

# **AGREEMENT FOR PROFESSIONAL SERVICES**

ALLEGHENY COUNTY SANITARY AUTHORITY  
3300 PREBLE AVENUE  
PITTSBURGH, PA 15233

**AGREEMENT FOR PROFESSIONAL SERVICES**

**CONSULTANT:**

**DATE:**

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# AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (this “Agreement”) is made and entered into as of the \_\_\_\_\_ by and between the ALLEGHENY COUNTY SANITARY AUTHORITY, having its address at 3300 Preble Avenue, Pittsburgh, Pennsylvania 15233-1092 (hereinafter referred to as the “Authority”), and \_\_\_\_\_, a/an corporation, individual, partnership, (*circle one*) having its address at \_\_\_\_\_ (hereinafter referred to as the “Consultant”).

## RECITALS:

WHEREAS, the Authority is a body politic and corporate, created pursuant to and governed by the Municipality Authorities Act of 1945, as amended (the “Act”); and

WHEREAS, the Authority desires to obtain certain professional Services (as such term is hereinafter defined); and

WHEREAS, and the Consultant has represented to the Authority that the Consultant is qualified by experience and technical competence to perform the professional Services needed by the Authority and that the Consultant is knowledgeable of and capable of complying with all governmental requirements applicable to the performance of such Services, including, but not limited to, environmental, municipal and other laws, regulations and requirements; and

WHEREAS, the Authority is willing to engage the Consultant to provide such Services, and the Consultant is willing to provide such Services to the Authority, all on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

## 1. GENERAL

### 1.1. The Services

The Authority desires to engage the Consultant to perform certain professional services as the Authority may from time to time require, and the Consultant desires to perform such services. The parties desire to embody in this Agreement the terms and conditions under which the Authority will engage the Consultant and the Consultant will provide such services to the Authority, subject to the terms of the individual Service Authorizations referred to in Section 1.2 below. The term “Services”, when used herein, shall mean all work performed by the Consultant pursuant to this Agreement and the applicable Service Authorizations.

### 1.2. Authorization for Performance of Services

1.2.1. The specific Services that the Consultant may be engaged to provide will be

described in one or more service authorizations (each, a “Service Authorization”) in the form (as such form may be modified by the Authority from time to time) provided by the Authority. Each Service Authorization will set forth additional specific terms and conditions applicable to the individual or phased project or assignment that is the subject of that Service Authorization, including the specific scope of work, schedule, budget cost, pricing method (including hours to be worked, wage rates, reimbursable expenses and other related costs), payment terms, invoicing requirements, the designation of Consultant’s project manager and any other obligations of the Consultant with respect to a particular project or assignment and the Services to be performed in connection therewith.

1.2.2. The Consultant shall be required to execute and deliver a Service Authorization to the Authority prior to the commencement of Services on a given project or assignment. All Service Authorizations shall be deemed to be a part of this Agreement and all references to the term “Agreement” hereunder shall be deemed to include all Service Authorizations. Likewise, the terms of this Agreement shall be deemed to be incorporated into each Service Authorization. The terms of this Agreement and those of the Service Authorizations shall be construed so as to be consistent with each other; provided, however, that in the event of any conflict between the terms of this Agreement and the terms of a Service Authorization, the terms of the Service Authorization shall control. In no event shall the Consultant commence the performance of any Services unless it has received and executed a specific Service Authorization, and the Authority shall have no obligation to pay for any Services that have not been authorized by a Service Authorization executed by the Consultant. Anything in this Agreement to the contrary notwithstanding, the Authority shall have the right to change the Services and other matters set forth in a Service Authorization by written notice to the Consultant. It shall be the responsibility of the Consultant to work with the Authority and to inform the Authority of solutions to problems and the approach or technique to be used to accomplish the Authority’s objectives as set forth in Service Authorizations.

1.2.3. The Consultant shall attend and, as needed, participate in all meetings that may be required to facilitate the project for which the Services are needed. In addition, the Consultant shall attend and, as needed, participate in all meetings of the Authority Board of Directors (the “Board of Directors”) if the Consultant is informed that the project which is the subject of the Services is on the meeting agenda to be discussed.

### 1.3. Term

The term of this Agreement (the “Term”) shall commence on the date set forth in the introductory paragraph of this Agreement and shall continue in effect on an indefinite basis for all Service Authorizations issued hereunder unless and until either party terminates this Agreement pursuant to the provisions within the Agreement.

### 1.4. Performance; Schedule

1.4.1. All Services shall be performed consistent with the generally accepted

professional skill and care in the industry in which the Consultant operates and in compliance with the Authority's stated deadlines, and the Consultant shall be responsible for the technical accuracy of the Services performed and Materials (as such term is hereinafter defined) delivered. If the Authority determines that there are any errors, omissions or other deficiencies in the Services and/or the Materials, the Consultant shall, without additional compensation, correct or revise said errors or omissions to the reasonable satisfaction of the Authority. Approval by the Authority of all or any portion of the Services and/or Materials shall not in any way relieve the Consultant of responsibility for the technical adequacy of the Services and/or Materials. When written Materials are provided to the Authority, a sufficient number of copies, as reasonably directed by the Authority, shall be provided. The Authority's review, approval or acceptance of, or payment for, any of the Services shall not, nor shall it be construed to, operate as a waiver of any of the Authority's rights under this Agreement or otherwise.

