement or malfeasance or a party's failure to perform the duties required under this Agreement. A waiver by either party of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

C. In the event of termination, payment for services complete up to and including date of termination shall be based upon work completed at the rates identified in this Agreement. In the event that, during the term of this Agreement, the Metro Council fails to appropriate funds for the payment of the Metro Government's obligations under this Agreement, the Metro Government's rights and obligations herein shall terminate on the last day for which an appropriation has been made. The Metro Government shall deliver notice to Consultant of any such non-appropriation not later than 30 days after the Metro Government has knowledge that the appropriation has not been made.

#### **IV. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement nor does it cause Consultant to be an officer or official of the Metro Government. By executing this Agreement, the parties hereto certify that its performance will not constitute or establish a violation of any statutory or common law principle pertaining to conflict of interest, nor will it cause unlawful benefit or gain to be derived by either party.

#### **V. RECORDS-AUDIT**

Consultant 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 Consultant's costs which are chargeable to the Metro Government under this Agreement; and the Metro Government shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of its own or of any public accounting firm selected by it. The records to be thus maintained and retained by Consultant shall include (without limitation): (a) payroll records

accounting for total time distribution of Consultant's employees working full or part time on the work (to permit tracing to payrolls and related tax returns), as well as canceled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases receiving and issuing documents, and all the other unit inventory records for Consultant's stores stock or capital items; and (c) paid invoices and canceled checks for materials purchased and for subcontractors' and any other third parties' charges.

**VI. 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 claims, damages, losses and expenses including attorneys' fees, arising out of or resulting, directly or indirectly, from the Consultant's (or Consultant's subcontractors if any) performance or breach of the contract provided that such claim, damage, loss, or expense is (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom, or from negligent acts, errors or omissions and (2) not caused by the negligent act or omission 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.

**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. Consultant agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Consultant 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. 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 Consultant, 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.

**XI. 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.

**XII. OCCUPATIONAL HEALTH AND SAFETY**

Consultant agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. Consultant also agrees to notify the Metro Government in writing immediately upon detection of any unsafe and/or unhealthful working conditions detected at any Metro-owned property where Consultant performs work under this Agreement. Consultant agrees to indemnify, defend and hold the Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**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, Consultant 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.

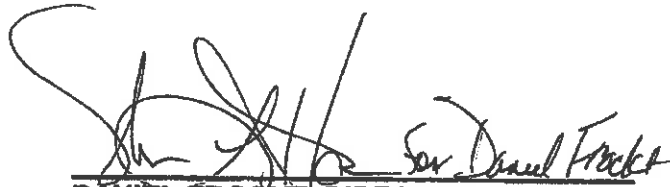
**XVIII. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Consultant shall reveal any final determination of a violation by the Consultant or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor. The Consultant shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Consultant or subcontractor for the duration of the contract.

WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND  
LEGALITY CONTINGENT  
UPON APPROVAL OF  
OF THE APPROPRIATION FOR  
THIS CONTRACT BY THE  
METRO COUNCIL

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

  
DANIEL FROCKT, DIRECTOR,  
OFFICE OF MANAGEMENT AND BUDGET

Date: 9/13/17

Date: 9/13/17

SIMON AND COMPANY, INCORPORATED

By: 

Title: President

Date: 9/13/17

Taxpayer Identification No.  
(TIN): 

Louisville/Jefferson County  
Revenue Commission Account  
No.: 