

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT (“AGREEMENT”), is made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through **LOUISVILLE FORWARD**, which performs its economic development functions, herein referred to as “**METRO GOVERNMENT**”, and **KENTUCKY WORLD TRADE CENTER INC.**, with offices located at 444 South Fifth Street, Suite 600, Louisville, Kentucky, 40202, herein referred to as “**CONSULTANT**”.

W I T N E S S E T H :

WHEREAS, the Metro Government is in need of certain professional services with respect to international business and trade services; 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. Consultant, while performing the services rendered pursuant to this Agreement, may incidental thereto utilize agents or employees of such Consultant. However, such use must be documented in the quarterly invoice submitted for those services rendered.

C. 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: professional services with respect to international business and trade services:

- 1) Consultant will serve as Metro Government's resource for international trade services and referrals for the Louisville business community by providing trade support and research along with trade counseling services. These services will include, but will not be limited to: identifying and negotiating with foreign trading partners, explaining foreign payment options, providing information and contacts in international shipping and logistics, help in completing import/export documentation, understanding foreign legal issues and translation services and cross cultural communications.
- 2) Consultant will provide Metro Government and the business community access to an international network of over 300 World Trade Centers in more than 92 countries.
- 3) Consultant will serve as a resource for Metro Government and the Louisville community on international business issues for companies traveling abroad or hosting international guests or exchange students.
- 4) Consultant will organize or co-sponsor at least ten trade education and export programs to keep businesses up to date and aware of opportunities and changes in international commerce.
- 5) Consultant will organize the annual *Kentucky World Trade Day*, the Commonwealth's largest gathering of international trade professionals. World Trade Day serves as an educational platform for international trade professionals to network and learn about best practices. The program agenda includes a key note speaker (examples, Ambassador of Korea, The ECONOMIST Intelligence Unit, Federal Reserve), along as an opportunity to recognize Louisville Metro businesses for trade and export success.
- 6) Consultant will produce and distribute six editions of *The Trade Bulletin*, the Consultant's international trade newsletter.
- 7) Consultant will invite and host a minimum of 25 visiting foreign trade professionals and dignitaries.
- 8) Consultant will serve as a resource for local colleges and universities by providing internship opportunities and offer to counsel students on future careers in international business. In addition, all interns are invited to participate in WTC-KY training and certification free of charge. Consultant has and will continue to participate in a minimum of four class room presentations to faculty and students each school year.

9) Consultant will organize at least one outbound or inbound foreign trade mission, to Kentucky and to facilitate one-on-one business contacts for Louisville Metro companies.

10) Consultant will support the Louisville Forward along with Sister Cities to add an international trade component to these offices' business efforts.

11) Consultant will expand its annual international trade certification program which allows Louisville Metro companies to train and certify their staff on key international trade topics and technical issues.

12) Consultant shall submit on the fifth day of each month a report to the director of Louisville Forward detailing its activities during the preceding month towards accomplishing the goals set forth herein.

13) Consultant will support city's focus on FDI through research, education offerings, and trade missions.

II. FEES AND COMPENSATION

A. Consultant shall be reimbursed for professional services rendered according to the terms of this Agreement, in two installments. The first installment, in the amount of \$36,000, shall be made upon final execution of this Agreement. The second installment, in the amount of \$36,000, shall be made upon receipt and review by Metro Government of a satisfactory progress report of the services or goals accomplished between July 1, 2015 and December 31, 2015. Total compensation payable to Consultant for services rendered pursuant to this Agreement, including out-of-pocket expenses, shall not exceed **SEVENTY-TWO THOUSAND DOLLARS AND NO CENTS (\$72,000.00)**.

B. Detailed invoices shall be presented semi-annually, which invoices shall indicate a general accounting of the hours expended in service under the contract 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. In the event payment is made in lump sum at the end of the service period, Consultant's final invoice shall indicate an 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 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, 2015 and shall continue through and including June 30, 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 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, and other work as assigned by the director to support the mission of the department and all divisions.

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 subConsultants' 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 subcontractor 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. Consultant shall comply with the insurance requirements attached hereto and fully incorporated herein as Attachment A.

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 Consultants. 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 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 Consultant 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 the contract.

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

By: 
Asst. Jefferson County Attorney

Printed name: PAUL V. GUGLIARDO

Date: 9-25-2015

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT LOUISVILLE FORWARD


By: 

Title: Chief, Louisville Forward

Printed Name: Mary Ellen Wiederwohl

Date: 11/11/15

KENTUCKY WORLD TRADE CENTER INC. CONSULTANT

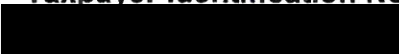
By: 

Title: Vice President Client & Membership Devel.

Printed Name: Sherry G. Mulkins

Date: October 30, 2015

Taxpayer Identification No.



Louisville/Jefferson County Revenue Commission Account



ATTACHMENT A

HOLD HARMLESS AGREEMENT AND INDEMNIFICATION CLAUSE AND INSURANCE REQUIREMENTS

Hold Harmless and Indemnification Clause

All insurance requirements including performance and payment bonds shall be furnished the day a contract issued pursuant to this Bid is awarded.

The 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 SubConsultants, 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 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.

INSURANCE REQUIREMENTS

Prior to commencing work, Consultant shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. Consultant shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to **Louisville/Jefferson County Metro Government's Purchasing Division** and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. Consultant shall not allow any subConsultants to commence work until the insurance required of such subConsultants has been obtained and copies of Certificates of Insurance retained by Consultant evidencing proof of coverages.

Without limiting Consultant's indemnification requirements, it is agreed that Consultant shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subConsultants, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Consultant to supply proof of subConsultants insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

- A. **The following clause shall be added to Consultant's (and approved subConsultants) Commercial General Liability Policies:**

1. **"The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."**
- B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Consultant's or subConsultants policy(ies), if that/those policy(ies) provide for Limits above the minimum):
1. **PROFESSIONAL LIABILITY (Error & Omissions)** coverage insurance policy, which includes a **minimum** limit of liability of **\$1,000,000** for each Wrongful Act, and **\$2,000,000 aggregate limit**. In the event that the Consultant's policy is written on a "Claims Made" Form, the Consultant shall, after work has been completed, furnish evidence that the liability coverage has been maintained for at least one year after completion of work, either by submitting renewal policies with a Retroactive Date of not later than the date work commenced under this contract, or by evidence that the Consultant has purchased an Extended Reporting Period Endorsement that will apply to any and all claims arising from work performed under this contract.
 2. **WORKERS' COMPENSATION (IF APPLICABLE)** insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

MISCELLANEOUS

- A. Consultant shall procure and maintain insurance policies as described herein and for which the **Louisville/Jefferson County Metro Government's Purchasing Division** shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least fifteen (15) days prior to the expiration of any policy(s).
- B. **Upon execution of the contract, Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Purchasing Division
611 West Jefferson Street
Louisville, Kentucky 40202

- C. **Upon Renewal of insurance coverage (s), Certificates of Insurance evidencing renewal shall be furnished to:**

Louisville/Jefferson County Metro Government
Office of Management and Budget
Risk Management Division
611 West Jefferson Street
Louisville, Kentucky 40202

- D. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Consultant shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Consultant shall notify Metro's Risk Management Division within two (2) business days. If Consultant fails to notify Metro as required by this Agreement, Consultant agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**

E. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of Consultant hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of Consultant.