PROFESSIONAL/TECHNICAL SERVICES AGREEMENT

Project Name:
Agreement No.:

THIS AGREEMENT, made and entered into at Louisville, Kentucky this day of , , by and between the LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT, Louisville, Kentucky (hereinafter called MSD), and , (hereinafter called CONSULTANT), its office located at .

WITNESSETH, that whereas MSD desires from time to time to obtain certain professional/technical services relative to various MSD Engineering and/or Construction projects; and

WHEREAS, MSD's engagement of the CONSULTANT is based upon the CONSULTANT's representations that it (1) is an organization of professionals/technicians experienced in the types of services it is being engaged to perform; (2) is authorized and licensed to do business in the Commonwealth of Kentucky; (3) is qualified, willing and able to perform the professional/technical services as set out herein ("Services") ; and, (4) has the expertise and ability to provide the professional/technical Services which will meet MSD's objectives and requirements, and which will comply with the requirements of all governmental, public and quasi-public authorities and agencies having jurisdiction over the Services to be performed or any construction work associated with the Project ("Work");

NOW, THEREFORE, in consideration of the mutual agreements, premises and covenants hereinafter set forth, MSD and the CONSULTANT enter into this Agreement with respect to the CONSULTANT's future Services.

SECTION 1 - CONSULTANT'S RESPONSIBILITIES

The CONSULTANT shall provide to MSD professional/technical personnel who are capable, qualified, trained, experienced and equipped to perform professional/technical services as shall be requested by MSD through the formal issuance of a Work Order(s), the form of which is attached hereto and made a part hereof as APPENDIX "A". MSD shall provide the CONSULTANT with a RFP and/or draft Work Order(s) documenting the Services to be performed and the estimated time for completion of the Services. The CONSULTANT shall prepare a cost proposal as a basis for negotiation based on the scope of Services and time for completion set out in the RFP and/or draft Work Order(s). After negotiation, MSD and the CONSULTANT shall select either Lump Sum or Fixed Hourly Rate payment terms for the Services to be performed. MSD reserves the right to amend any Work Order issued to increase or decrease the scope and cost of the Services. The issuance of a RFP and/or draft Work Order(s) shall not obligate MSD to award any Services for performance to the CONSULTANT. The CONSULTANT shall strictly comply with all applicable laws, rules, regulations or other promulgations of any governing bodies, agencies, authorities or organizations having jurisdiction over the Services or Work.

With respect to all Design Services rendered under this Agreement, the CONSULTANT shall thoroughly familiarize itself with the Work site and determine the location of existing buildings, utilities, streets, easements, equipment, conditions and other elements having or likely to have an impact on the Project, Services, or Work, including any structures or other man-made features which may need to be modified. The CONSULTANT shall review and become fully familiar with MSD design standards, specifications and requirements and shall provide design drawings in full compliance therewith. The CONSULTANT shall recommend, review and analyze all geotechnical, structural, chemical, hazardous material, or other tests or investigations required for the Project. The CONSULTANT shall design the Project so that the Engineer's Estimate of the Total Project Construction Cost shall not exceed the Project Budget as provided by MSD.

With respect to all Field Inspection Services rendered under this Agreement, the CONSULTANT shall provide Technical Field Inspectors ("TFI") to MSD for the purpose of determining that all Work performed for MSD construction projects conform to the requirements of the Construction Contract therefore and that the Contractor is in strict compliance with all applicable laws, rules, regulations or promulgations of any governing bodies, agencies,

authorities or organizations having jurisdiction over the Work. TFI shall immediately notify MSD of any Work not in conformance with the Construction Contract and shall act in a fiduciary capacity as the representative of MSD at the Work site. TFI shall become familiar with the Work site and the conditions under which the Work is to be constructed. TFI shall review and become fully familiar with the Contract Documents, Plans and Specifications required for the Work to be performed. TFI shall maintain daily logs as required by MSD which shall document the progress of the Work, verify the quantity of Work for which Payment Requests have been submitted and generally document the Work from its beginning to Final Completion.

1.1 Basic Data, Standards, Policy, and Procedures

a. Standards

The CONSULTANT shall perform the Services required under this Agreement in accordance with the policies and procedures set forth by MSD and those published standards listed below in effect at the time of the beginning of performance of the Services. MSD will provide notice of changes in those documents listed in subsections (i), (ii), (iv), (vi), (vii) and (viii) below. Should there be a conflict between these references, MSD shall determine which shall prevail.

i. MSD design standards.
ii. MSD Design Manual, with subsequent revisions.
iii. Federal Manual of Uniform Traffic Control Devices for Streets and Highways.
iv. MSD standard specifications.
v. Any applicable EPA provisions or regulations.
vi. Other directives issued by MSD.
vii. MSD Electronic Communications Media Policy
viii. EPSC Ordinance

b. Accuracy of Services

The CONSULTANT shall be responsible for the accuracy of the Services performed and shall without additional compensation promptly make the necessary revisions or corrections resulting from errors, ambiguities or omissions on its part in any phase of the Services contemplated under this Agreement.