1.4.2. Upon request, the Consultant shall submit for the Authority's approval a detailed schedule for the performance of the Services. This schedule shall include allowances for periods of time required for the Authority's review and for approval of submissions to regulatory authorities, including, without limitation, environmental authorities. Time limits established by the schedule approved by the Authority shall not be exceeded by the Consultant without the prior written consent of the Authority. Time is of the essence for all Services under this Agreement, and the Consultant shall be liable to the Authority as set forth herein for its and its Subconsultants' failure to adhere to the schedule for completion of the Services. In the event that the performance of the Services is unreasonably delayed solely by the Authority, the Consultant shall notify the Authority within five (5) days of the event giving rise to such delay, and if such notice is provided by the aforementioned deadline, the parties shall negotiate in good faith an extension of the time for performance of the Services and, if applicable, the cost thereof. Notwithstanding anything in this Agreement, the Consultant, including the Consultant's Subconsultants, if any, shall not be responsible hereunder for any delay, default or nonperformance of this Agreement, if and to the extent that such delay, default or nonperformance is due to any cause beyond the reasonable control of such party, except that the Consultant shall be responsible for delays, defaults and nonperformance of its Subconsultants.

1.4.3. The Consultant shall utilize computerized techniques in the form of word processing software, computer-aided design and drafting systems, analytical software and other software to a maximum extent possible to maximize labor productivity and to minimize overall project costs to the Authority. The Consultant shall keep the Authority informed of what computer hardware and software tools are being employed in the execution of assigned work efforts and shall ensure that the resulting Materials shall be compatible with Authority systems.

## 1.5. Representatives of the Parties

1.5.1. The Representative listed on Exhibit A "Statement of Work" shall serve as the Consultant's representative who shall manage and coordinate Services provided

in connection with Authority projects and who is hereby authorized to act on behalf of and to bind the Consultant in connection with negotiations and approvals of Service Authorizations and any other matter with respect to performance of Services for the Authority. The Consultant shall not replace such representative without the Authority's prior written consent. If requested by the Authority in writing, the Consultant shall remove such representative and designate a new representative suitable to the Authority.

1.5.2. The Executive Director of the Authority or her written designee shall act as the Authority's representative with respect to the Services and specifically for approving Service Authorizations. The Executive Director or her written designee shall have the authority to exercise the rights and responsibilities of the Authority provided in this Agreement. Said authority may include, but is not limited to: (i) issuing a formal notice to proceed, (ii) transmitting instructions, (iii) stopping work, (iv) receiving information, and (v) interpreting the Authority's policies and decisions with respect to materials, equipment, elements, and systems pertinent to the Services and Service Authorizations.

#### 1.6. Responsibilities of the Authority

The Authority shall (a) furnish or cause to be furnished such reports, studies, instruments, documents, and other information as the Consultant and the Authority mutually deem necessary and which are under control of Authority, (b) provide such other data and services as may be agreed upon and set forth in a Service Authorization, (c) pay all permit application filing fees, if applicable to the Services, and (d) provide access to Authority facilities that are applicable to the Services; provided, however, that Consultant or any person or entity claiming by or through the Consultant shall comply with the Authority's then-effective safety and security procedures while present at such facilities.

#### 1.7. No Guarantee of Work

This Agreement is entered into with no guaranteed quantity or value of work to be awarded to the Consultant. This Agreement is not exclusive, and the Authority may, in its sole discretion, choose to obtain from other service providers or itself perform the same or similar services as those provided by the Consultant.

## **2. COMPENSATION FOR SERVICES; BILLING AND PAYMENT**

#### 2.1. Compensation for Services

The individual Service Authorization shall set forth the specific payment methodology and the terms for payment for the Services performed by the Consultant. Total compensation (including, but not limited to, compensation for Subconsultants) shall not exceed the budget cost set forth in the applicable Service Authorization without the prior written approval of the Authority in each instance. The parties acknowledge and agree that pricing methodologies set forth in the individual Service Authorizations may include, without limitation, (i) time and materials pricing with a not to exceed maximum amount (see Section 2.2 below), and (ii) lump sum or flat fee pricing (see Section 2.3 below). The Consultant agrees to accept payment specified in such Service Authorizations and this Article II as full compensation for performing the Services.

2.2. Time and Materials (Not to Exceed) Payment for Services; Billing.

2.2.1. The Authority shall pay the Consultant compensation for the Services rendered on Authority projects based upon the actual raw hourly salary rates for actual employees of the Consultant multiplied by a factor identified in Exhibit B “Rate Schedule” for overhead and profit. The initial schedule of average hourly rates is set forth in Exhibit B, attached hereto and made a part hereof. The rates listed in Exhibit B shall be valid for a minimum period of one (1) year from the date hereof, or until the beginning of the year on the Service Authorization Period of Performance, whichever comes first. The Consultant shall have the right to update such rates once annually by providing a new updated rate schedule to the Authority in writing; providing however, that in no event shall any employee actual raw salary rate increase in excess of the Consumer Price Index for All Urban Consumers: All Items (CPI-U) for the United States City Average as published by the United States Department of Labor, Bureau of Labor Statistics over the previously effective rate in effect without prior written approval from the Authority. The Consultant shall be reimbursed only for employees working directly on Services for the Authority project. Reimbursement for the Consultant’s office support services staff shall be excluded from the monthly invoices. Examples of these exclusions include: administrative assistants, administrative secretaries, accounts receivable and payable personnel, messengers, receptionist, etc. The time and materials not to exceed price shall constitute the maximum total compensation the Consultant shall be entitled to receive for performance of the Services described in such Service Authorization, and the Consultant shall not exceed the time and materials (not to exceed) price without prior written approval by the Authority. The Consultant shall bill the Authority on a calendar month basis. The Consultant’s invoices will describe in reasonable detail and with respect to the relevant period: (i) the number of hours expended performing the Services, itemized by task and by person performing Services; (ii) the Services performed by each person; and (iii) any Materials created. Additionally, the Consultant shall include with each invoice for Services being performed on a time and materials (not to exceed) pricing basis a statement showing the percentage of work completed to the date of invoice compared to the aggregate percentage of the time and materials (not to exceed) price invoiced to date.

