

CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number _____

Meeting Type: Regular

Meeting Date: 11/7/2013

Action Requested By:
ITS

Agenda Item Type
Resolution

Subject Matter:

Professional Services Agreement

Exact Wording for the Agenda:

Resolution authorizing the Mayor to execute a Professional Services Agreement between the City of Huntsville and Columbia Telecommunications Corporation dba CTC Technology & Energy.

Note: If amendment, please state title and number of the original

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Associated Cost: 6,440.00

Budgeted Item: Not applicable

MAYOR RECOMMENDS OR CONCURS: Yes

Department Head: _____

Date: _____

RESOLUTION NO. 13-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into a Professional Services Agreement by and between the City of Huntsville and Columbia Telecommunications Corporation, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "Professional Services Agreement between the City of Huntsville and Columbia Telecommunications Corporation d/b/a CTC Technology & Energy," consisting of six (6) pages, and the date of November 7, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 7th day of November, 2013.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 7th day of November, 2013.

Mayor of the City of
Huntsville, Alabama

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE CITY OF HUNTSVILLE,
ALABAMA, AND COLUMBIA
TELECOMMUNICATIONS CORPORATION
D.B.A. CTC TECHNOLOGY & ENERGY**

**STATE OF ALABAMA)
COUNTY OF MADISON)**

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is made and entered into on this the 7th day of November, 2013, by and between Columbia Telecommunications Corporation d.b.a. CTC Technology & Energy ("CTC") and the City of Huntsville, a municipal corporation in the State of Alabama (the "City").

RECITALS

WHEREAS, CTC is a private consulting firm that specializes in public sector communications-related issues; and

WHEREAS, Dr. Andrew Afflerbach, Ph.D., P.E., ("Dr. Afflerbach") is CEO and Director of Engineering of CTC, and, as CTC's Director of Engineering, he oversees all technical and engineering work performed for the company's clients nationwide; and

WHEREAS, Dr. Afflerbach has been requested to prepare and facilitate two workshops/work sessions on communications-related issues on site in Huntsville for City-invited officials and personnel (the "sessions"); and

WHEREAS, the City and CTC desire to enter into this Agreement to set forth the agreement of the parties.

NOW, THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein by reference, and other good and valuable consideration, the parties do mutually agree as follows:

- 1. Scope of Work.** CTC agrees that Dr. Afflerbach will prepare and facilitate on-site sessions in the City as follows:

(a) *High-level briefing for City officials.* In order to introduce the City's policy makers and officials to the issues at hand and spark discussion of potential future projects and undertakings, Dr. Afflerbach will:

(1) Provide an overview of current initiatives in numerous other American cities—including both networks serving municipal needs (i.e., internal networks) and public-facing networks providing services to community anchor institutions, private sector partners, and businesses. These case studies will include descriptions of various network business models and implementation strategies; approaches to public-private partnerships; and steps that can be taken to make cities "gigabit ready."

(2) Present technical and engineering details at a level appropriate for a lay audience, and Dr. Afflerbach will be prepared to answer questions and guide a high-level discussion about issues, challenges, and opportunities facing the City.

(b) *Work session for City personnel.* For a City-invited audience of City personnel, Dr. Afflerbach will:

(1) Present similar material about initiatives in other cities—tailored to include more detail—on technologies, lessons learned during local deployments, best practices for municipal planning process, ways to leverage existing City resources (e.g., public works and utilities resources), peering and interconnection with other networks, means to identify and select appropriate private partners, coordination of network deployment tasks with road/utility projects, and the range of potential next steps for the City to take.

(2) As with his workshop for City policy makers, Dr. Afflerbach will present this work session at an appropriate technical level, will be prepared to answer questions, and will guide participants in meaningful discussion.

(c) In preparing for and facilitating the sessions, Dr. Afflerbach will bring to bear his expertise and experience, and that of his company's, in the field of public sector communications networks and related issues. He will also present an overview of his company and the services it offers to the public sector at both sessions.

(d) The sessions may be conducted on the same day or on consecutive days, whichever arrangement is more convenient for the City and Dr. Afflerbach. The length of each session will be determined by the City; provided that no session will be longer than three hours unless Dr. Afflerbach agrees to hold-over the session.

2. **Period of Performance.** The sessions will be conducted within 45 days from the date of this Agreement. Should an unforeseen delay beyond the control of the parties necessitate a rescheduling of the sessions, the parties will cooperate in re-scheduling the sessions to the soonest and most convenient date possible.

3. **Cost of Services.**

(a) To perform the scope of work described above the City shall pay CTC, within 30 days after the date of receipt of invoicing, a not-to-exceed cost, inclusive of all travel costs and other fees, of \$6,440.

(b) The work will be billed at the hourly rates listed below.

Labor Category	Rate
Director of Business Consulting	\$165
Principal Analyst	\$155
Senior Project Analyst	\$145
Senior Analyst	\$135
Staff Analyst	\$125
Communications Aide	\$ 70
Director of Engineering	\$165
Principal Engineer	\$155
Senior Project Engineer	\$145
Senior Engineer	\$135
Staff Engineer	\$125
Engineer Aide	\$ 70

The costs and billing rates are inclusive of all routine expenses including administrative, accounting, and computer support, telephone calls, and photocopying. Non-routine expenses and long-distance travel will be priced at direct cost with no mark-up.

