

(SAMPLE) Professional Services Agreement

This Agreement made and entered into effective this _____ day of _____ 2013, by and between **the Louisville/Jefferson County Metropolitan Sewer District**, a public body corporate and political subdivision of the Commonwealth of Kentucky, 700 West Liberty Street, Louisville, Kentucky, 40203 acting by and through its [INSERT DEPARTMENT] (hereinafter referred to as “MSD”), and [NAME AND ADDRESS OF CONSULTANT] (hereinafter referred to as “CONSULTANT”) and both collectively referred to as the “Parties.”

1. WHEREAS, MSD seeks professional consulting services in connection with a Customer Satisfaction Survey and CONSULTANT is willing to perform such services in accordance with the terms and conditions described in this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits, covenants and agreements contained within this Agreement, the parties agree as follows:

1. Scope of Professional Services

CONSULTANT agrees to perform the consulting services as defined in the Scope of Services attached as Exhibit “A” and made a part of this Agreement. CONSULTANT shall use commercially reasonable and diligent efforts to provide the services and to deliver the deliverables (“Deliverables”) set forth in Exhibit “B” as attached and made a part of this Agreement.

2. Fees and Compensation

A. All fees and compensation for professional services shall be rendered according to the terms of this Agreement. MSD shall pay CONSULTANT for all services stipulated in this Agreement to the Project Fees attached as Exhibit “B” and made a part of this Agreement. The total maximum compensation payable to CONSULTANT for providing all of the services required by this Agreement shall not exceed [**CONTRACT AMOUNT WRITTEN OUT**].

B. CONSULTANT shall be reimbursed for any direct expenses incurred by the CONSULTANT, which are identifiable as necessary for the work performed and approved, in writing, in advance by MSD. CONSULTANT shall not be reimbursed for any expense not approved, in writing, in advance by MSD.

3. Billing

A. Payment to CONSULTANT shall be made by MSD upon receipt of CONSULTANT’S monthly invoice for work performed. CONSULTANT shall submit monthly invoices to MSD Accounts Payable department detailing the work performed within the applicable thirty (30) day period and an itemization of any expenses. At a minimum, each invoice shall contain the following information:

- (1) The date and number of the invoice
- (2) Initials (first, middle (if applicable) and last) of person performing services

- (3) Date(s) of services
- (4) The phase of work or project step for which it applies (if applicable)
- (5) Detailed description of services/task(s)
- (6) Time spent performing services/tasks
- (7) Gross total of all hours and any listed expenses itemized by date and type of expense

In addition, each invoice shall be submitted under cover of a letter on Consultant's letterhead, signed by the responsible Consultant who shall certify to the accuracy of the statement and/or invoice.

B. If MSD identifies an item in the invoice, which appears to be in error, MSD may withhold the amount in question, pay the balance of the invoiced amount and provide CONSULTANT with a statement concerning the questioned item. Alternatively, MSD may pay the invoiced amount in full, provide CONSULTANT with a statement of the questioned item, and an adjustment, if appropriate, will be made in the next subsequent invoice submitted by CONSULTANT.

C. MSD will use its best efforts to pay the CONSULTANT's bill within thirty (30) days of receipt, provided all invoices are in the required form and comply with the provisions of this Agreement.

4. Time Schedule

The services required by this Agreement shall be completed in accordance with the Estimated Timeline demonstrated in Exhibit "B (if applicable) and made a part of this Agreement. CONSULTANT shall use commercially reasonable and diligent efforts to meet the estimated time schedule for delivery of the Deliverables set forth in Exhibit "B." It is recognized by the parties that the time schedule may be contingent upon factors beyond the control of either party. Both parties will take all reasonable steps to adhere to the time schedule.

5. Term of Agreement and Termination

A. The term of this Agreement shall be [INSERT CONTRACT TERM] from the effective date first written above, unless terminated or extended by amendment.

B. This Agreement may be terminated in whole or in part in writing by either party in the event of the failure of the other party to fulfill its obligations under this Agreement; provided that no such termination shall be effected unless the other party gives at least thirty (30) calendar days, prior written notice (by Certified Mail, Return Receipt Requested) of intent to terminate and an opportunity for consultation with the terminating party prior to termination.

C. This Agreement may be terminated in whole or in part by MSD for its convenience; provided that the notice and opportunity for consultation set out above is afforded to the CONSULTANT. If this Agreement is terminated by MSD for its convenience, the CONSULTANT shall be compensated for all work performed prior to termination, but no payment shall be made for anticipated profit, expenses or overhead related to work not performed.

6. Ownership of Work Product

A. All documents, data and records produced by CONSULTANT, pursuant to this Agreement, without limitation and whether preliminary or final, are and shall become and shall remain the property of MSD. Such documents, data and records may also be subject to inspection under the Kentucky Open Records Act.

B. MSD shall have the right to use all such documents, data, and records without restriction or limitation and without additional compensation to the CONSULTANT, and the CONSULTANT shall have no rights or interests therein. Upon completion of the services hereunder, or upon the termination of this Agreement, any documents, data and records created by the CONSULTANT shall be delivered to MSD's **[INSERT DEPARTMENT]**. It is the responsibility of the CONSULTANT to ensure deliver of the records.

