

KENOSHA COUNTY  
PROFESSIONAL SERVICES CONTRACT

AGREEMENT entered into this \_\_\_\_ day of \_\_\_\_\_, 2009 and between Company Name & Address (hereinafter referred to as "Contractor") and Kenosha County, a municipal corporation and political subdivision of the State of Wisconsin having its principle offices located at 1010 - 56<sup>th</sup> Street, Kenosha WI 53140, (hereinafter referred to as "County"). This document and Addendum A, [B and C if additional addendums are needed] constitute the entire agreement. **[Ethics Addendum is always Addendum A]**

**1) SCOPE OF SERVICES:**

Contractor shall specifically perform the following tasks:

**[ provide details of work to be completed by contractor, or attach contractor's proposal and incorporate it here as part of the document.]**

**[Include a test and final acceptance plan if applicable]**

Contractor shall provide, at its own expense, all personnel required in performing the services under this Contract. Contractor, during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of the County or any person who, to the knowledge of Contractor, has a conflict of interest in fulfillment of this agreement.

**2) COMPENSATION:**

Contractor shall be compensated for work performed **[CHOOSE ONE OF THE FOLLOWING STATEMENTS]**

on an hourly basis at the rate of **\$XXXX**/hour. The total compensation to Contractor for services performed under the Agreement shall not exceed **\$XXX dollars.** ]

**OR**

[the total sum of **\$XXXX**] upon completion of contract and final acceptance by the County.

Out of pocket expenses are not reimbursable. No further compensation of any amount or kind will be given, unless agreed to by the County in writing by the County Executive or the County Purchasing Director. As a matter of practice, the County attempts to pay all invoices in 30 days. Contractor shall provide Kenosha County with itemized billings which shall include, but not be limited to, the following:

Dates and hours worked.

Specific tasks performed.

Draft or final form documents of the work produced.

No payment shall be made without substantial workproduct delivered.

Kenosha County does not pay in advance for services. It is expected that this service contract will be completed within 60 days of the date entered.

**PREVAILING WAGE: [REMOVE THIS SECTION IF NOT A SKILLED TRADE JOB]**

The County of Kenosha requires all contractors and subcontractors performing public work, as defined in s 66.0901(c), on County property to pay Municipal Prevailing Wages for any contract, regardless of whether a Prevailing Wage Determination has been issued by the State of Wisconsin. No skilled-trade employee may be paid less than the prevailing wage rate determined for the same or most similar trade or occupation. The types of work performed and the prevailing local practices, as determined by the State of Wisconsin and not a previously assigned trade or occupational title, determines the applicable prevailing wage rate.

Failure to abide by this requirement will be cause for termination of the contract and all penalties of the statute, if applicable. The County reserves the right to audit the payroll and other records set forth in Wisconsin state statutes regarding prevailing wages and to obtain certified payroll records relating to the wages paid to the employees working on this project.

Prior to receiving final payment, each contractor must file an affidavit with Kenosha County which states that all of the provisions and requirements of this section have been complied with and that the contractor has received similar evidence of compliance from all of its agents and subcontractors. Kenosha County will not authorize the final payment to an employer until such an affidavit is filed in proper form and order.

3) **WARRANTY**

**[State any specific warranty requirements, term length of warranty]**

The **Contractor** warrants to the County that all goods and services furnished hereunder will conform in all respects to the terms of this agreement, including any drawings, specifications or standards incorporated herein; free from any defects in materials, workmanship, and free from such defects in design. In addition, Vendor warrants the goods and services are suitable for and will perform in accordance with the purposes for which they were intended.

4) **NON-DISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAMS:**

In the performance of work under this Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap, which shall include, but not be limited to, the following:

Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. Contractor will post in conspicuous places, available for employees of the Contractor and applicants for employment, notices setting forth the provisions of the non-discriminatory clause.

When a violation of the non-discrimination, equal opportunity or affirmative action provisions of this section has been determined by the County, Contractor shall immediately be informed of the violation and directed to take all action necessary to halt the violation, as well as such action as may be necessary to correct, if possible, any

injustice to any person adversely affected by the violation, and immediately take steps to prevent further violations. If, after notice of a violation to Contractor, further violations of this section are committed during the term of the Contract, the County may terminate the Contract without liability for the uncompleted portion or any materials or services purchased or paid for by the Contractor for use in completing the Contract, or it may permit Contractor to complete the Contract but, in either event, Contractor may be ineligible to participate in future contracts with the County.

