

SERVICES AGREEMENT

By and Between

THE NORTHEAST OHIO REGIONAL SEWER DISTRICT

And

[CONSULTANT]

This Professional Services Agreement (the “Agreement”) is made as of this [____] day of [_____], [____], by and between the Northeast Ohio Regional Sewer District (the “District”), a regional sewer district organized and existing as a political subdivision of the State of Ohio under Chapter 6119 of the Ohio Revised Code, and [CONSULTANT] a [State] corporation with principal offices at [address] (“Consultant”), by authority of the Board of Trustees Resolution No. [____] adopted by the Board of Trustees on [date], a copy of which is attached hereto and made part hereof as Exhibit “A”.

WITNESSETH:

WHEREAS, the District has determined the need to [very brief description of desired deliverable]; and

WHEREAS, it is necessary to supplement District staff effort with outside professional services; and

WHEREAS, Consultant has proposed to provide professional services to develop the above-mentioned [deliverable]; and

WHEREAS, the District has determined Consultant to be qualified, competent and the best candidate to provide such professional services; and

WHEREAS, the District finds the Consultant’s proposal to be generally acceptable, and is desirous of engaging Consultant to furnish such professional services;

WHEREAS, the Project is defined in the Request for Proposal published by the District, herein attached as Exhibit “B”, together with Consultant’s Proposal dated

[____], herein attached as Exhibit “C”.

NOW, THEREFORE, it is agreed that the District shall and does hereby engage Consultant to perform the work as herein specified; and that for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, it is agreed by and between the parties as follows:

Section 1 SCOPE OF SERVICES

1.1. Consultant does hereby agree to provide the professional services to execute the Project.

1.2. The Project Deliverables shall be determined by Exhibits “B” and “C” and the terms of this Agreement. In the case of conflicts between Exhibits “B” and “C”, Exhibit “B”, the Request For Proposal published by the District, shall prevail.

1.3. Any changes to the Project Deliverables shall be made by written agreement of the parties.

Section 2 RELATIONSHIP

2.1. The District shall be the decision-maker over final approval of each deliverable. The District may condition approval of any part of the Project upon verification by performance testing that deliverables meet the specifications set forth in Exhibits “B” and “C”.

2.2. Consultant shall be the decision-maker over the strategy and techniques to manage the Project. Consultant shall be responsible for the management of the Project and timely delivery of the Project deliverables. The District reserves the right to review and approve all strategies, methodologies and approaches prior to their execution.

Section 3 TERM OF AGREEMENT

3.1. This Agreement shall commence on the day and year first above written and shall continue until all Project Deliverables have been completed by Consultant and accepted by the District, not to exceed a period of [____] from the beginning date of this Agreement.

Section 4 REPRESENTATIVES

4.1. Consultant shall designate and authorize [____], who is an employee of

Consultant, or his/her successor, to act as its agent for all purposes under this Agreement, who shall be reasonably available during the regular business hours of 8:00 a.m. to 5:00 p.m. to the District for the purpose of notification and consultation, and who shall be designated as the Project Manager having overall responsibility for all phases of Consultant's participation in the Project, and who shall have authority to bind the Consultant in accordance with this Agreement.

4.2. For the purpose of this Agreement, the agent for the District and liaison with respect to the matters contained herein shall be the District's EIS Manager, Ana Maldonado, or her successor, who has the authority to bind the District in accordance with this Agreement.

4.3. Consultant shall furnish to the District a list of Consultant's personnel to be assigned to the Project and, upon request, information as to the qualifications of those personnel. Consultant shall update the list to reflect changes in personnel assigned to the Project at the time of such changes.

Section 5 CONSULTING RESOURCES AND EXPERTISE

5.1. Consultant shall provide the consulting resources and expertise to deliver the Project as documented in Exhibits "B" and "C".

5.2. For the duration of the Project, Consultant shall provide reports to the District regarding the status and milestones of the Project as set forth in Exhibit "B" on a regularly scheduled basis and in a format approved by the District.