4. **CTC Performing as an Independent Contractor.** In the performance of this work it is understood between the parties that CTC and its employees, agents, subcontractors, and consultants, if any, shall be acting as independent contractors and not as an employee of the City of Huntsville. CTC shall have no authority to obligate the City to any indebtedness or other obligation.

5. **Notices.** All notices and invoicing to be delivered hereunder shall be delivered to the other party by placing the same in the United States Mail, First Class postage prepaid,

by prepaid overnight service through Federal Express or United Parcel Services, by hand delivery, or by electronic mail to the addressee, addressed as follows:

City of Huntsville Attention: Bill Steiner, Director ITS P.O. Box 308 Huntsville, AL 35804 bill.steiner@huntsvilleal.gov	Columbia Telecommunications Corporation Attention: Dr. Andrew Afflerbach 10613 Concord Street Kensington, MD 20895 aafflerbach@ctcnet.us
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6. **Entire Agreement.** The contract between the City and CTC consists of this written Agreement. This written Agreement constitutes the entire agreement between the City and CTC with reference to the scope of work delineated within. This Agreement supersedes any proposals, documents, and all prior written or oral communication, representation, and negotiations, if any, between the City and CTC.
7. **No Privity of Contract with Third Parties.** Nothing contained in this Agreement shall create, or be interpreted to create, privity or any other contractual agreement between the City and persons or entities other than CTC.
8. **Non-assignment.** The City is relying on the expertise and experience of Dr. Afflerbach in the performance of the scope of work. Therefore, this Agreement is personal and shall not be assigned.
9. **Amendment.** This Agreement may be amended or modified only by a written instrument executed by both Parties.
10. **Hold Harmless Agreement.** CTC, to the fullest extent permitted by law, shall indemnify and hold harmless the City, its elected and appointed officers, officials, employees, and agents from and against all claims, damages, losses, and expenses, including attorney's fees, arising out of or resulting from the performance of the work, provided that any such claim, damage, loss, or expense (1) is attributable to personal injury, including bodily injury sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and (2) is caused by any negligent act or omission of CTC or any of their consultants, or anyone directly or indirectly employed by them or anyone for whose acts they are legally liable. This paragraph shall survive the termination of this Agreement.
11. **Governing Law and Venue.** This Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of Alabama. For any action concerning this Agreement, (a) jurisdiction shall be in the appropriate state or federal courts sitting in

Alabama and (b) venue (i) in Alabama state courts shall be in Madison County, Alabama and (ii) in Alabama federal courts shall be in the United States District Court for the Northern District of Alabama, Northeastern Division.

12. **No Third Party Beneficiaries.** Nothing contained herein shall create a contractual relationship with, or any rights in favor of, any third party.

13. **Confidential Information.** CTC acknowledges that in the performance of this Agreement it may receive information that has been deemed confidential or proprietary by the City or by third parties to whom the City is bound. CTC agrees that it will maintain the confidentiality of that information to the extent the City has notified CTC of the information's confidential/proprietary status. This paragraph shall survive the termination of this Agreement.

14. **Miscellaneous Provisions.**

(a) When a word, term, or phrase is used in this Agreement, it shall be interpreted or construed: First, as defined herein; second, if not defined, according to its generally accepted meaning according to the industry; and third, if there is no generally accepted meaning in the industry, according to its common and customary usage.

(b) The words "include," "includes," or "including," as used in this Agreement, shall be deemed to be followed by the phrase, "without limitation."

(c) In a provision involving two or more items, conditions, provisions or events, which items, conditions, provisions or events are connected by the conjunction "and," "or" or "either . . . or," the conjunction shall be interpreted as follows:

(1) "And" indicates that all the connected terms, conditions, provisions or events apply.

(2) "Or" indicates that the connected terms, conditions, provisions or events apply singly or in any combination.

(3) "Either . . . or" indicates that the connected terms, conditions, provisions or events apply singly but not in combination.

(d) Words or terms used as nouns in this Agreement shall be inclusive of their singular and plural forms, unless the context of their usage clearly requires a contrary meaning.

(e) Time limitations contained herein, or provided for hereby, are of the essence of this Agreement.

(f) The captions of this Agreement are for convenience and reference only and in no way define, describe, extend or limit the intent or scope of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

**COLUMBIA TELECOMMUNICATIONS CORPORATION
D.B.A. CTC TECHNOLOGY & ENERGY**

By: Andrew Offenberg

Its: CEO

CITY OF HUNTSVILLE
a municipal corporation
in the State of Alabama

Attest:

Charles E. Hagood
Its: Clerk-Treasurer

By: _____
Tommy Battle
Its: Mayor

**ROUTING SLIP
CONTRACTS AND AGREEMENTS**

Originating Department: **ITS**

Council Meeting Date: _____

Department Contact: **Bill Steiner**

Phone # _____

Contract or Agreement: **Professional Services Agreement**

Document Name: **Professional Services Agreement with Columbia Telecommunication**

City Obligation Amount: _____ **6,440.00**

Total Project Budget: _____

Uncommitted Account Balance: _____

Account Number: _____

Procurement Agreements

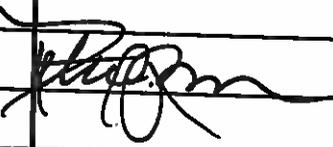
Not Applicable

Not Applicable

Grant-Funded Agreements

Not Applicable

Grant Name: _____

Department	Signature	Date
1) Originating		
2) Legal		11-6-13
3) Finance		
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		