2.2.2. In addition, the Authority shall reimburse the Consultant on an out-of-pocket cost basis for those reimbursable expenses specifically set forth in the applicable Service Authorization and not others (the “Reimbursable Expenses”); provided, however, that such Reimbursable Expenses must be (i) incurred while performing the Services; (ii) documented and evidenced by invoices, receipts or other evidence reasonably acceptable to the Authority; and (iii) reasonably incurred. All Reimbursable Expenses shall be billed to the Authority at the Consultant’s cost, and under no circumstances whatsoever shall the Consultant be entitled to mark-up the Reimbursable Expenses; provided, however, that Consultant shall have the right to be reimbursed for the actual cost of Subconsultants (excluding those costs the Authority determines are classified as “other direct costs (ODC),” materials and travel, meals and other expenses of such Subconsultants engaged by the Consultant plus an additional five percent (5%) of the cost of the Subconsultant’s services to compensate the Consultant for the procuring and managing of the

Subconsultant. The payment of all Reimbursable Expenses shall be subject to the Authority's then current policies and procedures governing expense reimbursements.

2.2.3. Invoices may be required to be submitted monthly into ALCOSAN's Project Management Information System (PMIS), eBuilder. The individual service authorizations will determine if the project shall be on the PMIS.

### 2.3. Lump Sum or Flat Fee Pricing for Certain Services

In some cases, the Consultant's total compensation for Services that are being performed pursuant to an individual Service Authorization shall be based upon lump sum or flat fee pricing. Any such lump sum or flat fee pricing arrangement shall be documented in the individual Service Authorization, which shall also set forth milestones and a schedule of values pursuant to which payments due to the Consultant will be calculated and made. In such cases, unless otherwise agreed in writing, the lump sum or flat fee price shall constitute the Consultant's full and complete compensation for those Services, including, without limitation, all of the Consultant's internal and out-of-pocket expenses. All invoices for Services being performed on a lump sum or flat fee pricing basis shall be in accordance with the agreed upon schedule of values and shall provide a statement showing the percentage of Services then completed on each milestone compared to the aggregate percentage of the lump sum price or flat fee invoiced to date.

### 2.4. Payment Terms

The Authority shall use its commercially reasonable efforts to pay the Consultant within thirty (30) calendar days from the last to occur of presentation of the Consultant's itemized report and invoice, approval by the Authority's representative and approval by the Authority's Board of Directors. The Consultant shall submit separate monthly invoices for each Service Authorization, which shall include a report of work completed during the respective invoice period. Invoices shall be in a format consistent with those shown in Exhibit C. The report shall be in a form reasonably acceptable to the Authority and shall be adequate in detail to describe work progress (including percentage complete for each task and for the Service Authorization as a whole) and written summaries of Services completed.

### 2.5. Right to Withhold Payments

Payments otherwise due to the Consultant may be withheld by the Authority on account of (a) defective Services not remedied, (b) performance of Services being materially behind schedule, (c) reasonable evidence that the Services cannot be completed for the unpaid balance of the time and materials (not to exceed) price or the lump sum or flat fee price set forth in the applicable Service Authorization, (d) reasonable evidence of overcharges, (e) reasonable evidence that the Consultant has not made payments when due to its Subconsultants, (f) claims filed, (g) reasonable evidence indicating probable filing of claims, (h) the failure of the Consultant to perform any of its obligations under this Agreement, or (i) the failure of the Consultant to protect the Authority against liability arising out of the Consultant's failure to pay or discharge taxes or other obligations.

## 2.6. Additional Costs Due to Errors and/or Omissions

- 2.6.1. If the Authority determines that, during the course of construction, change orders were issued which increased the cost of construction of the project because of the Consultant's failure through errors and/or omissions to produce proper and coordinated specifications and drawings, or any portions thereof relating to the project, in accordance with accepted standards and practice, and the increased cost of construction of the project attributable to such errors and/or omissions exceeds five percent (5%) of the original contract price, the Authority may, at its discretion, either: (i) assess the Consultant an amount equal to fifteen percent (15%) of the sum of the change orders plus the absolute value of all deduct change orders attributable to such errors and/or omissions, or (ii) pursue any and all other remedies provided for in this Agreement if available at law.
- 2.6.2. Paragraph (a) of this Section 2.6 shall not be interpreted to preclude the Authority, at its election, from pursuing any and all remedies provided for in this Agreement or available at law if the increased cost of construction attributable to Consultant's errors and/or omissions does not exceed five percent (5%) of the original contract price.
- 2.6.3. In consideration of Consultant's payment of any such assessment by the Authority under this Section 2.6, the Authority, its officers, employees, agents, servants, representatives, successors-or predecessors-in-interest and assigns (past, present and future) hereby release, acquit and forever discharge Consultant and its principals, shareholders, partners, directors, officers, subsidiary corporations, affiliates, employees, agents, servants, representatives, successors-or predecessors-in-interest, and assigns (past, present and future) from, and only from, those actions, causes of action, claims, demands, damages, lawsuits, obligations, costs, expenses and compensation which the Authority has or had for the increased construction costs which were incurred as a result of the errors or omissions that are the subject of the assessment. The Authority expressly reserves its right to bring and pursue any and all causes of action, claims, demands, damages, lawsuits, obligations, costs, expenses and compensation other than those for the increased construction costs which were incurred as a result of the errors or omissions that are the subject of the assessment.