Section 6 PROJECT DELIVERABLES

6.3. Consultant unconditionally warrants that all Project Deliverables shall meet the specifications set forth in Exhibits "B" and "C".

6.4. Consultant unconditionally warrants that all Project Deliverables shall be free of any and all date-sensitivity problems, including without limitation sensitivity to the passage from any one year to the next.

6.5. Consultant unconditionally warrants the integrity of data, accuracy of reports, and compatibility of interfaces of any software provided hereunder with existing District systems and applications.

Section 7 LOCALLY PERFORMED WORK

7.1. As used in this Agreement, the term “Locally Performed Work” shall mean the amount of Direct Labor that is subject to local income tax in a member community of the District as the result of Consultant having performed work in such community. Pursuant to this Agreement, not less than [____] percent (XX%) of the total Direct Labor shall be Locally Performed Work.

7.2. Consultant shall withhold local income taxes for work performed by each of its employees in District member communities, at the rate applicable in such communities. Consultant shall also maintain books, records, documents and/or other pertinent evidence which demonstrates that the local income taxes were withheld and forwarded to the local tax collection agencies. The District shall have access to such books, records, documents and pertinent evidence, for the purpose of inspection, audit and copying during regular business hours. Consultant, upon request, shall provide any and all authorizations, releases, or other documentation necessary to enable the District to verify with the appropriate local tax collection agencies the amount of local income tax withheld and paid to such agencies by Consultant for each employee that performed work under this contract.

7.3. Consultant shall report and certify the amount of Locally Performed Work on each monthly invoice.

7.4. The following is the recommended reporting format and certification statement:

Direct Labor Summary (Including all subconsultants)			
	Total Direct Labor	Direct Labor Taxed Locally	Percentage of Direct Labor Taxed Locally
Contract Amount	100,000	60,000	60%
Previously Invoiced	\$30,000	\$20,000	67%

This Invoice	\$30,000	\$25,000	83%
Total To-Date	\$60,000	\$45,000	75%
Balance	\$40,000	\$15,000	38%

I hereby certify, to the best of my knowledge and belief, that the data summarized above is complete, current and accurate.

Name: _____

Title: _____ Date: _____

Note: This certification statement must be signed by Consultant's Controller, Vice President of Finance, or other financial/accounting officer acceptable to the District.

Section 8 OWNERSHIP OF INTELLECTUAL PROPERTY

8.1. Software code and related documentation and materials developed solely for the District at the District's sole cost and expense pursuant to the Project (the 'Work Product') shall be governed by the terms of this Agreement. The District shall be entitled to use the Work Product without any usage restriction or other limitation. All intellectual property rights in the Work Product (including source and object code and related documentation, if applicable) developed by Consultant for the Project shall, upon payment of all amounts due Consultant, be solely the property of the District. Upon payment and request of the District, Consultant shall assign ownership of all patents and copyright registrations and other evidence of intellectual property rights that may be available for such Work Product.

8.2. Anything to the contrary in the preceding section notwithstanding, Consultant shall, at all times and for all purposes have all right, title, interest in, retain sole and exclusive ownership and control of, and be entitled to continue to use in its business and in all other engagements without limitation, all concepts, ideas, techniques, processes and methodologies however structured or conceived relating to the services performed hereunder, as well as all information technology and processing related thereto, whether initially developed by Consultant prior to the Project or developed in the

course of delivering or performing the Project (“Consultant’s Proprietary Methodologies”). Consultant’s Proprietary Methodologies shall not constitute “work made for hire” as that term is defined in Section 101 of the Copyright Act.

Section 9 COMPENSATION

9.1. In consideration of Consultant’s performance of the Services, the District agrees to pay and Consultant will accept an amount not to exceed [_____]. This amount shall include all Direct Costs, Indirect Costs, Other Direct Costs, Reimbursable Expenses, Subconsultant Costs and Profit. This total amount of compensation includes [_____] Dollars (\$XX,XXX) in project allowances and will only be paid if the allowance work has been authorized by the agent and liaison of the District pursuant to Section 18.2

9.2. All funds remaining in the contract at the completion of the Services and deliverables described in Exhibits “B” and “C” will be retained by the District.

