

**CONTRACT DATA SHEET**

PSC Type (check one):  New  Addendum Sole Source:  Yes  No

Contractor Information	
1. Legal Name of Contractor:	<u>Columbia Telecommunications Corporation d/b/a CTC Technology and Energy</u>
2. Address:	<u>10613 Concord Street</u>
3. City, State, & Zip:	<u>Kensington, MD 20895</u>
4. Contractor Contact Person:	<u>Joanne Hovis</u>
5. Phone:	<u>301-933-1488</u> Email: <u>jhovis@ctcnet.us</u>
6. Revenue Commission Taxpayer ID#:	_____
7. Federal Tax ID # (SSN if sole proprietor):	_____

Department Information	
8. Requesting Department:	<u>Economic Development - Louisville Forward</u>
9. Contact Person Name & Telephone:	<u>Rebecca Fleischaker 502-674-2974</u>

Contract Information	
10. Not to exceed amount:	<u>\$ 40,000</u>
11. Are expenses reimbursed?	<u>Yes</u>
12. If yes list allowable expenses and maximum amount reimbursable:	<u>out of pocket expenses and subcontractors</u>
13. Beginning and ending date of the contract:	<u>as soon as can be signed - 03/31/2016</u>
14. Funding Source	<u>General Fund - Louisville Forward</u> Federal Funds <u>yes</u> <u>no</u>
15. Scope & Purpose of the contract:	<u>Provide broadband consulting and planning services to determine to build out the "final mile" of the statewide Kentucky High Speed Fiber Optic Network ("KSN") to businesses and residences in Metro Government.</u>

Authorizations	
Department Director:	<u>Rebecca Fleischaker</u> Date: <u>6-20-15</u>
Purchasing Director:	<u>Margie Sale</u> Date: <u>8/2/15</u>
County Attorney:	<u>Paul V. Lynch</u> Date: <u>8-10-23-15</u>
<i>The County Attorney has written the attached Professional Service Contract or Sole Source Contract and has approved that document as to the legality of the instrument itself only and as to its form.</i>	

For Purchasing Use Only	
Contractor is registered and in good standing with the Revenue Commission	_____
Human Relations Commission requirements have been met	_____
Insurance requirements have been satisfied	_____
If federally funded, Federal Debarment standing has been verified	_____

Attach all justification documentation to this form, along with signed Written Findings Form.

**WRITTEN FINDINGS**

**EXPLAINING NECESSITY FOR USING NONCOMPETITIVE NEGOTIATION FOR PSC**

This document constitutes written request and findings, as required by KRS 45A.380 stating the need to purchase through noncompetitive negotiation. By the signatures listed below, the Requesting Department has determined, and the Chief Financial Officer concurs, that competition is not feasible because:

\_\_\_\_\_ A. An emergency exists which will cause public harm as a result of the delay in competitive procedures. **\*\* Mayors Approval required for emergency purchases exceeding \$10,000.**

\_\_\_\_\_ B. There is a single source within a reasonable geographic area of the supply or service to be procured or leased (attach sole source determination from the Purchasing Department).

X \_\_\_\_\_ C. The contract is for the services typically provided by a licensed professional, such as an attorney, architect, engineer, physician, certified public accountant, registered nurse, or educational specialist; a technician such as a plumber, electrician, carpenter, or mechanic; an artist such as a sculptor, aesthetic painter, or musician; or a non-licensed professional such as a consultant, public relations consultant, advertising consultant, developer, employment department, construction manager, investment advisor, or marketing expert and the like.

\_\_\_\_\_ D. The contract is for the purchase of perishable items purchased on a weekly basis, such as fresh fruits, vegetables, fish, or meat.

\_\_\_\_\_ E. The contract is for replacement parts where the need cannot reasonably be anticipated and stockpiling is not feasible.

\_\_\_\_\_ F. The contract is for proprietary items for resale.

\_\_\_\_\_ G. The contract or purchase is for expenditures made on authorized trips outside the boundaries of the city.

\_\_\_\_\_ H. The contract is for the purchase of supplies which are sold at public auction or by receiving sealed bids.

\_\_\_\_\_ I. The contract is for group life insurance, group health and accident insurance, group professional liability insurance, worker's compensation insurance, or unemployment liability insurance.

\_\_\_\_\_ J. The contract is for a sale of supplies at reduced prices that will afford a purchase at savings to the Metro Government.

\_\_\_\_\_ K. The contract was solicited by competitive sealed bidding and no bids were received from a responsive and responsible bidder.

\_\_\_\_\_ L. Where, after competitive sealed bidding, it is determined in writing that there is only one (1) responsive and responsible bidder.

Rebecca Couch 8-20-15  
Requesting Department Director Date

\_\_\_\_\_  
\*\*Mayor Date  
\*\*Signature is required only for Written Finding A

Maria Sule 8/21/15  
OMB/Purchasing Approval Date

## **AGREEMENT**

**THIS PROFESSIONAL SERVICE CONTRACT** (this "Agreement"), is made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, referred to as "**METRO GOVERNMENT**," by and through "**LOUISVILLE FORWARD**", which performs the economic development functions for **METRO GOVERNMENT**, and **COLUMBIA TELECOMMUNICATIONS CORPORATION d/b/a CTC TECHNOLOGY AND ENERGY**, with offices located at 10613 Kensington, MD 20895, herein referred to as "**CTC**",

### **WITNESSETH:**

**WHEREAS**, Metro Government in need of certain broadband consulting and planning services to determine where to best build out the "final mile" of the statewide Kentucky High Speed Fiber Optic Network ("KSN") to businesses and residences in Metro Government; and