The Services performed under this Agreement and all submittals, reports or other documentation in connection therewith, shall be furnished to MSD in such form and format as will readily permit the posting thereof on the MSD internet web site. All electronic documents or documentation provided to MSD shall be in the form and format (software and version) as shall be required by the MSD Chief Information Officer.

Acceptance of the Services or the documents developed in connection therewith by MSD will not relieve the CONSULTANT of the responsibility for the subsequent correction of any errors or omissions, or the clarification of any ambiguities or liability for loss or damage resulting therefrom, whether arising before or after acceptance of the Services or documents by MSD.

c. Neither MSD's review, approval or acceptance of, nor payment for, any of the Services set forth herein shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement. The CONSULTANT shall be and remain liable to MSD for all damages caused by the negligent performance of any of the Services furnished under this Agreement.

d. Relationship with Other Parties

The CONSULTANT shall cooperate fully with all employees, contractors, and consultants performing Services or Work for MSD, municipalities and local government officials, public utility companies and others, as may be directed by MSD. This cooperation shall include

attendance at meetings, discussions and hearings as may be requested from time to time by MSD, and complete compliance with all directives issued by MSD.

e. Compliance with Federal, State and Local Laws

The CONSULTANT shall comply with all federal, state and local statutes, ordinances and regulations in effect at the time the Services are performed and shall obtain all permits that are applicable to this Agreement.

f. MSD Software and Digital Data Standards

The CONSULTANT agrees to submit and deliver all digital data and reports to MSD, developed for or used as part of this Agreement, in the software version data formats as specified in the document "MSD's Software, Digital Data and Database Standards" latest revision, which is incorporated herein by reference. This standard may be modified by MSD from time to time as is necessary to meet the business needs of MSD. It is recognized that MSD may not always be utilizing the latest version of software, digital data formats or databases that may be commercially available. However, MSD agrees to keep said standards current so that the formats of data and reports required by MSD can be produced by the then current commercially available software the CONSULTANT uses.

The CONSULTANT also agrees to seek approval from MSD's Chief Information Officer before utilizing any software or database application/system for an MSD project not identified in MSD's Software, Digital Data and Database Standards, unless it is incidental to the project and will not be a deliverable to MSD.

g. Electronic Communications Media Policy

The CONSULTANT agrees to have all its employees, and all of its SUBCONSULTANT's employees adhere to the policies and practices described in the "Louisville and Jefferson County Metropolitan Sewer District Electronic Communications Media Policy" latest edition, as it may pertain to their performance of Services for MSD. No access to MSD's computer systems or network will be allowed until employees have signed MSD's receipt acknowledging that said policy is applicable to them.

SECTION 2 - MSD'S RESPONSIBILITIES

MSD will, without cost to the CONSULTANT:

2.1 Provide full information as to MSD's requirements for the Project and cooperate with the CONSULTANT.

2.2 Assist the CONSULTANT by making available all pertinent information that MSD has in its possession necessary for carrying out the Services, including previous records, maps, as-built drawings, surveys and any other data relative to the Project.

2.3 Provide the CONSULTANT with any available planimetric, topographic or photo image mapping to cover areas of the Project, provided that MSD has such mapping presently in its possession. The CONSULTANT will be responsible for field checking the mapping, adding pertinent information needed for the Project and adding the descriptions necessary to identify topographic features.

2.4 Designate in writing a person to act as MSD's representative with respect to the Services to be performed under this Agreement, which individual shall be the Project Manager identified in Section 5.18 of this Agreement, unless a subsequent written designation is provided. Such person shall have complete

authority to transmit instructions, receive information and interpret and define MSD's policies and decisions with respect to the Services covered by this Agreement.

2.5 Provide access to the Project site and adjacent lands, if required.

SECTION 3 - TERMS OF COMPENSATION

3.1 This Agreement shall become effective on the date first above written and shall continue in full force and effect through or until completion of the Services specified herein unless terminated earlier by either party as set forth in Section 5.19 of this Agreement. Such termination shall not relieve or release any party hereto from any rights, liabilities or obligations that may have accrued under the terms of this Agreement prior to the date of such termination.

3.2 The Total Maximum Compensation for providing all of the Services under this Agreement shall not exceed Dollars ($).

3.3 The CONSULTANT shall be compensated for Services performed and direct expenses incurred under this Agreement in accordance with the following terms:

MSD shall pay the CONSULTANT for Services performed under this Agreement according to the Hourly Rate or Lump Sum Methods. The Total Maximum Compensation amount listed is based on the summation of the prices of all of the Services provided under this Agreement. It is understood that the CONSULTANT shall be compensated only for the Services actually performed and that the amount actually due the CONSULTANT may be less than the amount listed should MSD choose not to complete all of the Services contemplated under this Agreement**.** The CONSULTANT shall notify MSD when billings total seventy-five percent (75%) of the Total Maximum Compensation.

a. Hourly Rate Method:

i. The CONSULTANT's billable Services shall be determined by multiplying the actual hours spent performing the Services as accurately recorded by each employee or principal of the CONSULTANT by Specific Hourly Rates identified in APPENDIX "B"**.** The Specific Hourly Rates shall remain fixed for the term of this Agreement.