9.3. Cost listings and job classifications for this Agreement which show the ranges of the direct labor cost for the various categories of personnel are as appear in Exhibit “C”.

9.4. No overtime will be incurred by any class of labor without the written authorization of the District. Authorized overtime will be billed and paid at straight time rates by the District.

Section 10 COMPENSATION PROCEDURES

10.1. Consultant shall submit monthly invoices to the District for the services performed during the invoice period. Each invoice shall show the name of the Project and the hours utilized in the invoice period by employee times their applicable rate to obtain invoice period billing. In addition, the invoice shall display cumulative previous billing to determine project-to-date billing total. This total shall be subtracted from the total specified in Section 9.1 above to determine the remaining Project balance. Out-of-pocket expenses shall also be included in the invoices and itemized as such.

10.2. Consultant shall fully document all charges for travel, lodging, meals, subcontractor expenses, computer charges, equipment rental, material purchases, reproduction costs, printing costs and communication expenses. It is District policy that

paid receipts constitute adequate documentation. Meals, travel and lodging expenses shall be paid only to those persons authorized to incur such costs when on assignment away from their home office county. Meal expenses shall exclude tips and gratuities.

Payment for lodging and meal expenses may not exceed the maximum per diem rates in effect at the time of travel as prescribed for the Cleveland, Ohio locality as set forth in 48 CFR Part 31.205.46. The current prescribed per diem maximums are \$85.00 for lodging and \$42.00 for meals and incidental expenses. Mileage charges, when authorized, shall be at the current corporate rate but in no event to exceed thirty-four and a half cents (\$0.345) per mile. The charge for any field vehicle shall be at the lowest available rental price exclusive of all incidental charges including gasoline and shall be subject to the prior approval of the District.

10.3. Out-of-pocket expenses shall be billed by Consultant at actual cost and with no mark-up for handling.

10.4. All accounting and financial matters relating hereto shall be processed by the Director of Finance of the Northeast Ohio Regional Sewer District. Payments shall be made by the District on the invoices within thirty (30) days of receipt.

Section 11 INSURANCE

11.1. Consultant shall take out and maintain during the life of this Agreement such public liability and property damage insurance, wherein the District is named as an additional insured, as shall protect itself and the District from claims for property damages which may arise from services hereunder, whether such services be by itself or by anyone directly or indirectly employed by either of them. A certificate evidencing such policy or policies shall be deposited with the District before the commencement of any work under this Agreement. Consultant shall update the copy as may be required. The District reserves the right to refuse insurance written by any unacceptable company. The amount of such insurance shall be as follows:

Public Liability Insurance and Automobile Liability Insurance in an amount not less than \$500,000 for injuries, including accidental death to any one person and subject to the same limit for each person, in an amount not less than \$1,000,000 on account of

one occurrence involving injury to more than one person, and property damage insurance in an amount not less than \$200,000 in any occurrence.

In addition to the above, the following shall be included during the term of this Agreement by rider or riders to the policy or policies above required or any separate policies of insurance in amounts as follows:

- a.** Public liability insurance to cover each automobile, truck or other vehicle used in the performance of the Agreement in an amount not less than \$500,000 on account of injury or death of one person and not less than \$1,000,000 on account of injury or death of two or more persons.
- b.** Property damage liability insurance to cover each automobile, truck or other vehicle used in the performance of this Agreement in an amount not less than \$200,000 in any occurrence.

11.2. Consultant shall purchase and maintain insurance to protect itself from claims arising out of the performance of the Services caused by any errors, omissions or negligent acts for which it may be legally liable. A properly certified copy of such policy or policies shall be deposited with the District before commencement of any work under this Agreement. Consultant shall update the copy as may be required. The District reserves the right to refuse insurance written by an unacceptable company. The amount of such insurance shall be in the aggregate not less than One Million Dollars (\$1,000,000).

11.3. All insurance policies shall contain the following special provision: “The Company [meaning the insurance company] agrees that thirty (30) days prior to cancellation or reduction of the insurance afforded by this policy, with respect to the agreement involved, written notice will be mailed by Certified Mail to the General Counsel of the District.”