5) **INDEMNITY AND INSURANCE REQUIREMENTS:**

A bid may be rejected if a bidder fails to meet any one of the following insurance requirements:

a) **Provider** agrees to indemnify, hold harmless and defend **Kenosha County**, its officers, agents and employees from any and all liability including claims, demands, losses, costs, damages and expenses of every kind and description or damage to persons or property arising out of or in connection with or occurring during the course of this agreement where such liability is founded upon or occurring out of the acts or omissions of the **Provider**, its agents or employees.

b) **Provider** agrees to protect itself and **Kenosha County** under the indemnity agreement set forth in the above paragraph. **Provider** will at all times during the terms of this Contract keep in force and effect commercial general liability, professional liability, automobile liability, excess/umbrella liability, worker's compensation, and employer's liability insurance policies issued by a company or companies rated A- VII or better by AM Best and authorized to do business in the State of Wisconsin with the following minimum limits of coverage;

i. Commercial General Liability**		
· Each Occurrence		\$1,000,000
· General Aggregate	\$2,000,000	
· Products - Comp/Op Agg	\$2,000,000	
ii. Professional Liability*		
· Each Occurrence		\$1,000,000
· General Aggregate	\$1,000,000	
iii. Automobile Liability		
· Combined Single Limit		\$1,000,000
iv. Excess/Umbrella Liability*		
· Each Occurrence		\$1,000,000
· Aggregate	\$1,000,000	
v. Worker's Compensation*		Statutory Limits
vi. Employer's Liability*		
· Each Accident		\$100,000
· Disease Each Employee		\$100,000
· Disease Policy Limit	\$500,000	

\*Or such higher limits sufficient for these insurance policies to be scheduled under the Umbrella policy.

+ Provide waiver of subrogation in favor of Kenosha County on the Commercial General Liability, Excess/Umbrella Liability, and Worker's Compensation policies.

- b) Coverage afforded shall apply as a primary with **Kenosha County** named as an additional insured on the commercial general, automobile and excess/umbrella liability policies. **Provider** shall give 30 days advance written notice of cancellation or non-renewal during the term of this Contract.
- c) **Provider** shall not discontinue or change liability insurance policies in effect during any part of this contract without buying "tail end" insurance to cover potential claims that may have occurred during the term of this agreement. The hold harmless, indemnity and insurance provisions of this contract shall survive the termination of this contract and shall remain operative until the time that all potential claims or potential civil actions by the parties or by third parties shall expire under existing law.
- d) Upon execution of this Contract, the **Provider** shall furnish **Kenosha County** with a certificate of insurance, showing evidence of the above requirements.
- e) **Provider** shall notify **Kenosha County** immediately upon the commencement of any litigation against **Provider** where there is any possibility **Kenosha County** may be made a party thereto.

6) **TERMINATION BY CONTRACTOR:**

Contractor may, at its option, terminate this Contract upon the failure of the County to pay any amount which may become due hereunder for a period of forty-five (45) days following submission of appropriate billing and supporting documentation. Upon said termination, Contractor shall be paid the compensation due for all services rendered through the date of termination including any retainage.

7) **BREACH BY CONTRACTOR:**

It is mutually agreed the breach of this Contract on Contractor's part will result in irreparable and continuing damage to the County for which money damages may not provide adequate relief. Therefore, the breach of this agreement on Contractor's part shall entitle the County to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

8) **TERMINATION FOR VIOLATIONS BY CONTRACTOR:**

If Contractor fails to fulfill its obligations under this Contract in a timely or proper manner, or violates any of its provisions, the County shall thereupon have the right to terminate it by giving **15 days written notice** of termination of contract, specifying the alleged violations, and effective date of termination. It shall not be terminated if, upon receipt of the notice, Contractor promptly cures the alleged violation prior to the end of the 15 day period. In the event of termination, the County will only be liable for the reasonable amount of value for services rendered through the date of termination and not for the uncompleted portion, or for any materials or services

purchased or paid for by Contractor for use in completing the Contract.

**9) UNRESTRICTED RIGHT OF TERMINATION:**

The County further reserves the right to terminate this Contract at any time for any reason by giving Contractor **30** days written notice by ordinary U.S mail, first class post paid, of such termination to the address of Contractor set forth in this agreement. In the event of said termination, Contractor shall reduce its activities hereunder as mutually agreed to, upon receipt of said notice. Upon said termination, Contractor shall be paid for all services rendered through the date of termination. This section also applies should the Kenosha County Board of Supervisor's fail to appropriate additional monies required for the completion of the Contract.

**10) INDEPENDENT CONTRACTOR:**

Nothing contained in this Contract shall constitute or be construed to create a partnership or joint venture between Kenosha County or its successors or assigns and Contractor or its successors or assigns. In entering into this Contract, and in acting in compliance herewith, Contractor is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder. Contractor attests that he or it in fact, regularly performs similar professional services for other customers.