ii. The CONSULTANT's direct expenses are defined as the costs incurred by the CONSULTANT that are identifiable as necessary for the Services which are required by MSD and in no way directly benefits other clients of the CONSULTANT or the general operation of the CONSULTANT. Direct expenses exclude direct labor cost, fringe benefits and general over-head. Relocation expenses of employees or principals from one resident office of the CONSULTANT to another are not allowable costs.

iii. The CONSULTANT shall not be reimbursed for any expenses not approved in advance by MSD. Approved Expenses shall be itemized and billed to MSD at the CONSULTANT's actual cost.

iv. If, at any time, the CONSULTANT has reason to believe that the total cost to MSD will be greater than, or substantially less than, the Total Maximum Compensation established, the CONSULTANT shall notify MSD in writing to that effect, giving the revised estimate of such total cost for the performance of the Services.

v. MSD shall not be obligated to reimburse the CONSULTANT for costs incurred in excess of the Total Maximum Compensation, and the CONSULTANT shall not be obligated to incur costs in

excess of the Total Maximum Compensation unless and until this Agreement is formally amended to increase the Total Maximum Compensation.

b. Lump Sum Method:

i. As consideration for providing the Services as set forth in the Scope of Services or Work Order(s) to the CONSULTANT, MSD shall pay CONSULTANT the sum of amount specified in the Work Order(s) which shall constitute total and complete compensation for all Services to be rendered by CONSULTANT under said Scope of Services or Work Order(s), including the CONSULTANT's direct labor costs, profit, fringe benefits and general overhead, plus direct expenses.

ii. MSD shall not reimburse the CONSULTANT for cost incurred in excess of the Lump Sum price. The Lump Sum price may be increased or decreased only when MSD has approved and subsequently negotiated a significant change in the original scope of Services and has issued a formal amendment to the Lump Sum Work Order(s).

3.4 Payment for Services and Expenses of the CONSULTANT

Payments for Services and expenses of the CONSULTANT shall be made as follows:

a. The CONSULTANT may submit periodic statements requesting payment, but not more often than monthly. Such request for payment shall be based on the factors set out above and shall be prepared and supplemented or accompanied by such supporting data as may be requested by MSD.

b. Upon receipt of such payment request, MSD shall make payment to the CONSULTANT within 30 days based upon properly submitted statements, less all previous payments, provided such billings are in satisfactory form and in accordance with the terms of this Agreement.

3.5 Changes in the Scope of Services

a. MSD may, at any time, by written order, make changes within the general scope of this Agreement in the Services to be performed. If such changes cause an increase or decrease in the CONSULTANT's cost of performance of any Services under this Agreement, an equitable adjustment shall be made and this Agreement shall be modified in writing by Amendment and shall embody all claims for compensation by the CONSULTANT for the Services to be performed.

b. Any claim of the CONSULTANT for adjustment under this clause must be asserted in writing within thirty (30) days from the date of receipt by the CONSULTANT of the notification of change unless MSD authorizes, in writing, a further period of time for response with a request for additional Services.

c. All changes in the scope of Services and applicable compensation therefore, will be authorized by MSD through the issuance of an executed Amendment and the CONSULTANT will not be compensated for cost incurred for Services not authorized by MSD.

SECTION 4 - SUBCONSULTANT REQUIREMENTS

4.1 SUBCONSULTANT Utilization

a. The CONSULTANT agrees to identify all proposed SUBCONSULTANTS prior to the commencement of Services. The CONSULTANT shall not enter into any agreement with any SUBCONSULTANT to which MSD raises a timely objection, including any objection to the type and amount of Services being performed by the SUBCONSULTANT under this Agreement.

Copies of all SUBCONSULTANT contracts shall be made available to MSD upon request. The CONSULTANT shall be responsible for all Services performed by its SUBCONSULTANTS and shall assure that the Services of its SUBCONSULTANTS complies with all the requirements of this Agreement.

b. The obligations of the SUBCONSULTANTS shall inure to the benefit of MSD and any agreements between the CONSULTANT and its SUBCONSULTANTS shall require that in the event of default under, or termination of, this Agreement, the SUBCONSULTANTS shall perform such Services as may be requested by MSD in furtherance of this Agreement.

c. Nothing contained in this Agreement or any documents shall create any contractual relation between any SUBCONSULTANT and MSD.

d. MSD shall be promptly notified of the substitution, addition or deletion of any SUBCONSULTANTS, the reasons therefore and the names and qualifications of any proposed replacements or additions.

4.2 SBE SUBCONSULTANT Utilization

☐ **Not Applicable (under $100,000)**

☐ **Applicable (over $100,000)**

☐ **Not Applicable (over $100,000; approved by MSD Chief Procurement Officer)**

The CONSULTANT shall aspire to provide a minimum of 20% of the total value of the Services to a certified Small Business Enterprise(s) (SBE. The CONSULTANT will provide the identity of the SBE(s) SUBCONSULTANT(sused to attain these percentages. A copy of the final contract(s) with the SBE(s) must be sent to the MSD Economic Inclusion Department to the attention of the Chief Procurement Officer within fifteen (15) calendar days of the MSD contract award, and in no event will MSD issue a Notice to Proceed prior to receipt of such final contract(s). Any alteration, change or termination of a contract with an SBE throughout the life of this Agreement with MSD must first be reported to MSD's Chief Procurement Officer and Chief Engineer. The CONSULTANT's position in these situations must be fully explained and supported with adequate documentation. In the event a contract with an SBE is terminated or is altered in such a way as to affect the CONSULTANT's initial SBE participation, the CONSULTANT shall aspire to make reasonable "good faith efforts" to replace that SBE with other SBE(s) . The CONSULTANT is also expected to make reasonable efforts to maintain the above-stated goals through subsequent and additionally approved Services.