## 3. PERFORMANCE STANDARDS

### 3.1. Performance Standards

- 3.1.1. The Consultant represents and warrants that the Services shall comply fully with the requirements set forth in this Agreement and shall be performed in a professional manner and with the degree of care and skill exercised by other professionals performing similar services on similar projects.
- 3.1.2. The Consultant further represents and warrants that (i) it is and will continue to be technically, physically, financially and legally ready, willing and able to perform

the Services hereunder, (ii) it has and will maintain the requisite competence, skill and physical resources to perform the Services required hereunder, (iii) it has and shall maintain the registrations, licenses, permits and government approvals required to perform the Services, (iv) it is familiar with and knowledgeable about applicable governmental requirements to the extent necessary to carry out its duties in a professional and competent manner, and (v) if the Consultant is an entity, it is duly formed and validly existing in its state of formation and is qualified to do business in the Commonwealth of Pennsylvania.

- 3.1.3. The Consultant has or will secure, at its own expense, qualified personnel required in performing the Services. All Services required to be performed by or under the direction of licensed professionals shall be performed by professionals appropriately licensed within the Commonwealth of Pennsylvania in the field for which they are responsible in accordance with the appropriate laws and regulations of the Commonwealth. Key project personnel will be identified in each Service Authorization and will be expected to perform as much of the Services as can reasonably be expected.
- 3.1.4. The Consultant acknowledges and agrees that the Authority is relying on the Consultant's abilities and the accuracy and completeness of the Services and the Materials. The Consultant represents and warrants that it has performed work similar to that required hereunder on other projects, and that the Consultant's experience and expertise are the principal reasons that the Authority is retaining the Consultant to perform Services hereunder. The Consultant accepts the relationship established between it and the Authority established hereunder and covenants with the Authority to utilize its skill, efforts and judgment in furthering the interests of the Authority and to perform the Services in the most expeditious and economical manner consistent with the interests of the Authority.
- 3.1.5. The Consultant acknowledges and agrees that, during the Term, the Authority shall have the right to award projects to other firms, including, but not limited to, firms that perform the same type of services as the Consultant. The Consultant agrees to cooperate with all other professionals and consultants retained by the Authority, including, but not limited to, by sharing technical information developed hereunder, participating in joint meetings for project coordination and engaging in communications with other professionals and consultants as the Authority shall require. The Consultant also agrees that it will bring to the Authority's attention any defects of which it becomes aware with respect to work or services performed by other professionals and consultants. Additionally, the Consultant acknowledges and agrees that its Services may impact the performance of work by such others and that the failure of the Consultant to perform the Services on a timely basis and in accordance with the requirements of this Agreement and the applicable Service Authorization could affect the efficacy of the work performed by such others.
- 3.1.6. The Consultant shall comply with, and give all notices required by, all federal, state and local laws, ordinances, rules, regulations and orders bearing on the performance of the Services. The Consultant's Services shall comply with said laws, ordinances, rules, regulations and orders. Without limiting the generality of

the foregoing, Consultant acknowledges and agrees that (i) the Authority is a party to a certain Consent Decree agreement with the United States Environmental Protection Agency, the Commonwealth of Pennsylvania Department of Environmental Protection and the Allegheny County Health Department as entered into the Federal Register in the case *United States, et al. v. ALCOSAN*, Case No. 07-CV-00737 (the “Consent Decree”), (ii) the Consent Decree sets forth a schedule and various requirements for the Authority for the development and implementation of a water-quality based long-term control plan and other associated requirements, (iii) the Services to be performed by Consultant may directly or indirectly involve or impact the Authority’s implementation of the requirements of the Consent Decree and the Authority’s compliance with the terms of the Consent Decree and the schedule applicable thereto, and (iv) Consultant shall at all times ensure perform the Services in full compliance with the requirements of the Consent Decree and the schedule applicable thereto and ensure that the result of the Services are in full compliance with the requirements of the Consent Decree and the schedule applicable thereto. For Service Authorizations involving work under Federal or State grants or approving agencies, the Consultant’s performance shall be subject to all required provisions or any other supplemental provisions as may be included in each Service Authorization. A copy of the Consent Decree and all supporting attachments are available on the Authority’s public website ([www.alcosan.org](http://www.alcosan.org)).

#### 4. INSURANCE

##### 4.1. Required Insurance Coverage

Without limiting any of the other obligations or liabilities of the Consultant, the Consultant shall, at its own cost and expense, obtain and maintain in force, until all of its Services have been completed and accepted by the Authority (or for such duration as is otherwise specified hereinafter), the following insurance coverages:

- 4.1.1. Worker’s Compensation Insurance to apply to all of the Consultant’s employees in compliance with the “Worker’s Compensation Law” of the Commonwealth of Pennsylvania and all applicable Federal Laws.
- 4.1.2. Employer’s Liability with minimum limits of One Hundred Thousand Dollars (\$100,000) per person, Five Hundred Thousand Dollars (\$500,000) per occurrence and One Hundred Thousand Dollars (\$100,000) per each disease.
- 4.1.3. Comprehensive General Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability plus excess umbrella protection up to Five Million Dollars (\$5,000,000) for the same. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability policy, without restrictive endorsements other than ISO Endorsement GL 21 06 (Engineers, Architects, or Surveyors Professional Liability exclusion), as filed by the Insurance Services Office and must include: (i) Premises and/or Operations, (ii) Independent Contractors, (iii) Products and Completed Operations until at least three (3) years after completion of all Services, coverage for Products and Completed Operations, including Broad Form Property Damage, (iv) Broad Form

Property Damage, (v) Contractual Coverage applicable to this specific Agreement, (vi) Personal Injury Coverage with minimum limits of coverage equal to those required for Bodily Injury Liability.

- 4.1.4. Business Automobile Liability with minimum limits of One Million Dollars (\$1,000,000) per occurrence combined single limit for Bodily Injury Liability and Property Damage Liability plus excess liability umbrella protection described in subsection (c) above. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office and must include: (i) Owned Vehicles, (ii) Hired and Non-Owned Vehicles, and (iii) Employers' Non-Ownership.
- 4.1.5. Professional Liability Insurance with minimum limits of Three Million Dollars (\$3,000,000) per occurrence/Five Million Dollars (\$5,000,000) aggregate. Coverage shall be afforded on a form acceptable to the Authority. Consultant shall maintain such professional liability insurance until at least one year after satisfactory completion of the Agreement.