The manner in which Contractor performs the services provided for hereunder including work hours, location, and other details of such services, shall be exclusively determined by the Contractor. The Contractor may consider the availability of the facility and the normal working hours of the County. The County shall have the right to control and direct the results of such services, however, in the performance thereof, Contractor is and shall remain independent (with the obligation solely on the Contractor's part to provide for and pay any contribution or taxes required by federal, state or local authorities imposed on or measured by income) providing consultation and work product on the matters made the subject thereof. The County understands the Contractor will engage in other business or trade for other persons or organization, at Contractor's discretion, during the time Contractor is rendering services for the County, providing such outside functions do not in any way restrict Contractor in performing the services provided for in this Contract.

Contractor further agrees that the County is not to be charged with the obligation or responsibility of extending any fringe benefits such as hospital, medical and life insurance, or pension plans, etc., which may be extended to employees of the County from time to time and further agrees to indemnify and hold harmless Kenosha County and all its employees, officers and agents from any liability for worker's compensation, unemployment compensation, income tax or social security or FICA contributions, or any or other simialr obligation, and from personal injuries, including death, or for damage to or loss of personal property, which might occur as a result of the performance of the services provided for under this Contract.

Contractor agrees that Contractor will not file any complaint, charge, or claim with any local, state or federal agency or court in which Contractor claims to be or to have been an employee of Kenosha County during the period of time covered by this Contract and that if any such agency or court assumes jurisdiction of any complaint, charge or claim against the County on Contractor's behalf, Contractor will request such agency or court to dismiss such matter without fees or costs or any other expense to Kenosha County.

**11) ASSIGNMENT LIMITATION:**

This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns; provided however, that neither party shall assign its obligations hereunder without the prior written consent of the other.

**12) PROHIBITED PRACTICES:**

Contractor during the period of this contract shall not hire, retain or utilize for compensation any member, officer, or employee of the County or any person who, to the knowledge of Contractor, has a conflict of interest. **Contractor shall obey all state, federal and local laws and regulations.**

**13) AUTHORIZATION:**

The validity, construction, enforcement and effect of this Contract shall be governed by the laws of the State of Wisconsin. All agreements and covenants contained herein are severable, and in the event any one of them shall be held invalid by any competent court or agency, this Contract shall be interpreted as if such invalid covenant was not contained herein.

**14) OWNERSHIP OF INFORMATION:**

All information, written, digital, photographic or otherwise, and any derivatives thereof, whether created by the County or Contractor, which are related to the services covered under this Contract remains completely the property of Kenosha County and no license or other rights to such information is granted to any other person or entity. For purposes of this Contract, "derivatives" shall mean: (i) for copyrightable or copyrighted material, any translation, abridgment, revision, or other form in which an existing work may be recast, transformed, or adapted; and (ii) for patentable or patented material, any improvement thereon.

**15) NON-DISCLOSURE AND NON-USE OF INFORMATION AND WORK PRODUCT DEVELOPED BY CONTRACTOR FOR KENOSHA COUNTY:**

Contractor will not disclose, publish, or disseminate any information it obtains from or develops for the County under this Contract. Contractor agrees to take all reasonable precautions to prevent any unauthorized use, disclosure, publication, or dissemination of information and work product obtained from or developed for the County under this Contract. Contractor agrees not to use, publish or disseminate information and work product for its own or any third party's benefit without the prior written approval of the County.

**16) RETURN OF DOCUMENTS:**

Within ten business days of receipt of the County's written or oral request, Contractor will return all documents, records, and copies thereof it obtained or created during the development of the work product covered by this Contract.

**17) PUBLIC RECORD LAW COMPLIANCE:**

It is the intention of Kenosha County to maintain an open and public process in the solicitation, submission, review, and approval of contracts.

- a) The Parties acknowledge that Kenosha County is a municipal corporation legally bound to comply with the Wisconsin Public Records Law and Open Meetings Law (see sections 19.32-19.39 & 19.81-19.98, Wis. Statutes) and that, unless otherwise clearly allowed by law to be an exception to the Public Record Law and confidential, all aspects of this agreement are subject to open disclosure and are a matter of public record. It is further agreed to that neither party will take any action to obstruct the operation of these laws. To comply with any request under said Public Record Law, the provider/contractor herein shall produce copies of all materials gathered or produced or modified pursuant to this contract to Kenosha County, in their original (i.e., electronic or digital, etc.) format at actual cost of reproduction, without profit. According to Wisconsin caselaw, even if records are created or maintained by, or in the custody of, the provider as an independent contractor, they, along with the raw data used to create the record, are nevertheless public records that must be made available to the public within a reasonable time and without delay upon request by any person, and in the format in which they were created. Provider/contractor agrees to hold Kenosha County, its agents, officials and employees harmless and to indemnify them and Kenosha County for all costs, fees, including all reasonable attorney fees and expense of all kinds, and any judgments, orders, injunctions, writs of mandamus, and damages or expense of whatever kind for which Kenosha County or its agents, officials or employees may expend or be held liable due to the Provider/contractor's failure to comply with the Wisconsin Public Records and Open Meetings laws, or with this agreement.
- b) Any Public Record Law request received directly by a contractor related to this contract with Kenosha County shall immediately be reported to the contract manager for the County.