SECTION 5 - GENERAL CONSIDERATION

5.1 Community Benefits (☐ APPLICABLE ☐ NOT APPLICABLE)

The CONSULTANT agrees to the committed percentage of % of the total amount of the contract award in community benefits over the term and duration of the Agreement. Prior to the issuance of the Notice to Proceed, the CONSULTANT shall submit to MSD's Director of Community Benefits & Partnerships all required supporting documentation including 1) The Community Benefits Plan, 2) Community Benefits Summary Table, 3) Statement of Understanding, 4) Letter of Intent. All approved documents will become part of the final contract. No alteration of the commitment during the term of this Agreement shall be permitted unless approved in writing by, MSD's Director of Community Benefits and Partnerships. The CONSULTANT must document all changes and provide a thorough explanation and adequate documentation supporting said changes. In the event the CONSULTANT fails to fulfill its

contractual obligation of the community benefits commitments, the CONSULTANT will be assessed a penalty as outlined in MSD's Procurement Regulations, Section 3, 3D.

5.2 Equal Employment Opportunity

The CONSULTANT agrees that it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, age, national orientation, disability or veteran status. The CONSULTANT further agrees to abide by MSD's EQUAL EMPLOYMENT OPPORTUNITY REPORTING REQUIREMENT, attached and made a part of this Agreement as APPENDIX "C".

5.3 Responsibility for Claims and Liability

The CONSULTANT agrees to indemnify, hold harmless and defend MSD, its Board members, officers and employees, and the Louisville Metro Government from damages and losses arising from the negligent acts, errors or omissions of the CONSULTANT in the performance of professional Services under this Agreement to the extent CONSULTANT is legally responsible for causing such damages and losses. If MSD or the Louisville Metro Government is sued or threatened to be sued in any manner to which this indemnification would apply, MSD shall give written notice to the CONSULTANT as soon as practical of such suit or suits. Should CONSULTANT assume the defense of MSD or the Louisville Metro Government, CONSULTANT shall consult with MSD before appointment of counsel, although appointment of counsel shall remain within the exclusive direction of CONSULTANT and/or its insurer.

5.4 Interest of CONSULTANT

The CONSULTANT covenants that he presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with Services required to be performed under this Agreement. The CONSULTANT further covenants that in the performance of this Agreement, no person having any such interest shall be employed. In addition, the CONSULTANT shall not act in a professional capacity in matters of litigation against MSD, except to the extent such matter involves the Services contemplated by this Agreement; or as reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

5.5 Confidentiality

a. The CONSULTANT agrees to keep confidential and not to disclose to any person or entity, other than the CONSULTANT's employees, SUBCONSULTANTS, and the general contractor and subcontractors if appropriate, any data and information not previously known to and generated by the CONSULTANT or furnished to the CONSULTANT and marked CONFIDENTIAL by MSD. These provisions shall not apply to information in whatever form that comes into the public domain, nor shall it restrict the CONSULTANT from giving notices required by law or complying with an order to provide information or data when such order is issued by a court, administrative agency or other authority with proper jurisdiction, or if it is reasonably necessary for the CONSULTANT to defend itself from any suit or claim.

b. The CONSULTANT agrees that all hard copy and/or digital data from the Louisville/Jefferson County Information Consortium (LOJIC) Geographic Information System (GIS) which are provided to the CONSULTANT are copyrighted by one or more of the LOJIC Participants, (Louisville and Jefferson County Metropolitan Sewer District, the Louisville Metro Government, the Property Valuation Administrator and the Louisville Water Company) and are furnished to the CONSULTANT with all rights reserved. However, notwithstanding the foregoing, the CONSULTANT is hereby expressly permitted to use the LOJIC GIS data for the purposes required to complete the scope of this Agreement, subject to the LOJIC GIS Copyright, Limitation of Liability and Accuracy Statement provided to the CONSULTANT along with the

hard copy and/or data. The CONSULTANT further agrees not to otherwise copy, reproduce or use the LOJIC GIS data for any other purpose whatsoever.

c. The CONSULTANT agrees that all personnel and SUBCONSULTANTS having access to or utilizing data from the Property Valuation Administrator's Real Estate Master File shall execute a "Limitations on the use of PVA REMF Databases on LOJIC" form and return said form to MSD's Chief Information Officer, before they will be given access to PVA data. As an alternative, the CONSULTANT's or SUBCONSULTANT's representative may sign on behalf of their firm with the understanding that they are assuming all liability and risk for the use of the PVA data by their employees.