#### 4.2. Additional Requirements

- 4.2.1. Prior to commencement of Services, the Consultant shall provide to the Authority certificates of insurance evidencing, to the satisfaction of the Authority, the insurance coverage specified in Sections 4.1. All policies covered within Sections 4.1 shall be endorsed to provide the Authority with thirty (30) days' advance written notice of cancellation, alteration and/or restriction. The Authority shall be named as an additional insured as to Consultant's liability insurance policies described in Sections 4.1.3 and 4.1.4. Additionally, all liability insurance policies shall waive the right of recovery or subrogation against the Authority.
- 4.2.2. The Consultant shall also make available to the Authority, if required, a certified copy of the professional liability insurance policy required by Section 4.1.5 above for the Authority's review. Upon request, the Consultant shall provide copies of all other insurance policies.
- 4.2.3. The Consultant's insurance, including that applicable to the Authority as an Additional Insured, shall apply on a primary basis and shall be without right of contribution from any insurance maintained by the Authority. All premiums shall be at the sole cost and expense of the Consultant. In the event that the Consultant maintains a claims-made insurance policy, the Consultant shall obtain, at the Consultant's expense, any and all prior acts coverage ("nose") or extended reporting period coverage ("tail") that may be required as a result of the termination or expiration of such claims-made insurance to ensure uninterrupted insurance coverage on the terms and in the amount set forth in this Article IV. This Article IV shall survive the expiration or earlier termination of this Agreement. All deductibles under such policies shall be for the account of Consultant.

- 4.2.4. The Authority, in its sole discretion, shall have the right to reduce the requirements of this Article IV based on the nature of the Services performed, if the Authority deems them to be excessive or inapplicable.

## **5. INDEMNIFICATION; LIMITATION OF LIABILITY**

### **5.1. The Consultant's Indemnity**

5.1.1. The Consultant's Indemnity. (a) The Consultant shall be solely responsible for and shall indemnify, defend (using counsel approved by the Authority) and hold harmless the Authority from and against any and all claims, losses, costs, damages, liabilities and expenses (including, without limitation, reasonable attorney's fees) sustained by the Authority by reason of or in connection with (i) the performance of the Services, including, but not limited to, errors and omissions of the Consultant and its Subconsultants in connection with the Services; (ii) any breach by the Consultant of any of its representations, warranties or covenants contained in this Agreement; (iii) the negligence or willful misconduct of the Consultant, its Subconsultants or any of its or their personnel; (iv) any infringement or misappropriation of any patent, trademark, copyright, trade secret or any actual or alleged violation of any other intellectual property or proprietary rights arising from or in connection with the Services and/or the Materials; (v) any release of hazardous substances caused or exacerbated by the Consultant, its Subconsultants or any of its or their personnel; and (vi) the violation by the Consultant, its Subconsultants or any of its or their personnel of any federal, state and local statute, law, ordinance, order, rule, regulation, standard, guidance document, policy, permit, license, order, decree or other governmental requirement of any kind, including, but not limited to, the Consent Decree.

5.1.2. The Authority is hereby authorized to, and may, deduct any indemnifiable amounts from any monies due or that become due to the Consultant under this Agreement or under any other contract with the Authority, or if such monies are insufficient, the Consultant shall pay to the Authority any deficiencies in such monies upon demand.

### **5.2. Limitation of Liability**

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, CONSULTANT AND AUTHORITY SHALL NOT BE RESPONSIBLE UNDER ANY LEGAL THEORY, WHETHER IN TORT, IN CONTRACT OR OTHERWISE, TO THE OTHER, FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR OTHER INDIRECT DAMAGES WITH RESPECT TO ANY CLAIM OR MATTER RELATING TO OR ARISING OUT OF THE SERVICES, THIS AGREEMENT AND ANY SERVICE AUTHORIZATION.

## **6. TERMINATION OR SUSPENSION**

### **6.1. Termination Due to Breach**

This Agreement (and all Service Authorizations issued hereunder) may be terminated by

either party if the other party substantially fails to perform or observe any term, covenant or provision of this Agreement, where such failure continues for seven (7) days after receipt of written notice from the non-breaching party that a breach of this Agreement has occurred.

#### 6.2. Termination Without Cause

The Agreement as a whole or any Service Authorization issued hereunder may be terminated by the Authority for any reason and without cause upon not less than five (5) days' written notice to the Consultant.

#### 6.3. Suspension of Services

The Authority shall have the right, exercisable by the provision of written notice, to require the Consultant to temporarily suspend the performance of Services under any or all then-issued Service Authorizations. Upon suspension lasting 180 days, the Authority has the right to terminate for convenience.

#### 6.4. The Consultant's Obligations Upon Termination or Suspension

Upon termination or suspension pursuant to this Article VI, the Consultant shall immediately cease the performance of Services by both itself and all Subconsultants and the placing of orders for materials and supplies in connection therewith, shall provide the Authority with a written report on the status of completion of the Services and billings to the date of termination or suspension, and shall provide the Authority with all Materials produced through such date. Upon any termination of this Agreement or a Service Authorization, the Consultant shall, if applicable, work harmoniously with any successor who enters an agreement to provide services for the Authority in order to provide for a smooth transition period.

#### 6.5. Compensation to the Consultant

In the event of termination not the result of a breach by the Consultant, the Consultant shall be compensated for Services performed prior to the effective date of termination or suspension.

