RESOLUTION NO. _____, SERIES 2006

A RESOLUTION PURSUANT TO ORDINANCES 98 AND 99, SERIES 2005, APPROVING THE APPROPRIATIONS TO FUND THE FOLLOWING NEW CONTRACT - (CAPITAL INNOVATIONS, INC. - $48,000.00).

Sponsored By: Councilman David Tandy

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The following appropriation for the listed contract is hereby approved:

CABINET FOR COMMUNITY DEVELOPMENT

$48,000.00 for a new Professional Service Contract with CAPITAL INNOVATIONS, INC. for development of a debt-based, higher risk pool of privately managed capital or attract such a fund which will have the propensity to lend expansion capital to promising local companies on commercially reasonable terms. The fund may be private to semi-private and may or may not take advantage of tax incentives or credit enhancements from March 10, 2006 to June 30, 2006.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herron Metro Council Clerk	Kevin J. Kramer President of the Council
Jerry E. Abramson Mayor	Approval Date

APPROVED AS TO FORM AND LEGALITY:

Irv Maze
Jefferson County Attorney

BY: _____

[GK/RES/2006 CAPITAL INNOVATIONS INC]
CapitolInnovationsIncAgrmt&ResROCbknDraft1 (2).doc

02/09/06
2-16-06

CONTRACT DATA SHEET

PSC Type (check one): __X__ New _____ Renewal _____ Addendum

Contractor Information

1. Legal Name of Contractor: Capital Innovations, Inc.
2. Address: 222 South First Street
3. City/ State & Zip: Louisville, KY 40202
4. Contact Person Name & Telephone Number: Lynn Allen, President, 502-238-8276
5. Revenue Commission Taxpayer ID#: 046707
6. If registration is not required please explain:
7. Is account in good standing: yes
8. Federal Tax ID # (SSN if sole proprietor): 02-0702657

Department Information

9. Requesting Department: Cabinet for Community Development
10. Contact Person Name & Telephone: C. Bruce Traughber, Secretary 574-6250

Contract Information

11. Not to exceed amount: $48,000
12. Are expenses reimbursed? yes
13. If yes list allowable expenses and maximum amount reimbursable: as stated in contract
14. Beginning and ending date of the contract:
15. Coding: 1101 - 501 - 0978 - 097801 - 521301
16. Scope & Purpose of the contract: Develop a debt-based, higher risk pool of privately managed capital or attract such a fund which will have the propensity to lend expansion capital to promising local companies on commercially reasonable terms. The Fund may be private to semi-private and may or may not take advantage of tax incentives or credit enhancements. Establish a review committee, prepare a preliminary research report that assesses demand and options, make recommendations, and, if appropriate, develop and implement an RFP for manager selection and fundraising.

Authorizations

WPB County Attorney Review - Approved as to Form:

Department Director: C Bruce Traughber Date: 2-21-06

Signature certifies:

- ✓ *Funds are available*
- ✓ *Contractor is registered and in good standing with the Revenue Commission*
- ✓ *Human Relations Commission registration requirements have been met*

Cph Risk Management Division of Finance - Certifies Insurance requirements satisfied: 2-22-06

Cabinet Secretary: C Bruce Traughber Date: 2-21-06
(If applicable)

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 for PSC Contract # _____. 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.

C Bruce Traylor 2-21-06 C Bruce Traylor 2-21-06

Requesting Department Director Date Cabinet Secretary Date
(When required by cabinets policy)

_____

**Mayor Date

Signature is required only for Written Finding A

AGREEMENT

THIS PROFESSIONAL SERVICE CONTRACT, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **CABINET FOR COMMUNITY DEVELOPMENT** herein referred to as **"METRO GOVERNMENT",** and **CAPITAL INNOVATIONS, INC.,** with offices located at 222 South First Street, 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 development of a risk pool of capital to make loans to local companies on reasonable terms; 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 professional 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 monthly 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:

Develop a debt-based, higher risk pool of privately managed capital or attract such a fund which will have the propensity to lend expansion capital to promising local companies on commercially reasonable terms. The fund may be private to semi-private and may or may not take advantage of tax incentives or credit enhancements.

E. The work product or deliverables of Consultant shall include but not be limited to the following:

Establish a review committee, prepare a preliminary research report that assesses demand and options, make recommendations, and, if appropriate, develop and implement an RFP for manager selection and fundraising.

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 **ONE HUNDRED SIXTY DOLLARS ($160.00) per hour,** for lead consultant, and **SIXTY DOLLARS ($60.00) per hour,** for associate consultant. Total compensation payable to Consultant for services rendered pursuant to this agreement, including out-of-pocket expenses, shall not exceed **FORTY EIGHT THOUSAND DOLLARS ($48,000.00).**

B. Unless otherwise agreed to in writing by the Metro Government, services shall be rendered and payment therefor shall be made at biweekly intervals throughout the duration of this agreement. Payment shall only be made pursuant to a detailed invoice presented biweekly, which invoice shall indicate a descriptive daily accounting of the hours expended in service under the contract, the particular nature of such service 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 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. Consultant shall only be reimbursed out-of-pocket expenses if they are reasonable in amount and necessary to accomplish the scope of services of this contract. The Metro Government will not reimburse first class air fare, personal phone calls, short term parking expenses, or other premium type expenses. The Metro Government reserves the right to reduce or disallow expenses considered excessive or unnecessary under this contract.

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, March 10, 2006 and shall continue through and including, June 30, 2006.

B. This Agreement may be terminated by submitting thirty (30) days' written notice to the non-terminating party of such intent to terminate.

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.

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 subcontractors' and any other third parties' charges.

VI. HOLD HARMLESS CLAUSE

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 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.

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 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 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.

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 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.

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.

XIII. 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:

IRV MAZE
JEFFERSON COUNTY ATTORNEY

Date: 02/17/06

LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT
CABINET FOR COMMUNITY DEVELOPMENT

By: C. Bruce Traughber

Title: Cabinet Secretary

Date: 2-21-06

CONSULTANT:

CAPITAL INNOVATIONS, INC.

By:

Title: President

Date: 2-21-06

Taxpayer Identification No. (TIN): 02-0702657

Louisville/Jefferson County Revenue Commission Account No.: 046707