5.6 CONSULTANT's Insurance

Prior to beginning the Services, the CONSULTANT shall obtain for its Services and furnish proof of Commercial (Comprehensive) General Liability Insurance (including contractual liability insurance), Comprehensive Automobile Liability Insurance, Workers' Compensation Insurance, Employer's Liability Insurance, Excess or Umbrella Liability Insurance, if required, and Professional Liability Insurance, if required. MSD shall be named as an additional insured on the CONSULTANT'S Commercial (Comprehensive) General Liability policy.

CONSULTANT shall procure and maintain at all times during the course of the Services (including corrective Services) the required insurance with limits of liability not less than those listed. Policies shall be in a form satisfactory to MSD and issued by insurers licensed to do business in the Commonwealth of Kentucky.

Certificate of Insurance and Additional Insured

CONSULTANT shall furnish MSD with a certificate of insurance (or certified copies of its insurance policies), that discloses limits, expiration date, names and types of policies which CONSULTANT warrants and represents is a true and accurate representation of CONSULTANT's existing insurance coverage. CONSULTANT shall include additional insured and certificate holder as:

Louisville and Jefferson County Metropolitan Sewer District (MSD)
1600 West Hill Street
Louisville, KY 40210

Required Insurance

A. Workers' Compensation

Employer's Liability:
$100,000 - Each Accident Bodily Injury
$500,000 - Policy Limit Bodily Injury by Disease
$100,000 - Each Employee Bodily Injury by Disease
Kentucky state minimum limits

B. Commercial General Liability

Limits of Liability:
$1,000,000 - General Aggregate (HIGHER LIMITS MAY BE REQUIRED FOR SPECIFIC PROJECTS)
$1,000,000 - Products & Completed Operations Aggregate
$1,000,000 - Each Occurrence

Coverage Details: Standard Commercial General Liability Occurrence Form Including:
Premise/Operations
Personal & Advertising Injury

Contractual Liability
Explosion, Collapse, and Underground Liability (if applicable)
Broad Form Property Damage
Independent Contractors
Products & Completed Operations

C. Comprehensive Automobile Liability

$1,000,000 – Combined Single Limit
OR
Bodily Injury:
$1,000,000 – Per Person; $1,000,000 – Per Accident

Any motor vehicle owned, hired, or non-owned and used to conduct the Contractor/Seller's business activities.

D. Professional Liability (Errors and Omissions) **(APPLIES ☐ DOES NOT APPLY ☐)**

Limits of Liability:
$250,000 - Limit of Liability (inclusive of both damages and claims expense) (HIGHER LIMITS MAY BE REQUIRED FOR SPECIFIC PROJECTS.)

E. Excess or Umbrella Liability

$2,000,000 – Per Occurrence
$2,000,000 – General Aggregate

F. Insurance Company Rating

Rated "A" or better by A.M. Best

G. Cancellation, Renewal or Modification

All insurance policies shall contain a provision that the coverage afforded thereunder shall not be canceled or not renewed, nor restrictive modifications added, until at least thirty (30) days prior written notice has been given to MSD.

5.7 MSD's Code of Conduct

The CONSULTANT hereby agrees to adopt and abide by the applicable provisions of the MSD CODE OF CONDUCT attached hereto as APPENDIX "D" and made a part hereof. The CONSULTANT further agrees to include the MSD CODE OF CONDUCT in all subcontracts. The term Contractor in the MSD CODE OF CONDUCT is synonymous with "Engineer", "CONSULTANT", or "Respondent".

5.8 Prevailing Law

a. The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action or suit brought pursuant to entering into this Agreement shall be brought before the Jefferson County, Kentucky courts and shall be tried by the Court sitting without a jury.

b. The CONSULTANT warrants that the Services and articles of this Agreement shall be produced and performed in compliance with:

i. The Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the US Department of Labor.

ii. Federal and State Occupational Safety and Health Law.

iii. Equal Employment Opportunity in accordance with Executive Order 11246, as amended.

iv. Federal and state affirmative action obligations for contractors or subcontractors for minorities, females, handicapped workers and veterans, as amended.

c. Before performing any Services within Jefferson County, Kentucky, as set forth in this Agreement, the CONSULTANT is required to register with the Louisville Metro Revenue Commission, 734 West Main Street, Louisville, Kentucky. This Agreement may be canceled, with the CONSULTANT being prohibited from future engagement by MSD, should the CONSULTANT fail to properly register with the Revenue Commission.

d. The CONSULTANT agrees that in performance of the Services provided under this Agreement, it will comply with all applicable laws, rules and regulations of governmental authority in connection therewith applicable to the Project at the time of the performance of the Services.

5.9 Taxes, Royalties and Expenses

The CONSULTANT shall pay all taxes, royalties and expenses incurred in connection with his Services under this Agreement.

5.10 Ownership of Documents

The CONSULTANT hereby agrees that all materials, survey data, reports, drawings, studies, plans, specifications, contract documents, estimates, maps and computations prepared by or for CONSULTANT under the terms of this Agreement shall be the property of MSD and, upon request, shall be delivered to MSD on completion of the Services and payment of all moneys due CONSULTANT. MSD agrees to indemnify, hold harmless and defend CONSULTANT from any damage or loss arising out of any reuse or modification of the plans, specifications or construction documents by MSD.