### **7. OWNERSHIP OF MATERIALS; CONFIDENTIALITY**

#### 7.1. The Ownership

The parties hereto agree that the Authority shall be the owner of all of drawings, specifications, plans, documents, writings, works, ideas, discoveries, inventions, improvements and other work product (including any of the above in electronic form, and in the native software used for its development) prepared in the course of performance of the Services by the Consultant or any of its Subconsultants (collectively referred to as the "Materials"), and that all Materials will be provided to the Authority without additional charge. The Authority shall be free to make internal use of such Materials as it sees fit. In addition, Consultant agrees to execute and deliver (and to cause its Subconsultants to execute and deliver) to the Authority any and all applications, assignments, instruments or other documents which the Authority shall deem necessary to (a) apply for and obtain

letters patent or copyrights of the United States or any foreign country or to otherwise protect the Authority's interest in any such Materials; or (b) vest in the Authority title to such Materials. Such obligations shall continue beyond the termination of this Agreement with respect to Materials authored, conceived or made, in whole or in part, by Consultant or its Subconsultants during the Term of this Agreement, and such obligations shall be binding upon Consultant's heirs, successors, assigns, executors, administrators and other legal representatives.

## 7.2. Confidentiality

7.2.1. All discussions between the Authority and the Consultant and all information provided to the Consultant or any of its Subconsultants by the Authority, as well as all project-specific information developed and project-specific work product produced by the Consultant or any of its Subconsultants (including, without limitation, all project-specific Materials), that are not otherwise a matter of public record shall be deemed to be confidential. All such confidential information shall be protected as such by the Consultant and its Subconsultants and shall not be revealed to other persons, whether directly or indirectly, and shall not be used by the Consultant and its Subconsultants for any purpose other than the performance of the Services without the prior express written consent of the Authority, unless otherwise mandated by an order of court. Notwithstanding the foregoing, the confidentiality provisions of this Agreement shall not apply to any of the following (a) information that becomes generally available to the public other than as a result of disclosure by the Consultant or any of its Subconsultants; (b) information that was legally available to the Consultant or any of its Subconsultants on a non-confidential basis prior to being made available to them by the Authority; and (c) information that becomes legally available to the Consultant or any of its Subconsultants on a non-confidential basis from a source other than the Authority.

7.2.2. Without limiting the generality of Section 7.2.1, Consultant is prohibited, without prior written consent from the Authority, from displaying or utilizing Authority Related Information on Consultant's public website, in Consultant's marketing materials or in any other form of communication intended for dissemination to third parties. For the purposes of this Agreement, the term "Authority Related Information" shall include, but not be limited to: (i) photographs, drawings or maps of the Authority's facility or the Services Consultant performs for the Authority, (ii) documents obtained from or prepared by the Authority or associated in any way with the Consultant's Services for the Authority, (iii) photographs or images of the Authority's employees or attendees at Authority meetings, (iv) written descriptions of the Authority's facility or Supplier's Services for the Authority, and (v) the Authority's name or logos.

## 8. AUDIT RIGHTS

### 8.1. Recordkeeping; Right to Audit

Records of all expenses relative to each Service Authorization shall be kept in accordance with United States generally accepted accounting principles and shall be retained by the Consultant for seven (7) years after completion of the applicable Service. The Consultant

shall notify the Authority if it wishes to destroy such records and allow the Authority the option to arrange for pickup of such records by the Authority to be used or destroyed as the Authority sees fit. The Authority (and its designees) shall have the right to inspect, audit and copy, at all reasonable times and places, the records of the Consultant (a) to permit evaluation and verification of any charge to the Authority hereunder (other than lump sum or flat fee charges); (b) to permit the Authority to determine the Consultant's compliance with this Agreement; and (c) to allow the Authority to review any other information that pertains to any matters, rights, duties or obligations under or covered by this Agreement. In the event that any audit by the Authority in accordance with this Section 8.1 reveals that the Consultant has overcharged the Authority for any of the Services or Reimbursable Expenses, then the Consultant shall immediately pay such overcharged amounts to the Authority plus interest at the highest rate permitted by law calculated from the date of such overcharge until the date reimbursement is made to the Authority.

## **9. MISCELLANEOUS PROVISIONS**

### **9.1. Assignment; Hiring of Subconsultants**

The Consultant shall not assign this Agreement without the prior written consent of the Authority, and any purported assignment in violation of this provision shall be null, void and of no force and effect. The Consultant shall not utilize any Subconsultants or other third-party service providers ("Subconsultants") without the Authority's prior written consent. In the event that the Authority shall consent to any assignment or subcontracting, the Consultant shall remain wholly liable for any Services performed by, as well as all actions and omissions of, such assignee or Subconsultant. The Consultant shall include within any contracts with Subconsultants those provisions of this Agreement which are intended for the protection or benefit of the Authority.

### **9.2. Authority to Act; Independent Contractor**

Nothing in this Agreement authorizes the Consultant to execute documentation on behalf of the Authority, bind the Authority or otherwise assume or incur any obligation, or make any representation of any kind whatsoever, in the name of the Authority. The relationship of the Consultant to the Authority is and shall at all times be that of an independent contractor, and no employer/employee relationship shall be deemed to be established between the Contractor and the Authority.

### **9.3. No Third-Party Relationships**

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party (including, without limitation, any Subconsultants) against the Authority.

### **9.4. Survival**

Any provision setting forth an obligation or duty of the Consultant which by its nature is not expected to or cannot or may not be performed during the actual life of this Agreement (including, without limitation, the Consultant's obligations with respect to warranties, indemnity and insurance) shall be deemed to survive suspension, expiration, termination or cancellation of this Agreement.

9.5. Entire Agreement; Amendments

This Agreement (and any Service Authorizations issued hereunder) represents the entire and integrated agreement between the Authority and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both the Authority and the Consultant. Unless otherwise expressly agreed in writing by the Authority, in no event shall any terms or conditions found on any proposal, acknowledgment or other document issued by the Consultant be considered part of, or an amendment or modification to, this Agreement.