7. Conflict of Interest

The CONSULTANT shall avoid any situation which could be considered a conflict of interest or which might appear to be detrimental to the operation or reputation of MSD. This would include avoiding any activities prohibited by the MSD Code of Conduct for Contractors, Consultants or Agents, attached hereto as "Exhibit C."

8. Insurance

If this Agreement covers the performance of labor or services anywhere on MSD property, the CONSULTANT shall procure and maintain, and shall require each of his subcontractors to procure and maintain until the completion of the work under this Agreement, insurance of the types and in the amounts specified below unless agreed to by MSD to require more or less coverage, depending on the scope of work to be performance. It shall also be the responsibility of the CONSULTANT to ensure his subcontractors compliance with all the insurance requirements contained herein. The types and amounts of insurance required are as follows (unless otherwise approved by MSD):

- a. Worker's Compensation coverage in accordance with the Commonwealth of Kentucky Statutes governing such insurance. Employer's Liability in a minimum amount of \$100,000 for each accident, \$100,000 disease-each employee and \$500,000 Disease-Policy Limit.
- b. General Liability should include Contractual Liability and Completed Operations coverage, \$1,000,000 for each occurrence and \$2,000,000 for General Aggregate. Additionally, for property damage, the limit of \$1,000,000 per occurrence will apply.
- c. Automobile Liability should have limits of not less than \$1,000,000 Combined Single Limit or Bodily Injury of \$1,000,000 per person, \$2,000,000 per accident and \$1,000,000 property damage covering any motor vehicle owned, hired, or non-owned by the CONSULTANT.
- d. Excess Liability or Umbrella insurance providing additional protection with the limit of \$2,000,000 for each occurrence and General Aggregate of \$2,000,000.
- e. Professional Liability Insurance- Limits of liability \$250,000- Limit of Liability (inclusive of both damages and claims expense) (HIGHER LIMITS MAY BE REQUIRED FOR SPECIFIC SERVICES).

CONSULTANT shall notify MSD of cancellation of insurance, except for cancellation for non-payment of premium, or restrictive amendments at least thirty (30) days prior to the effective date of such cancellation or amendment. Ten (10) days prior notice of cancellation for non-payment of premium will be required. Certificates of Insurance stating the limits of liability and expiration date shall be filed in triplicate with MSD before performing services. Such certificates shall name the types of policies provided.

CONSULTANT must include the following as Additional Insured and typed on each Certificate of Insurance:

Louisville and Jefferson County Metropolitan Sewer District
700 West Liberty Street
Louisville, Kentucky 40203-1911

9. Indemnification

The CONSULTANT shall indemnify and defend MSD from and against any claims, demands, actions, liabilities, losses, costs, and expenses, including but not limited to reasonable attorney fees asserted by third parties (“Claims”) which Claims are caused by or arise from injuries or damages sustained by such third parties resulting or arising from any negligent act or omission or intentionally wrongful act of the CONSULTANT or any of its officers, agents, employees, and/or representatives in relation to professional services provided to MSD by the CONSULTANT under this Agreement. This indemnity provision shall not apply to Claims for which payment is available under the CONSULTANT’s professional liability insurance policies.

10. Independent Contractor

In performing the services required under this Agreement, the CONSULTANT will act as an independent contractor and not as an employee or agent of MSD. If the CONSULTANT intends to subcontract any of the services required hereunder to a firm or individual not associated with the CONSULTANT it shall notify MSD, in writing, of such intent. The CONSULTANT shall not enter into any subcontract with any firm or individual to whom MSD objects. Copies of all subcontracts shall be supplied to MSD upon execution. The CONSULTANT shall not change or substitute subcontractors without first notifying MSD in writing.

11. Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth 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 the 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 hereunder.

12. Successors/Assigns

Assignment of all or part of this Agreement or the work covered by this Agreement shall be prohibited without the prior written consent of MSD’s Legal Counsel.

13. Entire Agreement

This Agreement, including all referenced documents, constitutes the entire agreement between the parties. No modifications, changes or waiver to the Agreement shall be valid or binding unless incorporated into a written amendment to this Agreement signed by both parties.

IN WITNESS WHEREOF, MSD, acting by and through its Executive Director, and [INSERT CONSULTANT NAME], acting by and through its authorized agent, have caused this Agreement to be executed on the date and year first above written.

**LOUISVILLE AND JEFFERSON COUNTY [INSERT CONSULTANT NAME]
METROPOLITAN SEWER DISTRICT**

_____	_____
Title:_____	Title:_____
Date:_____	Date:_____

Approved as to Legality and Form

Paula Purifoy, General Counsel
Metropolitan Sewer District

SAMPLE ONLY

EXHIBIT “B”

[INSERT PROJECT FEE]

MSD'S CODE OF CONDUCT

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 3(a) above.

Improper activities shall not include:

1. 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
2. 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
3. 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.

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.
2. 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 VEVRAA 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.