5.11 Retention of Records

The CONSULTANT and all SUBCONSULTANTS shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred under this Agreement and shall make such materials available for inspection by MSD at all reasonable times during the period of this Agreement and for the period of three (3) years after the date of final payment to the CONSULTANT. Copies of such data shall be furnished to MSD upon request. The CONSULTANT is entitled to reasonable reimbursement for the cost of furnishing such copies.

5.12 Successors and Assigns

MSD and the CONSULTANT each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement. Neither MSD nor the CONSULTANT shall assign, sublet or transfer its interests in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer

or agent of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than MSD and the CONSULTANT.

5.13 Personnel

The CONSULTANT hereby represents and agrees that sufficient and adequate personnel are and will be available to render the required Services covered by this Agreement. The CONSULTANT shall not employ or contract with any current MSD employee for any Service required by the terms of this Agreement.

5.14 Independent Contractor

The CONSULTANT is an independent contractor and not the agent of MSD and shall not have any authority with respect to any matter or in any manner to obligate or commit MSD by contract or otherwise. However, CONSULTANT does have authority to act on behalf of MSD as authorized in this Agreement or as otherwise authorized by MSD.

5.15 Dispute Resolution

In the event of a dispute in the interpretation of the provisions of this Agreement, such dispute will then be referred to MSD's Executive Director, or his designee, who shall decide the dispute in a timely manner and render a written decision on all claims, questions and disputes of whatever nature relative to the interpretation of this Agreement or the prosecution and fulfillment of this Agreement on the part of the CONSULTANT.

5.16 Severability

If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause, paragraph, portion or provision of this Agreement.

5.17 Continuing Obligation

The CONSULTANT agrees that if, because of death or any other occurrence including bankruptcy, it becomes impossible for any principal or principals of the CONSULTANT to render the Services set forth in this Agreement, neither the CONSULTANT nor the surviving principals shall be relieved of their obligations to complete performance thereunder and shall make adequate assurances, upon request from MSD, of future performance in accordance with the terms of this Agreement. Failure by the CONSULTANT to provide such assurances within five (5) business days of any such request shall be cause for MSD to terminate this Agreement pursuant to Section 5.19, Termination.

5.18 Project Manager and Notices

The CONSULTANT agrees that the individual listed under "CONSULTANT" below is to be the Project Manager and is to have direct, primary and continuing responsibility for the Services rendered under this Agreement. While other individual technicians and specialists will be involved, the CONSULTANT's Project Manager shall be available to MSD on an immediate and continuous basis. The CONSULTANT agrees that the CONSULTANT's Project Manager will not be changed without approval of MSD.

All notices required to be given under this Agreement shall be in writing and addressed, in the case of MSD, to the individual designated by MSD, as specified below, and in the case of the CONSULTANT,

to the individual designated by the CONSULTANT, as specified below. All such notices shall be effective on the date received by the addressee or the addressee's office, whichever is earlier.

MSD

Louisville & Jefferson County
Metropolitan Sewer District
1600 West Hill Street
Louisville, Kentucky 40210

CONSULTANT

5.19 Termination

a. This Agreement may be terminated in whole or in part in writing by either party in the event of failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party; PROVIDED, that no such termination may be effected unless the other party is given: (a) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (b) an opportunity for consultation with the terminating party prior to termination.

b. This Agreement may be terminated in whole or in part in writing by MSD for its convenience; PROVIDED, that the CONSULTANT is given: (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested), of intent to terminate, and (2) an opportunity for consultation with MSD prior to termination.

c. If this Agreement is terminated by MSD for its convenience, an equitable adjustment in the price provided for in this Agreement shall be made, but no amount shall be allowed for anticipated profit or overhead on unperformed Services. This equitable adjustment shall provide for payment to the CONSULTANT for services rendered and direct expenses incurred prior to the termination.

d. If termination for default is effected by MSD, MSD shall reasonably determine what payment, if any, is to be made at the time of termination and such may be adjusted to the extent of any additional costs occasioned to MSD by reason of the CONSULTANT's default. However, MSD shall not withhold undisputed amounts or an amount in excess of a reasonable amount relating to the claim or matter in controversy.

e. Upon receipt of a termination notice pursuant to paragraphs a. or b. of this Section, the CONSULTANT shall: (1) promptly discontinue all services affected (unless the notice directs otherwise), and (2) deliver or otherwise make available to MSD all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the CONSULTANT in performing this Agreement, whether completed or in process, subject to the provisions of this Agreement.

f. Upon termination, pursuant to this Section, MSD may take over the performance of Services contemplated hereunder and prosecute the same to completion by agreement with another party or otherwise.

g. The rights and remedies of MSD and the CONSULTANT provided under this Agreement are in addition to any other rights and remedies provided by law or under this Agreement.

h. The CONSULTANT shall not be relieved of liability to MSD for damages sustained by MSD by virtue of any breach of this Agreement by the CONSULTANT, and MSD may withhold

payments to the CONSULTANT pursuant to 5.18(d) until such time as the amount of damages due MSD from the CONSULTANT is reasonably determined.