9.6. Governing Law

This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the Commonwealth of Pennsylvania, without regard to conflicts of law principles.

9.7. Dispute Resolution

9.7.1. The Consultant shall notify the Authority's Executive Director of all matters that have, or could, result in a dispute between the parties. The written correspondence from the Consultant shall plainly be marked in boldface type as either "DISPUTES" OR "POSSIBLE DISPUTES" and shall describe all relevant facts and the Consultant's interpretation of those facts. The Authority's Executive Director will be the final decision maker regarding all disputes between the Authority and Consultant. Appeal from the Executive Director's decision must be pursuant to Section 9.7.2 below. Failure of the Consultant to submit such dispute or possible dispute to the Executive Director as required will result in the Executive Director's determination becoming legally binding and non-appealable as between the parties.

9.7.2. Any controversy, dispute or claim arising out of or relating to this Agreement and/or any Service Authorization, or the breach hereof or thereof, may, in the Authority's sole discretion, be settled by arbitration in accordance with the then current Commercial Arbitration Rules of the American Arbitration Association (in the Pittsburgh, Pennsylvania office only). All findings and decisions by the arbitrators shall be conclusive and binding on both parties, and judgment upon the award rendered by the arbitration panel may be entered in the Court of Common Pleas of Allegheny County, Pennsylvania except that the arbitration of a claim or controversy arising out of the manner or amount of payments to be made under the Agreement may not be sought until the final application for payment is prepared for a specific Service Authorization, and that any claim or controversy that threatens to slow or interrupt the completion of the Services or the project for which the Services are needed will be decided on an interim basis by the Executive Director of the Authority, whose decision shall be binding until an arbitration or court decision is obtained. The Authority may in its sole discretion refuse to submit to arbitration on any claim, but all actions brought by the Consultant must first be submitted to arbitration in Allegheny County, Pennsylvania, unless the Authority otherwise requests or directs.

- 9.7.3. If a party seeks arbitration of a controversy, dispute or claim, it must send a notice of intention to arbitrate with the other party within thirty (30) calendar days of the day the claim or controversy arose or the day the Authority's Executive Director issued a decision which is the subject of the claim or controversy, whichever date is later. The failure to file a notice of intention to arbitrate within thirty (30) calendar days of the day of the claim or controversy arose will result in the Executive Director's decision on the matter becoming final and binding.
- 9.7.4. If a controversy, dispute or claim is so determined by the arbitrators, the fees, costs and expenses of the arbitration shall be borne by the party against whom the arbitration is determined.
- 9.7.5. If the Authority decides not to arbitrate pursuant to this Section 9.7, the Consultant hereby covenants, consents and submits to the exclusive jurisdiction of the courts of competent jurisdiction in Pittsburgh, Pennsylvania and any action or court proceeding held in accordance with this paragraph may be commenced only in a court of competent jurisdiction in Pittsburgh, Pennsylvania, and the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees, including attorney's fees and costs on appeal.

## 9.8. Notices

All notices, consents, waivers and other communications under this Agreement or under any applicable Service Authorization must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by email, provided that a copy is contemporaneously mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and email set forth in Exhibit A "Statement of Work" (or to such other addresses and email as a party may designate by notice to the other party).

The Consultant's Contact:

Attention:

Email Address:

The Authority's Contact:

Allegheny County Sanitary Authority

Attention:

Email Address:

## 9.9. Litigation Services

It is understood and agreed that Consultant's Services may include reasonable participation in litigation or dispute resolution arising from this Agreement, any Service Authorization, the Services and/or any project to which the Services relate. Consultant's participation shall include up to thirty (30) hours of Services related to litigation or dispute resolution involving individuals or entities not a party to this Agreement. Any such Services in excess of thirty (30) hours shall be an additional Service; except that the Consultant shall be responsible for providing, at no cost or expense to the Authority, all litigation and/or

dispute resolution services as may be necessary for any litigation or dispute arising from or relating to any negligent acts, errors or omissions by the Consultant and/or its directors, officers, agents and/or employees.

9.10. Truth in Negotiation

Signature of this Agreement and any Service Authorization by Consultant shall act as the execution of a truth in negotiation certificate stating that wage rates and other factual unit costs supporting the compensation of this Agreement are accurate, complete, and current. The original contract price and any additions thereto shall be adjusted by the Authority to exclude any sums by which the Authority determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs.

9.11. Equal Opportunity Employment; Nondiscrimination

Pursuant to Executive Order 11246, Consultant shall not discriminate against employees or applicants for employment because of race, creed, color, religion, sex, age, handicapped status, national origin or otherwise in violation of applicable laws. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices setting forth this nondiscrimination clause. This provision applies to all of the Consultant's Subconsultants, and it is the responsibility of Consultant to make certain of each Subconsultant's compliance with this Section 9.11.

9.12. Prohibition against Contingent Fees

The Consultant has not employed or retained, and shall not employ or retain, any person or entity, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement, and Consultant it has not paid or agreed to pay, and will not pay or agree to pay, any person or entity, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Agreement.

9.13. Interest of the Consultant

9.13.1. The Consultant presently has no direct or indirect interest and shall not acquire any direct or indirect interest in any project to which this Agreement pertains or any other interest which would conflict in any manner or degree with the performance of Services hereunder, and in the performance of this Agreement, no person having any such interest shall be employed. In addition, the Consultant has not directly or indirectly provided, and will not directly or indirectly provide, anything of value to any director, officer, employee or agent of the Authority in exchange for this Agreement or any Service Authorization.

