

## AGREEMENT

THIS AGREEMENT, made and entered into by and between the LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT, and through LOUISVILLE FORWARD, which performs its economic development activities, herein referred to as "METRO GOVERNMENT", and COMMONWEALTH ECONOMICS PARTNERS, LLC, with offices located at 108 Esplanade, Suite 100, Lexington, Kentucky, 40507, herein referred to as "CONSULTANT".

### WITNESSETH:

**WHEREAS**, the Metro Government wishes to engage Consultant to provide professional services with regard to financial advice and counseling on complex financial arrangements, deal structures and tax increment financing; 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 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.** The services of Consultant shall include but not be limited to financial advice and counseling on complex financial arrangements, deal structures and tax increment financing.

#### **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 **NINE THOUSAND**

**DOLLARS (\$9,000.00)** per month. Total compensation payable to Consultant for services rendered pursuant to this Agreement shall not exceed **ONE HUNDRED EIGHT THOUSAND DOLLARS (\$108,000.00)**.

**B.** Unless otherwise agreed to in writing by the Metro Government, 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 a descriptive daily accounting of the hours expended in service under this Agreement and the particular nature of such service. Copies of invoices or receipts for third party charges must be included with the Consultant's invoice when payment is requested. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate a descriptive daily accounting of hours expended as described heretofore.

**C.** The Metro Government shall not reimburse out-of-pocket expenses under this Agreement.

**D.** Consultant, to the extent that it provides the same or related services to other parties agrees to pro-rate its billings 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. In no event will the Metro Government pay bills which are considered to be double billing (i.e. billing two different parties for the same work).

### **III. DURATION**

**A.** This Agreement shall begin July 1, 2018 and shall continue through and including June 30, 2019.

**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 this Agreement, 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 shall 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 Agreement.

**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 it is qualified to do business in the State of Kentucky, and 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 therefore, 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 therefore.

(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 therefore.

(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 are 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 this Agreement.

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

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

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT  
LOUISVILLE FORWARD

MICHAEL J. O'CONNELL  
Jefferson County Attorney

By: [Signature]  
Asst. Jefferson County Attorney

Printed name: D. H. [Signature]

Date: 6/18/18

By: Rebecca J. Couch

Title: Deputy Director

Printed name: Rebecca Fleischer Couch

Date: 6-21-18

COMMONWEALTH ECONOMICS  
PARTNERS, LLC

By: J.R.F.

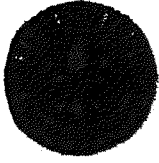
Title: President

Printed name: John R. Freed

Date: 6/18/18

Taxpayer Identification No.  
(TIN) \_\_\_\_\_

Louisville/Jefferson County  
Revenue Commission Account  
No.: \_\_\_\_\_



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

Department	Louisville Forward	Department Contact	Laura Ferguson
Contact Email	laura.ferguson@louisvilleky.gov	Contact Phone	502-574-3503

Contract Type: check one	<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)	07/01/2018	06/30/2019		

**VENDOR INFORMATION**

Vendor Legal Name	Commonwealth Economics Partners LLC			
DBA				
Point of Contact	F. Thomas Howard	Email	info@commonwealthecon.com	
Street	108 Esplanade - Suite 220			
Suite/Floor/Apt		Phone	859-246-3060	
City	Lexington	State	KY	Zip Code 40507
Federal Tax ID#		SSN# (If sole proprietor)		
Louisville Revenue Commission Account #				
<u>Human Relations Commission Certified Vendors</u>	Certified Minority Owned Business	Certified Woman Owned business	Disabled Owned business	
Select if applicable				

**FINANCIAL INFORMATION**

Not to Exceed Contract Amount	<b>\$108,000</b>	(including reimbursement expenses, if applicable)			
Fund Source: General Fund	✓				
Federal Grant		Federal Granting Agency			
Other		Describe:			
Account Code String #	1101	505	3324	333000	52130
Payment Rate		per hour		per day	
	\$9,000.00	per month		Other	
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.

See attached contract.

**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.

Vendor is providing Louisville Forward and the Office of the Budget Director with financial advice and counsel on complex financing arrangements and deal structures in general and also deals involving Tax Increment Financing. Their role is comprehensive relating from advice on how to best structure the deal for Louisville Metro to satisfying the ongoing compliance and reporting provisions imposed on applicants for state funds. They also possess expertise in bond transaction structures that will assist the City in appropriately structuring bond debt for projects. They have the most relevant and practical experience in dealing with these types of transactions.

To date, the majority of their work involved analysis of the proposed soccer stadium and surrounding district, refinancing certain bonds, and analyzing various tax increment financing and other projects, such as Heritage West. They are also assisting the City with the multiple reporting and document reviews that are required to receive state reimbursement under the Butchertown Stadium TIF. They also assist the City's review of other projects in which the City may participate.

This contract should not be bid out as the vendor has already spent significant time on the Butchertown Stadium, Heritage West and other projects and potentially paying another consultant to get up to speed would not be efficient or effective usage of City funds. Potentially changing vendors at this juncture, with several projects in progress, would not be practical or feasible.

**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 Mary Ellen Wiederwohl Date 6/15/18  
Signature  
Mary Ellen Wiederwohl  
Printed Name

Purchasing Director Joel Neaveill Date 6/15/18  
Signature  
Joel Neaveill  
Joel Neaveill