5.20 MSD Contractual Audit Provisions

a. CONSULTANT's records pertaining to services performed shall be available to MSD or MSD's authorized representative upon request.

b. CONSULTANT's records subject to audit shall include but not be limited to records which may have a bearing on matters of interest to MSD in connection with the CONSULTANT's Services for MSD and shall be open to inspection and subject to audit and/or reproduction by MSD's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) CONSULTANT's compliance with contract requirements, (b) compliance with MSD's business ethics policies, (c) compliance with provisions for computing Billable Hours/Services and direct expenses, and (d) any and all other matters of concern to MSD.

c. MSD or its designee shall be entitled to audit all of the CONSULTANT's records and shall be allowed to interview any of the CONSULTANT's employees, pursuant to the provisions of this article throughout the term of this contract and for a period of three (3) years after final payment. Such audits may require inspections and photocopying of selected documents from time to time at reasonable times and places.

d. CONSULTANT acknowledges that MSD has the right to review or audit any calculation and its documentation utilized to determine Hourly Billing rates and/or applicable multiplier billing percentage. CONSULTANT further acknowledges that MSD, based upon results from an audit or review, has the right to make adjustments, both up or down, in the rates, on a retroactive basis, if it is discovered that cost information or the classification of cost information are either inaccurate, not current or incomplete or if such information is not prepared in accordance with MSD policy.

e. In the event that any audit or review conducted by MSD or any local, state, federal or other such agency, from which MSD has received any sums as grants, cost sharing, contribution or reimbursement for Services performed by the CONSULTANT, results in MSD being required to return or refund any portion of such sums, the CONSULTANT shall, immediately upon receiving notification from MSD, return or refund to MSD the amount required to be returned or refunded by MSD.

SECTION 6 – SPECIAL PROVISIONS **(APPLIES ☐ DOES NOT APPLY ☐)**

SECTION 7 - ENTIRE AGREEMENT

This Agreement supersedes all previous agreements, oral or written, between MSD and the CONSULTANT and represents the whole and entire Agreement between the parties with respect to the CONSULTANT's Services herein described. No other agreements or representations, oral or written, have been made by MSD or the CONSULTANT. This Agreement may not be altered, modified or amended, except in writing properly executed by an authorized representative of MSD and the CONSULTANT.

☐ If checked, the MSD Information Security Agreement ("ISA") attached is incorporated into this Agreement. If unchecked, the Parties may choose subsequently to execute the ISA, and in such event, the ISA shall be incorporated herein.

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

CONSULTANT

By: _____
Name:
Title:

LOUISVILLE & JEFFERSON COUNTY
METROPOLITAN SEWER DISTRICT

By: _____
Name:
Title:

This Instrument Reviewed By:

_____
Attorney at Law
1600 West Liberty Street
Louisville, Kentucky 40210
Telephone: (502) 540-6255

LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT
PROFESSIONAL/TECHNICAL SERVICES STANDARD AGREEMENT
WORK ORDER ISSUED TO

In accordance with Agreement dated Click or tap to enter a date.

Project Name:

☐ ORIGINAL ☐ AMENDMENT

Work Order: Date: Click or tap to enter a date. RFQ: (Select One)
Start Date: Click or tap to enter a date. Completion. Date: Click or tap to enter a date.
W.O. Amend #: MSD Project Mgr.: Project #:
MSD Agreement #: MSD P.O. #: Center #: Exp. Acct. #:

Purpose:

Scope of Services:

COMPENSATION FOR THIS ACTION	
Consultant's Labor Cost	$
Other Expenses	$
Total Work Order Cost for This Action	$
COMPLETE SECTION BELOW ONLY IF THIS ACTION IS A WORK ORDER AMENDMENT	
Previous Work Order Ceiling Total	$
Amended Work Order Ceiling Total	$

PAYMENT OF THIS W/O AND/OR ITS AMENDMENT(S) IS BASED ON ☐ LUMP SUM ☐ HOURLY RATE

SBE PROGRAM

The aspirational participation goals are 20% SBE for contracts with an Engineer's Estimate or contract value at $100,000 and greater. For the following section, if multiple SBE consultants are utilized, list all of their individual percentages and allocated amounts respectively.

SBE utilization on this work order? Choose an item.
Information below provided on separate page? Choose an item.

SBE Original Aspirational % **SBE Cumulative** Aspirational Work Order %

Names of SBE Consultant(s) utilized on this Work Order: Percentage: % Allocated Amount: $
Names of SBE Consultant(s) utilized on this Work Order: Percentage: % Allocated Amount: $

Requested by:	Date: Click or tap to enter a date.
Request Approved by:	Date: Click or tap to enter a date.
Economic Inclusion Program Administrator:	Date: Click or tap to enter a date.
Division Director:	Date: Click or tap to enter a date.
Executive Director:	Date: Click or tap to enter a date.