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

\_\_\_\_\_  
 Company Name

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date

**County of Kenosha, by:**

\_\_\_\_\_  
 Authorized Signature

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Print Name

\_\_\_\_\_  
 Date

# ETHICS COMPLIANCE ADDENDUM

Addendum A

It is agreed and understood by all parties to this contract that:

1. In addition to ethical standards set forth in Wisconsin Statutes section 19.59 for all county employees and officials [either elected or appointed] Kenosha County has adopted an ethics policy that is applicable to county employees in conducting county business. That policy may be reviewed at:

[http://www.co.kenosha.wi.us/corpc/documents/05\\_CH\\_ET.pdf](http://www.co.kenosha.wi.us/corpc/documents/05_CH_ET.pdf)

It is further understood that all county employees and officials [either elected or appointed] are prohibited from engaging in any criminal conduct contrary to Wisconsin Statutes sections 946.12 involving misconduct in public office and 946.13 involving a private interest in a public contract.

2. This ethics policy is intended to ensure that public trust in Kenosha County government is maintained and that decisions affecting the county and its citizens are made fairly and impartially for the benefit of all citizens and not for personal gain. This policy precludes:

- the misuse or misappropriation of county property or funds for personal use or otherwise,
- use or disclosure of confidential information for personal gain or otherwise,
- elimination of conflicts of interests, receipt of gifts or favors or other considerations of value by county employees,
- the use of the employee's public position to influence or gain unlawful benefits or to influence or gain advantages or privileges for the employee,
- and the conducting of personal business or campaigning during working hours.

3. This policy, furthermore, requires employees to disclose and report to the proper authorities any violation of this policy or State Statute by either other employees or by any non-employee or citizen seeking to or aiding or abetting in efforts to circumvent this policy. Any employee failing to make such disclosure or report is subject to discipline. This contract also requires that any party contracting with Kenosha County also report any such violation to either the District Attorney or Corporation Counsel for Kenosha County.

4. By executing this contract, each party certifies that it knows of no conflicts of interest or appearance of a conflict or appearance of an impropriety on the part of any current or former county official or employee who may have had a role on deciding which proposal or bid will be accepted, and

5. By executing this contract, each party certifies that no attempt has been made by anyone on behalf of the party submitting a proposal or bid to directly or indirectly illegally influence the awarding of a contract by promise of or delivery of any consideration or any thing of value to a current or former County official or employee or family or household member of a current or former County official or employee, or in any other manner contrary to law, and

6. The parties acknowledge that Kenosha County is a municipal corporation legally bound to comply with the Wisconsin Open Meetings and Public Records laws and that as such, unless otherwise allowed for by law, all aspects of this agreement are subject to open discussion and disclosure are a matter of public record. It is furthermore agreed to that no party will take any action to obstruct the operation of these laws. If records are created or maintained or in the custody of the provider, as an independent contractor, they, along with the raw data used to create the record, are, nevertheless, public records. Within legal constraints related to confidentiality and privacy protection, such records must be made immediately available to the public upon request and in the format in which they were created. Provider agrees to hold the County harmless and to indemnify the County for all costs, fees, including all attorney fees and judgments and damages of



whatever kind for which the County may be held liable due to the provider's failure to comply with the Wisconsin Public Records and Open Meetings laws.

7. That any subsequent finding of a violation of either the County's ethics policy or Wisconsin Statutes sections, 19.59, 946.12 and 946.13 by any party or any agent of any party acting either alone or acting in concert with a current or former Kenosha County official or employee may result, at the sole option of Kenosha County, in this agreement being declared null and void and / or may result in the party violating this policy being debarred from submitting proposals, bids or contracting with Kenosha County for a specified period of time in the future.

_____	<u>County of Kenosha, by:</u>
<b>Company Name</b>	
_____	_____
<b>Authorized Signature</b>	<b>Authorized Signature</b>
_____	_____
<b>Title</b>	<b>Title</b>
_____	_____
<b>Print Name</b>	<b>Print Name</b>
_____	_____
<b>Date</b>	<b>Date</b>