**WHEREAS**, CTC has a contract with the Commonwealth of Kentucky (the "Commonwealth") to provide similar consulting and planning services for the statewide KSN; and

**WHEREAS**, Metro Government wishes to take advantage of CTC's consulting and planning services for the statewide KSN and have it applied to the "final mile" of the KSN, and CTC is willing to provide such services;

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

**I. SCOPE OF SERVICES AND DELIVERABLES.**

(a) CTC shall develop a high-level strategic plan that explores options to deliver broadband services to Metro Government's residents and businesses, as more

particularly described in Exhibit "A" to this Agreement. As part of developing this plan, CTC's objectives are (i) to determine what incentives Metro Government might offer, and/or barriers it might lower, to attract potential service providers, and (ii) to investigate ways in which Metro Government may be able to integrate its efforts with the Commonwealth's current design/build process for the KSN, which may take advantage of and apply the expertise and familiarity CRC has gained in working with the Commonwealth on the KSN for Metro Government's benefit.

(b) The services shall result in a deliverable that consists of high-level fiber design and cost estimates for the construction of the fiber infrastructure, as well as identification of strategic approaches to incenting private investment in the fiber infrastructure, as more particularly described in Exhibit "A" to this Agreement. The final deliverable will include CTC's strategic recommendations and all data and insights developed during the course of this Agreement.

## **II. FEES AND COMPENSATION**

In consideration of the services and deliverables provided in Section I, Louisville Forward agrees to pay CTC a sum not to exceed \$40,000.00, to be used pursuant to the purposes set forth in Section I, and paid pursuant to the remainder of this Section:

- (a) CTC shall submit its invoices on a monthly basis to Louisville Forward, which invoices shall include a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such services and any non-routine expenses. The invoices shall reflect billing at the following hourly rates:

Director of Business Consulting/Engineering \$170/hour  
Principal Analyst \$160/hour  
Senior Project Analyst/Engineer \$150/hour  
Senior Analyst/Engineer \$140/hour  
Staff Analyst/Engineer \$130/hour  
Communications/Engineer Aide \$75/hour

CTC's billing rates are inclusive of all routine expenses, including administrative, accounting and computer support, telephone calls and photocopying. Non-routine expenses and long-distance travel are recovered at direct cost with no mark-up. Copies of invoices or receipts for non-routine expenses must be included with CTC's invoice when payment is requested.

- (b) Louisville Forward shall pay all properly documented invoices within 30 days of receipt.
- (c) The \$40,000 contractual limit includes any and all out-of-pocket expenses incurred by CTC.

### **III. APPROPRIATION & APPROVAL**

Payment by Metro Government to CTC for services performed pursuant to this Agreement has been made per an appropriation from Metro Council. Should Metro Council fail to appropriate the funding referenced in this agreement in future years, then the duties and obligations set forth in this agreement for both parties are null and void.

### **IV. DURATION**

(a) This is a professional service contract which shall begin as of the date this Agreement is signed and shall continue until March 31, 2016.

(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 either 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 or expenses incurred up to and including date of termination shall be based upon work completed at the rates identified in this Agreement.

#### **V. EMPLOYER/EMPLOYEE RELATIONSHIP**

It is expressly understood that no employer/employee relationship is created by this Agreement, nor does it cause CTC to be an officer or official of 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.

#### **VI. RECORDS-AUDIT**

CTC 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 CTC's costs which are chargeable to Metro Government under this Agreement; and 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 CTC shall include (without limitation): (a) payroll records accounting for total time distribution of CTC'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 CTC'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.

**VII. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of CTC in accordance with Exhibit B attached hereto.

**VIII. HOLD HARMLESS CLAUSES**

CTC shall indemnify, hold harmless, and defend 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 CTC's (or CTC'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 breach of contract, and (2) not caused by the negligent act or omission or willful misconduct of 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.

**IX. 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 Metro

Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. CTC agrees to furnish Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. CTC further agrees to provide such other information to Metro Government as may be required by the IRS or the Kentucky Department of Revenue.

**X. 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.

**XI. AUTHORITY**

CTC, by execution of this Agreement, does hereby warrant and represent that it is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**XII. 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.

**XIII. 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.

**XIV. OCCUPATIONAL HEALTH AND SAFETY**

CTC 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. CTC also agrees to notify Metro Government in writing immediately upon detection of any unsafe and/or

unhealthful working conditions detected at any Metro-owned property where CTC performs work under this Agreement. CTC agrees to indemnify, defend and hold Metro Government harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

**XV. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. CTC may not assign its duties and obligations set forth in this agreement without express written permission from Louisville Forward.

**XVI. 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.

**XVII. 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.

**XVIII. 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, CTC is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XIX. 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.

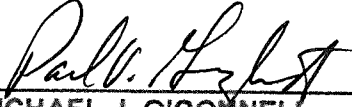
**XX. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS**

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

[The remainder of this page is intentionally left blank]

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

APPROVED AS TO FORM AND  
LEGALITY:

  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

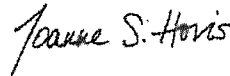
LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
TED SMITH  
CHIEF OF CIVIL INNOVATION

Date: 10-23-15

Date: 9/2/15

COLUMBIA TELECOMMUNICATIONS  
CORPORATION d/b/a CTC TECHNOLOGY &  
ENERGY



Date: 8/18/2015

Taxpayer Identification (TIN):

██████████

Louisville/Jefferson County  
Revenue Commission Account

No.: ██████████