SBE Utilization on This Work Order
(additional space if needed)

SBE Original Aspirational %	**SBE Cumulative** Aspirational Work Order %
SBE Original Aspirational %	**SBE Cumulative** Aspirational Work Order %

SBE Consultant(s) utilized on this Work Order:			
Name:	Percentage:	%	Allocated Amount: $
Name:	Percentage:	%	Allocated Amount: $
Name:	Percentage:	%	Allocated Amount: $
Name:	Percentage:	%	Allocated Amount: $
Name:	Percentage:	%	Allocated Amount: $

APPENDIX B

SPECIFIC HOURLY RATES

Description	Cost/Unit

APPENDIX C

EQUAL EMPLOYMENT OPPORTUNITY REPORTING REQUIREMENT

As a recipient of federal funds and in accordance with Executive Order 11246, as amended; the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, MSD is including in all of its purchasing documents, including, but not limited to, bid specifications, purchase orders, etc., the following provisions:

During the performance of this Contract, the CONTRACTOR agrees as follows:

1. **The CONTRACTOR AND SUBCONTRACTOR shall abide by the requirements of 41 CFR §§ 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals on the basis of protected veteran status or disability and require affirmative action by covered prime and subcontractors to employ and advance in employment qualified protected veterans and individuals with disabilities.**

2. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, physical or mental disability, or because the employee or applicant is a special disabled veteran, veteran of the Vietnam era, recently separated veteran or other protected veteran. The CONTRACTOR will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, disability, veteran status or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; job assignment; leave; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause, and to ensure that special disabled veterans are informed of the notices as required by the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended ("VEVRAA").

3. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, religion, sex, color, disability, veteran status or national origin.

4. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractors' commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. In addition, the CONTRACTOR will notify each labor organization or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the CONTRACTOR is bound by the terms of the VEVRAA and Section 503 of the Rehabilitation Act of 1973, as amended, and is committed to take affirmative action to employ and advance in employment qualified special disabled veterans, veterans of the Vietnam era, recently separated veterans, other protected veterans, and qualified individuals with physical and mental disabilities.

5. The CONTRACTOR will comply with all provisions of Executive Order 11246 of September 24, 1965, the VEVRAA, including all requirements set forth in the VEVRRA pertaining to the listing of employment openings existing at the time of and during this contract, all provisions of Section 503 of the Rehabilitation Act, and all provisions of the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to Executive Order 11246 and these Acts.

6. The CONTRACTOR will furnish all information and reports required by Executive Order 11246 of September 24, 1965, the VEVRAA, and Section 503 of the Rehabilitation Act, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

7. In the event of the Contractors' noncompliance with the non-discrimination clauses of this Contract or with any of such rules, regulations or orders, this Contract may be cancelled, terminated or suspended in whole or in part and the CONTRACTOR may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, the VEVRAA, and Section 503 of the Rehabilitation Act, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, the VEVRAA and Section 503 of the Rehabilitation Act, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.

8. The CONTRACTOR will include the provisions of Paragraphs 1 through 7 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, the VEVRAA and Section 503 of the Rehabilitation Act so that such provisions will be binding upon each subcontractor or vendor. The CONTRACTOR will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

APPENDIX D

MSD CODE OF CONDUCT
FOR
CONTRACTORS, CONSULTANTS OR AGENTS
(Adopted 11/10/03)

The contractor, consultant or agent (hereinafter referred to as contractor) must avoid a situation which could be considered either a conflict of interest or detrimental to the operation or reputation of MSD. MSD may take disciplinary action, including termination of this Contract and/or disqualification of the party from further work with MSD, should MSD determine that the party has participated in such improper activities.

Improper activities include, but are not limited to, the following:

1. Offering gratuities, favors or anything of monetary value including, but not limited to: meals, drinks, gifts, or tickets, passes, or invitations to any entertainment, sporting or recreational event

    a. To any firm or individual doing business with MSD, either by direct contract or indirectly through subcontracts; or firms or individuals who are prequalified for contract work with MSD under circumstances from which it could reasonably be inferred or the party involved believes that the purpose of the action is to influence the party in the performance of that party's duty to MSD; or
    b. To any employee of MSD as employee is defined by the MSD Conflict of Interest policy under circumstances from which it could reasonably be inferred or the party involved believes that the purpose of the action is to influence the party in the performance of that party's duty to MSD.

2. Using the position of contractor with MSD to coerce or attempt to coerce any firm or individual to take an action, perform a service, participate in election campaign or the like under circumstances from which it could reasonably be inferred; or the party involved believes that the contractor will reward or punish the party's action using MSD's resources.

3. Not informing MSD, from the time the contractor is first considered by MSD for the potential award of a contract until all such considerations and contractual arrangements with MSD have elapsed, of the contractor's knowledge of the following:

    a. That an MSD, employee or agent, or members of their immediate families, or their partners, have a financial or other interest in the contractor's firm or at least 5% ownership of equity; and
    b. That the contractor employs or is considering employment of any person described under 3a above.
    c. That the contractor has retained as a consultant or paid a commission to any person described under 3a above.

4. Improper activities shall not include:

    a. The contractor giving away insignificant items to MSD employees or firms and individuals doing business with MSD if the items have a value of $10.00 or less and are clearly and strictly promotional/advertising of the contractor; or
    b. The contractor holding receptions or parties for business clients including MSD employees or firms and individuals doing business with MSD at which food and beverages are consumed; or

c. The contractor attending entertainment, sporting or recreational events with MSD employees or firms and individuals doing business with MSD if the contractor does not provide meals, drinks, or tickets, passes, or invitations of a monetary value to the MSD employee or firm and individual doing business with MSD

The contractor shall include this Code of Conduct in all subcontracts.