9.13.2. Neither the Consultant nor any of its affiliates, officers, directors, employees or shareholders are currently under investigation, or have been under investigation during the preceding five (5) year period, by any governmental agency for collusion with respect to bidding under public contracts, improper or illegal

payments to governmental employees, elected officials or candidates for public office or for any other actual or alleged offense involving bribery, kickbacks, public corruption or other similar laws, and neither the Consultant nor any of its affiliates, officers, directors, employees or shareholders have been convicted of any such offenses.

9.13.3. The Consultant and the Authority agree that even the appearance of a conflict of interest could be detrimental to the completion of any Authority project. As a result, the Consultant agrees that it will immediately inform the Authority as to any business situations that might appear to produce a conflict of interest, including, but not limited to the Consultant performing general contractor duties on any project that involves any Subconsultant working under the control of the Consultant on an Authority project, contracting to any Authority contractor working under the control of the Consultant on an Authority project for the Consultant to work as the contractor's Subconsultant on any project, or other similar relationships as may be described by the Authority. The Consultant agrees that it will inform the Executive Director of the Authority in writing as soon as it is aware of any situation that is or may be a conflict of interest or violation of this Section 9.13. After so informing the Executive Director, the Consultant agrees to supply such further information as may be requested by the Authority. The Authority then, at its option, may require that the Consultant terminate its work on the project within the time frame determined by the Authority. If the Consultant fails to immediately notify the Authority as specified above, the Authority, among other remedies to which it shall be entitled, may require that the Consultant forego all fees and revenues earned under this Agreement beginning upon the earliest date that the Consultant could have notified the Authority.

#### 9.14. Counterparts

This Agreement and any Service Authorization may be executed in counterparts, each of which shall be deemed to be an original hereof or thereof and all of which, when taken together, shall be deemed to be one and the same instrument.

#### 9.15. No Waiver of Rights

A failure by the Authority to assert its rights for or upon any breach of this Agreement or any Service Authorization shall not be deemed a waiver of such rights, nor shall any such waiver be implied. No waiver in writing by the Authority with respect to any right, shall extend to or affect any subsequent breach, either of like or different kind, or impair any right consequent thereon.

#### 9.16. Severability of Provisions

The invalidity under applicable law of any provision of this Agreement or any Service Authorization shall not affect the validity of any other provisions of this Agreement or any Service Authorization, and in the event that any provision hereof or thereof be determined to be invalid or otherwise illegal, this Agreement shall remain effective and shall be construed in accordance with its terms as if the invalid or illegal provision were not contained herein.

WITNESS WHEREOF, the AUTHORITY has caused these presents to be executed in its name by its AUTHORITY Board Chairman and attested and its official Seal to be hereunto affixed and the CONSULTANT has hereunto set its hand and Seal the day and year first written above.

ALLEGHENY COUNTY  
SANITARY AUTHORITY

CONSULTANT

By: \_\_\_\_\_  
Arletta Scott Williams  
Executive Director

By: \_\_\_\_\_  
(Print or Type Name Above)

ATTEST:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness  
\_\_\_\_\_  
(Print or Type Name Above)



**ACKNOWLEDGEMENT IF AN INDIVIDUAL**  
**(To be executed with the Agreement)**

Commonwealth of Pennsylvania    )  
  )    SS:  
  )    *or*  
  )    EIN:  
County of Allegheny                    )

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the Commonwealth and County named above to take acknowledgements, personally appeared \_\_\_\_\_, known to me to be the person in and who executed the foregoing instrument, and acknowledged before me that he/she executed the same.

SWORN TO AND SUBSCRIBED before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public

(SEAL)

My Commission Expires:



**EXHIBIT A**  
**STATEMENT OF WORK**

To be determined by individual Service Authorization

**EXHIBIT B**  
**RATE SCHEDULE**

To be determined by individual Service Authorization

Audited Indirect Rate: \_\_\_\_\_

**Profit Rate Not-to-Exceed 10%.** Consultant shall be reimbursed only for employees working directly on Services for the Authority project.

**Profit Rate on Subconsultants Not-to-Exceed 5%.**

# EXHIBIT C INVOICE FORMAT

Service Authorization Number  
Company Name  
Address

Invoice Number  
Invoice Period  
Date of Invoice

**LABOR**

CLASS & TITLE	EMPLOYEE NAME	SALARY RATE	HOURS	AMOUNT
_____	_____	<<raw rate\$/HR>>	_____	<<salary x hours>>
_____	_____		_____	<<salary x hours>>
_____	_____		_____	<<salary x hours>>
_____	_____		_____	<<salary x hours>>
_____	_____		_____	<<salary x hours>>

Subtotal Labor		a. <u>total the column above</u>
Overhead Multiplier	<<overhead multiplier >>	b. <u>( = line a. x multiplier rate)</u>
Subtotal Labor + overhead		c. <u>( = line a + line b)</u>
Profit Multiplier (10%)	10%	d. <u>( = line c x .10)</u>
Profit on Subs (5%)	5%	e. <u>( .05 x line g)</u>
Total Prime Contractor <i>labor and profit</i>		f. <u>( = c + d + e)</u>

**SUBCONTRACTORS**

NAME	<u>'\$ subcontractor cost</u>
NAME	<u>'\$ subcontractor cost</u>
NAME	<u>'\$ subcontractor cost</u>

TOTAL SUBS g. Total the column above

**OTHER DIRECT COSTS**

Identify Costs by Company	<<no multiplier>>	<u>amount</u>
Identify Costs by Company	<<no multiplier>>	<u>amount</u>
		h. <u>total of ODCs</u>

**TOTAL INVOICE**

i. = line f + line g + line h

BUDGE* <<amount of Service Authorization	j. _____
This invoice	k. _____
Previously earned	L. _____
Earned to date	m. = line k + line L
Remaining on Contract	n. = line j - line m