

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT, 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 **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, and **LOUISVILLE AREA CHAMBER OF COMMERCE, INC. d/b/a GREATER LOUISVILLE INC.**, with offices located at 614 West Main Street, Louisville, Kentucky 40202, herein referred to as “**GLI**”,

WITNESSETH:

WHEREAS, Louisville Forward is in need of certain support services and access to resources with respect to economic development programs; and

WHEREAS, GLI has been determined by Louisville Forward to be able to provide those services and access to resources;

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

I. **SCOPE OF SERVICES**

GLI shall provide the following services to Louisville Forward.

Business Attraction, Expansion and Support Services.

- Louisville Forward anticipates the need for information, research and preliminary analysis of data in order to perform its duties. As such, GLI agrees to provide said data and analysis, upon request of authorized staff of Louisville Forward, for subject matter that includes but is not limited to the following:

- Nexis data pulls and analysis, including but not limited to the sharing of information derived from daily news searches during significant events that signal a potential change in the local business community that could substantially impact the city's economy;
- information from ACCRA, Moody's, and Claritas;
- information from Salesforce, including but not limited to historical data from closed projects; and
- InfoGroup data pulls and analysis, RFI data pulls and analysis, property locator searches, target sector website review, and other miscellaneous information and research.

GLI shall provide up to four hundred (400) hours per year of "On Demand Research and Database Services" for research, data and analysis, and "Additional On Demand Research and Database Services" above 400 hours per will be compensated at the hourly rate set forth in Section II below. Data and research requests under this subsection shall be honored within two (2) business days of request, or this timeframe may be extended or shortened by agreement of both parties.

In addition to On Demand Research and Database Services and Additional On Demand Research and Database Services above, GLI agrees to provide the following "Regular Research Reports":

- C2ER Cost of Living Index quarterly reports;

- Moody's Analytics Cost of Doing Business Index annual report;
- Moody's Precip Metro Louisville MSA report as received;
- Quarterly report on the stock performance of Louisville's publicly traded companies, and data and trends related to the five business clusters named in Advantage Louisville;
- Early warning signals of unusual business activity and other information received by GLI from the banking and investment communities, specifically the outcome of monthly industry meetings on early warning signals; and
- Data pulls and analysis that are triggered by significant events in the local business community that could substantially impact the city's economy, including but not limited to mergers and acquisitions activity, regulatory changes, unusual industry trends, and potential company relocations.

The C2ER and Moody's Reports shall be forwarded by GLI to Louisville Forward within two (2) business days of receipt by GLI. The other Regular Research Reports generated locally on a monthly or quarterly schedule, or triggered by local business activity or significant events, shall be delivered to Louisville Forward by GLI within a reasonable time period reflecting the end of a reporting period or occurrence of business activity or significant event.

Louisville Forward reserves the right to request additional Regular Research Reports as the need arises, as long as the additional regular report is currently available in one or more of the databases currently available to GLI. If an additional Regular Research Report request requires GLI to retain outside consultants, the language in the following paragraph shall apply.

Pursuant to this Section I(a), for any information or data analysis request requiring GLI to retain outside consultants, and provided that funds remain available under the limits of this agreement, GLI and Louisville Forward shall agree on the scope and costs of each request prior to the commencement of work on the request. As part of this agreement GLI will maintain a Salesforce Database for active deals and, with client permission where necessary, will provide Louisville Forward access to active deals in the database when utilizing Louisville Forward's own purchased Salesforce seat licenses. Administrative time and direct costs incurred by GLI for upgrading the Salesforce software are billable as Additional On Demand Research and Database Services and/or Direct Expenses (see Section 1(d) below). At the request of Louisville Forward, GLI shall pay directly for and/or reimburse Louisville Forward or its staff for "Incidental Costs" up to \$165,000 [~~\$155,000~~] associated with business development activities for events and other development activities during the term of this

Agreement, including but not limited to the Kentucky Derby, site visits, and GLIDE. All Incidental Costs shall be submitted by Louisville Forward in writing to GLI as a valid invoice or expense report approved by signature of an authorized person at Louisville Forward. GLI does not assume responsibility for verifying or validating expenses approved by Louisville Forward. GLI will consult with Louisville Forward prior to assessing any administrative fee for this service.

- (a) At the request of Louisville Forward, GLI staff will provide “Professional Services” including project management, meeting attendance, event coordination, travel, training, analysis, and other reasonable services associated with business and economic development activities. GLI will be compensated for Professional Services at an hourly rate set forth in Section II below.
- (b) Louisville Forward will promptly reimburse GLI for any “Direct Expenses” incurred at the request of Louisville Forward including travel, meals, entertainment, outside consulting, marketing activities, or research services, software license fees, etc. for economic development.
- (c) GLI will make available up to five (5) free tickets for GLI events including but not limited to G.L.I.P., Capitol Connection, Enterprise Corp., the Signature Event, Annual meeting, and the

Hot Dozen. Free tickets must be used by Louisville Forward or Metro Government officials and may not be redistributed

Louisville Forward and GLI agree to hold standing regular meetings to openly discuss active economic development deals, related matters, and matters of mutual interest. Time spent by GLI officials or employees in such standing monthly deal meetings will not be billable as a Professional Service.

II. FEES AND COMPENSATION

In support of the services and access to resources provided in Section I, Louisville Forward agrees to pay GLI a sum not to exceed \$300,000.00 to be used pursuant to the purposes set forth in Section I and paid pursuant to the remainder of this Section.