Section 12 INDEMNIFICATION

12.1. Consultant shall indemnify, keep and save harmless the District and its

respective Trustees, officers, agents and employees against all suits or meritorious claims that may be based upon any injury to persons or property that may arise out of tortious conduct of Consultant's employees or agents occurring during the performance of the Project, and Consultant shall at its own expense defend the District in all litigation, pay all attorney fees, damages, court costs and other expenses arising out of the litigation or claim or incurred in connection therewith; and shall at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the District or any of its Trustees, officers, agents or employees.

12.2. Consultant shall indemnify, keep and save harmless the District and its respective Trustees, officers, agents and employees against all suits or meritorious claims that may be based upon any failure of the Project Deliverables to perform as warranted herein. Consultant shall at its own expense defend the District in all litigation or administrative proceeding, pay all attorney fees, damages, court costs and other expenses arising out of the litigation or claim or incurred in connection therewith. Consultant shall at its own expense, satisfy and cause to be discharged such charges, fines, penalties or judgments as may be obtained against the District or any of its Trustees, officers, agents or employees.

Section 13 WORKERS' COMPENSATION COVERAGE

13.1. Consultant shall at all times during the term of this Agreement subscribe to and comply with Workers' Compensation Laws of the State of Ohio. Consultant shall pay such premiums as may be required thereunder and shall save the District harmless from any and all liability arising from under said Act. Consultant shall furnish a copy of the official Certificate of receipt showing the payment hereinbefore referred to, if such payment is required.

Section 14 INDEPENDENT CONTRACTOR

14.1. Consultant shall be and remain an independent contractor with respect to all services performed hereunder, and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions or annuities, now or

hereafter imposed under any State or Federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Consultant on work performed under the terms of this Agreement, and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by any duly authorized State or Federal officials; and Consultant agrees to indemnify and save harmless the District from any such contributions or taxes or liability therefor.

Section 15 EQUAL EMPLOYMENT OPPORTUNITY

15.1. Consultant agrees to adopt and maintain a policy of non-discrimination in employment. It further agrees that it will comply with all applicable Federal and State laws with regard to Equal Employment Opportunity and Fair Employment Practices, and with the District's Equal Employment Opportunity Policy, Guidelines and Procedures.

15.2. Consultant agrees to provide the District's Equal Employment Opportunity Administrator with information regarding its employment practices, in such forms as the Equal Employment Opportunity Administrator may prescribe; and that compliance with such requests is a condition of this Agreement. A copy of Consultant's Equal Employment Opportunity Report is included as part of Exhibit "D".

15.3. Consultant acknowledges the non-discrimination requirements of Executive Order 11246, and agrees that it will not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, or national origin.

Section 16 SUBCONTRACTORS

16.1. Since this Agreement is made pursuant to the proposal submitted by Consultant and in reliance upon Consultant's qualifications and responsibility, Consultant shall not assign, sublet or transfer its interest in this Agreement nor shall any subcontractor commence performance of any portion part of the work included in this Agreement without prior written consent of the District. In making the application for subletting any portion of the work, Consultant shall state in writing the portion of the work which each subcontractor is to do or the material which it is to furnish, the subcontractor's place of business, and such other information as may be required by the

District. Subletting, if permitted, shall not relieve Consultant of any of its obligations under this Agreement.

16.2. All subcontractors for work covered by this Agreement must conform to the requirements of this Agreement. Prior to approval of any subcontract, Consultant shall submit with the request for approval an Equal Employment Opportunity Report executed by the subcontractor.

Section 17 NON-SOLICITATION OF STAFF

17.1. Consultant and the District agree that they will not, during the period of this Agreement and for a period of one year following the end of this Agreement, solicit for employment the staff of the other party without the advance written permission of the other party.

Section 18 AUTHORIZATION TO PROCEED

18.1. Consultant will be authorized to begin the work described herein immediately upon receipt of Notice to Proceed from the District.

