

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT, made and entered into by and between the LOUISVILLE/JEFFERSON COUNTY 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.

- (a) 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 InfoGroup data pulls and analysis, RFI data pulls and analysis, information from ACCRA, Moody's

Claritas, Salesforce, etc., economic indicators tracking, peer/competitor city data tracking, market and industry data tracking and analysis, property locator searches, target sector website review, historical data from closed projects, and other miscellaneous information and research. GLI shall provide up to sixty (60) hours per month of "Database Data Services" for research, data and analysis, and "Additional Data Services" above 60 hours per will be compensated at the hourly rate set forth in Section II below. Database Data Services will not roll over month-to-month. Data requests shall be honored within two (2) business days of request, or this timeframe may be extended or shortened by agreement of both parties. 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, 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 Data Services and/or Direct Expenses (see Section 1(d) below).

(b) At the request of Louisville Forward, GLI shall pay directly for and/or reimburse Louisville Forward or its staff for "Incidental Costs" up to \$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, the PGA Championship, 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.

(c) 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 shall provide up to forty (40) hours per month of Professional Services at no cost for the first five (5) months of this Agreement. Up to 40 unused no-cost hours may be carried forward into the following month provided that no unused hours may roll over into the sixth month. GLI will

be compensated for Professional Services at an hourly rate set forth in Section II below.

(d) Louisville forward will promptly reimburse GLI for any "Direct Expenses" incurred at the request of Louisville Forward including travel, meals, entertainment, outside consulting or research services, software license fees, etc.

(e) 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 a standing monthly meeting 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 Expense.

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 \$17,500 per quarter for the 60 hours per month of Database Data Services provided under Section I(a).

- (b) Additional Data 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 \$77,500 each in August 2014 and January 2015 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 Data 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, 2015 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, 2014 and shall continue through and including June 30, 2015.

(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 B attached hereto.

VIII. HOLD HARMLESS CLAUSES

GLI 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 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 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.

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 Louisville Metro/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.

XVII. 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.

XVIII. 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.

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

XX. 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.

XXI. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS


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

LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT

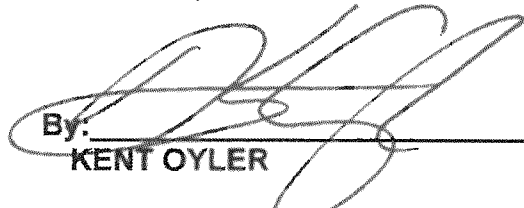

MICHAEL J. O'CONNELL
JEFFERSON COUNTY ATTORNEY


MARY ELLEN WIEDERWOHL
CHIEF, LOUISVILLE FORWARD

Date: 7/16/2014

Date: 7/16/2014

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

By: 
KENT OYLER

Title: President & CEO

Date: 7/16/14

Taxpayer Identification (TIN):



Louisville/Jefferson County
Revenue Commission Account

No.: 

Addendum A

GLI will bill Louisville Forward quarterly for services rendered

CONTRACT DATA SHEET

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

Contractor Information	
1. Legal Name of Contractor:	<u>Greater Louisville Inc.</u>
2. Address:	<u>614 West Main Street</u>
3. City, State, & Zip:	<u>Louisville, KY 40202</u>
4. Contact Person Name & Telephone Number:	<u>Eileen Pickett (502) 625-0000</u>
5. LeAP Supplier #:	<u>1144</u>
6. Revenue Commission Taxpayer ID#:	<u>533221</u>
7. Federal Tax ID # (SSN if sole proprietor):	<u>[REDACTED]</u>

Department Information	
8. Requesting Department:	<u>Economic Development</u>
9. Contact Person Name & Telephone:	<u>Matt Yates 574-3730</u>

Contract Information	
10. Not to exceed amount:	\$ <u>300,000</u>
11. Are expenses reimbursed?	<u>No</u>
12. If yes list allowable expenses and maximum amount reimbursable:	<u>n/a</u>
13. Beginning and ending date of the contract:	<u>7/1/2014-6/30/2014</u>
14. Coding:	<u>1101 - 505 - 3372 - 337201 - 521301</u>
15. Funding Source	<u>General Fund</u> Federal Funds <input type="checkbox"/> yes <input checked="" type="checkbox"/> no
16. Scope & Purpose of the contract:	<u>To provide professional services with respect to economic development programs.</u>

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

Authorizations	
Department Director:	<u><i>E. J. Japprey</i></u> Date: <u>7/17/14</u>
Department certifies:	
<input checked="" type="checkbox"/>	Funds are available
<input checked="" type="checkbox"/>	Contractor is registered and in good standing with the Revenue Commission
<input checked="" type="checkbox"/>	Human Relations Commission registration requirements have been met
<input type="checkbox"/>	Contractor's status regarding Federal Debarment has been verified per Metro Procurement Policy Section VII – Federally Funded Contracts & Agreements
_____ Purchasing:	Approval of Sole Source Designation Date: _____
_____ Risk Management:	Certifies Insurance requirements satisfied. Date: _____
_____ County Attorney:	Date: _____
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.	

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.

E. Jeffrey Morley 7/17/14

 Requesting Department Director Date

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

 OMB/Purchasing Approval Date