- (a) Louisville Forward agrees to pay GLI a flat fee of \$15,000 per quarter for the 400 hours per year of On Demand Research and Database Services and Regular Research Reports provided under Section I(a).
- (b) Additional On Demand Research and Database Services and Professional Services will be billed at ninety five dollars (\$95) per hour and invoiced in arrears with appropriate hourly billing detail.
- (c) Section I(d) Direct Expenses rendered will be invoiced separately and include appropriate supporting documentation.
- (d) Louisville Forward agrees to pay GLI two (2) deposits of \$82,500 each in August 2015 and January 2016 to be held in a segregated GLI Depository Account and used to pay Section 1(b) Incidental Costs.

(e) Any amounts remaining in the Depository Account after payment of Incidental Costs may, at the request of Louisville Forward, be utilized to pay GLI for Additional On Demand Research and Database Services, "Professional Services" and "Direct Expenses" or other economic development costs. Any amounts paid out under Section II(e) will reduce the maximum amount available for Incidental Expenses by the amount paid.

(f) Louisville Forward will approve and pay all invoices submitted by GLI within 30 days.

(g) Louisville Forward reserves the right to allocate any of the amounts not disbursed by June 30, 2016 under Section II of this Agreement to the GLI Foundation. Said funds allocated to the GLI Foundation shall be disbursed on a mutually agreed upon targeted economic development initiative.

III. APPROPRIATION

Payment by the Metro Government to GLI for services performed pursuant to this Agreement shall be made per an appropriation from the Metro Council. Should the Metro Council fail to appropriate the funding referenced in this agreement, 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 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 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 GLI 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.

VI. RECORDS-AUDIT

GLI 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 GLI'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 GLI shall include (without limitation): (a) payroll records accounting for total time distribution of GLI'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 GLI'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 GLI in accordance with Schedule A attached hereto.

VIII. HOLD HARMLESS CLAUSES

GLI shall indemnify, hold harmless, and defend the 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 GLI's (or GLI'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 the 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 the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. GLI agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. GLI further agrees to provide such other information to the Metro Government as may be required by the IRS or the State 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

GLI, 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

GLI 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. GLI 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 GLI performs work under this Agreement. GLI 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.

XV. PRIOR WORK

Metro Government hereby acknowledges and agrees that all services, work product, deliverables and other obligations under any and all agreements between GLI and Metro Government, including but not limited to each of the Professional Service Contracts effective July 1, 2007, July 1, 2009, July 1, 2010, July 1, 2011, July 1, 2012 and July 1, 2013, respectively have been completed and that no subsequent activities are necessary to effectuate any duties and/or obligations emanating from said contracts from either Metro Government/Louisville Forward or GLI. Louisville Forward agrees to invite and recognize GLI at any economic development event or press release where it played a material role in a successful outcome.

XVI. SUCCESSORS

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

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

APPROVED AS TO FORM AND
LEGALITY:

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY

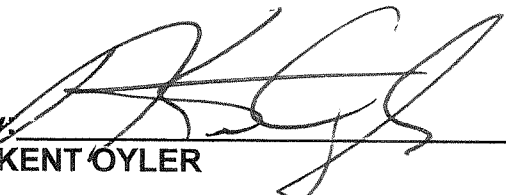


MARY ELLEN WIEDERWOHL
CHIEF, LOUISVILLE FORWARD

Date: _____

Date: 8/6/15

LOUISVILLE AREA CHAMBER OF
COMMERCE, INC. D/B/A GREATER
LOUISVILLE, INC.

By: 

KENT OYLER

Title: President & CEO

Date: August 6, 2015

Taxpayer Identification (TIN):



Louisville/Jefferson County
Revenue Commission Account

No.: 

SCHEDULE A

I. **INSURANCE REQUIREMENTS.**

Prior to commencing work, GLI shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the Commonwealth 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. GLI shall not commence work under this agreement until all insurance required under the agreement has been obtained and until copies of policies or certificates thereof are submitted to and approved by Metro Government (who may request review by Metro Government's Risk Management Division). GLI shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting GLI's indemnification requirements, it is agreed that GLI 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 subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by Metro Government. Metro Government may require GLI to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro Government's option, actual copies of policies.

The following clauses shall be added to GLI's (and approved subcontractors) 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 agreement.
- A. 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 agreement:
1. **COMMERCIAL GENERAL LIABILITY**, via the Occurrence Form, with a **\$1,000,000** Combined Single Limit for any one Occurrence and \$2,000,000 aggregate for Bodily Injury, Personal Injury and Property Damage, including:

- a. Premises – Operations Coverage
- b. Products and Completed Operations
- c. Contractual Liability
- d. Broad Form Property Damage
- e. Independent Contractors Protective Liability
- f. Personal Injury

- 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.

II. ACCEPTABILITY OF INSURERS.

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

III. MISCELLANEOUS.

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

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

- C. CANCELLATION OR MATERIAL CHANGE OF COVERAGE. GLI shall notify Metro Government'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, GLI shall

notify Metro Government's Risk Management Division within two (2) business days. If GLI fails to notify Metro Government as required by this agreement, GLI agrees that such failure shall be a breach of this agreement. Metro Government reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or materials change of coverage in accordance with policy provisions. When requested by Metro Government, a copy of the policy endorsement shall be provided to Metro Government's Risk Management Division.

- D. Approval of the insurance by Metro Government shall not in any way relieve or decrease the liability of GLI hereunder. It is expressly understood that Metro Government 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 GLI.