18.2. Any work to be performed that is classified herein as an allowance must be authorized separately by the District prior to Consultant or any Subconsultants commencing such work.

Section 19 CONSTRUCTION

19.1. All terms and words used in this Agreement, regardless of the number and gender on which they are used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context or sense of this Agreement or any paragraph or clause herein may require, the same as if such words had been fully and properly written in the number and gender. Consultant agrees that no representations or warranties of any type shall be binding upon the District, unless expressly authorized in writing herein. In the case of any conflict between the Consultant Proposal (Exhibit "C") and this Agreement, the provisions of this Agreement shall govern. The headings of sections and paragraphs, to the extent used herein are used for reference only, and in no way define, limit or transcribe the scope or intent of any provision hereof. This Agreement may be executed in any number of

counterparts, each of which when so executed and delivered in any number of counterparts shall be deemed an original but such counterparts together shall constitute but one and the same instrument.

19.2. If any portion of this Agreement is held to be ineffective, unenforceable or illegal for any reason, the remaining provisions shall not be affected and shall remain in full force and effect.

Section 20 CONFIDENTIALITY

20.1. All data, information and deliverables produced during the performance of the Project, including strategies, methods, documentation and other information of all types, oral, written and electronic, shall be held in the strictest confidence by the District and Consultant mutually until any of the following occurs:

- a.** Written permission to disclose specific information is granted. Such disclosure then shall be limited to only that information so stated in the written permission.
- b.** The information becomes public domain information such that there is no proprietary quality or confidentiality issues pertaining to its use.

Section 21 ASSIGNMENT OF AGREEMENT

21.1. The District and Consultant bind themselves and their successors, administrators and assigns to the other party of this Agreement and to the successors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as stated above, neither the District nor Consultant shall assign, sublet or transfer interest in this Agreement without the written consent of the other, which consent shall not be unreasonably withheld. 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.

Section 22 GOVERNING LAW

22.1. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of Ohio, and if any disputes cannot be settled by negotiation, then they shall be decided at law.

Section 23 NOTICES

23.1. All notices shall be in writing and shall be distributed from one party to the other by US Mail or any commercial mail or delivery services or hand delivered. All notices shall be made at the principal offices of the other per the following:

Northeast Ohio Regional Sewer District
Attn: Ana Maldonado
3826 Euclid Avenue
Cleveland, Ohio 44115-2504
FAX 216-881-6603

[__ Consultant __]
[__ Project Manager __]
[__ Consultant Address __]
[__ Consultant Address __]
[__ Consultant Fax __]

Section 24 FORCE MAJEURE

24.1. Neither Consultant nor the District shall be responsible to the other in all or in part for any stoppage of work or delays in deliverables caused by acts of God, fire, flood, other natural disasters, strikes, labor disputes, accidents, acts of war, or public enemy. Date sensitivity of hardware or software, including without limitation sensitivity to the passage from any one year to the next, shall not be subject to this Section.

Section 25 EXHIBITS

25.1. It is mutually understood and agreed that all Exhibits attached hereto are made a part hereof as if fully written herein.

25.2. The following Exhibits attached hereto are hereby incorporated with and made part of this Agreement:

- a. Exhibit "A" – Northeast Ohio Regional Sewer District Resolution No. [____]
- b. Exhibit "B" – Northeast Ohio Regional Sewer District Request for Proposal
- c. Exhibit "C" – Consultant’s Proposal dated [____]
- d. Exhibit "D" – Consultant’s Equal Employment Opportunity Report

Section 26 OTHER PROVISIONS

26.1. This Agreement may not be amended, in whole or in part, except by an instrument in writing signed by both Consultant and the District.

IN WITNESS WHEREOF, the parties have hereunto have caused this Agreement to be executed and to become effective as of the day and year first above written.

IN WITNESS WHEREOF, the parties hereunto have caused this Agreement to be executed and to become effective on this ____ day of _____, 1999.

WITNESS:

**NORTHEAST OHIO REGIONAL
SEWER DISTRICT**

BY: _____

AND: _____

(Title): _____

[CONSULTANT]

BY: _____

(Title): _____

SAMPLE