

PHYSICAL ADDRESS:

1656 SUTTER ROAD
McKINLEYVILLE, CA 95519

MAILING ADDRESS:

P.O. BOX 2037
McKINLEYVILLE, CA 95519



MAIN OFFICE:

PHONE: (707) 839-3251
FAX: (707) 839-8456

PARKS & RECREATION OFFICE:

PHONE: (707) 839-9003
FAX: (707) 839-5964

April 25, 2012

REQUEST FOR PROPOSALS, WASTEWATER TREATMENT SYSTEM UPGRADE PROJECT, MCKINLEYVILLE COMMUNITY SERVICES DISTRICT

To Whom It May Concern:

McKinleyville Community Services District (District) completed a 20 Year Wastewater Facilities Plan (Plan), in January 2012. The WFP identified a series of upgrades to the District's existing wastewater treatment plant including portions of the effluent disposal system. The District is now in the process of selecting a qualified consulting team to complete the planning and design process, and ultimately, provide engineering assistance through construction of the proposed improvements.

This Request for Proposals (RFP) consists of the following Parts:

- Part A – Proposal Format
- Part B – Scope of Work
- Part C – Selection Criteria
- Part D – MCSD Professional Service Agreement

A detailed description of the project background and the recommended alternative for improvements is provided in the District's WFP, which is available for download on the District's website: <http://mckinleyvillecsd.com/news/20-year-facility-plan>.

Please submit five (5) hard copies and one (1) PDF (on CD and word searchable) version of the proposal no later than 5:00 PM, Wednesday June 13, 2012. Proposals received after this date and time will be considered non-responsive. Proposals should be addressed to:

McKinleyville Community Services District
Attn: Norman Shopay, General Manager
1656 Sutter Road
McKinleyville, CA 95519

All questions related to this RFP shall be directed, **via email**, to:

Mr. Greg Orsini
Operations Director
McKinleyville CSD
operations@mckinleyvillecsd.com

Prospective consultants are invited to an optional pre-proposal meeting. The meeting will be held at the District's office at 10:00 AM Monday May 21, 2012. Any firm interested in an individual tour should contact Greg Orsini, Operations Director, at 707-839-3251. These tours will be a maximum of one hour long.

Proposal Schedule

The following are goals for the process:

- RFP Release: April 26, 2012
- Pre Proposal Meeting: May 21, 2012
- Questions Due: May 23, 2012
- Response Issued: May 28, 2012
- Proposals Due Date and Time: June 13, 2012, 5:00PM
- Consultant Interviews: July 11 and 12, 2012
- Anticipated Contract Award August 1, 2012

Project Background

In February 2012, the District completed a 20-year wastewater facilities plan (Plan). The Plan identified a program of improvements necessary to accommodate future regulatory requirements, and planned growth within the District's service area through the year 2030. The plan identified three areas of the wastewater infrastructure that require upgrades as follows:

- Collection
- Pretreatment
- Secondary Treatment
- Disposal

The purpose of this RFP is to solicit proposals from qualified consultants for purposes of completing recommended upgrades to the District's treatment system.

Construction inspection and observation, improvements to the District's collection and disposal systems will be engineered under separate contracts.

The Plan includes an evaluation of treatment alternatives, and recommendations. This document also provides the basis for planning, which includes treatment plant flow and loading projections through the year 2030. In addition, the Plan includes a copy of the District's latest NPDES permit, which was approved in April 2011. Prospective

consultants are expected to carefully review the Plan, Permit, and other relevant documents in the course of preparing their proposals.

Part A

Proposal Format

This part of the RFP describes the format and content of each section of the proposal.

Section A.1 Introductory Letter – The proposer may use this section to introduce the proposal and/or to summarize the key provisions of the proposal. The introductory letter shall include, but need not be limited to, the following information: The name of the firm, as well as, the signature, printed name and title, telephone, and email of the officer authorized to represent the firm in any correspondence, negotiations and sign any contract that may result. The address and office that will be providing the service, a project manager's name, telephone, and email address. The federal tax ID numbers, and state of incorporation, if applicable, must also be included. A statement shall be included that "the firm accepts all the terms and conditions contained in the Request for Proposal and the proposal is valid for one hundred and twenty (120 days after submission deadline". A statement shall be included that "the firm accepts all the terms and conditions contained in the sample District Professional Services Agreement provided with the RFP". (Maximum of 2 pages)

Section A.2 Approach – Provide a detailed description of the project and technical approach for completing the scope of work (Part B), and any suggested revisions. Include a list of any unique ideas, innovative approaches and key issues relating to the project. Include any issues that your firm believes will require special consideration. The District will assess the Consultant's understanding of all aspects of the project based on the proposed approach. (No page limit)

Section A.3 Project Organization – List contact information for the lead firm and all sub-consultants (if any) to be engaged for the project; organization chart; brief description of responsibilities and qualifications for key personnel that emphasize experience directly relevant to the project. Key personnel include the project manager, project engineer, process engineer, planner, construction manager, and QA/QC team. Qualifications of the principal in charge will not be considered. (Maximum of 6 pages)

Section A.4 Schedule – Provide a work schedule for the tasks described in the scope of work (Part B); Gant chart showing precedent tasks, including all deliverables, permits and District review time. Consultant shall assume a minimum of three (3) weeks for all District review periods. (No page limit)

Section A.5 Personnel Effort – Provide an estimate of the required personnel hours by task and job title, as required to execute the scope of work. Include a breakdown of hours for each task and each employee and subconsultant who will work on the project. A time-task matrix would be beneficial. In addition, provide a detailed fee estimate, including hourly rates for each person assigned to the project and time estimate for each and estimate of billable expenses, in a separate sealed envelope. Group the effort and expenses into basic services, and additional-optional services.

Estimated personnel effort and expenses for construction-phase services will be negotiated separately, after the final contract documents are complete.

The services described in the scope of work shall be compensated on a time-and-expense basis with separate not-to-exceed budgets for basic and additional-optional services.

Monthly invoices shall be in sufficient detail to track individual labor and expenses and includes a detailed description of the work performed by each individual for each task. An example invoice shall be provided. (No page limit)

Section A.6 Management Control Program – Describe the project management approach; cost control system used to track expenses and labor; method for project status reporting; and schedule control system. Describe the project review and QA/QC program. (Maximum of 4 pages)

Section A.7 Experience and References – Provide brief descriptions of up to four projects completed over the last ten years, performed by the individuals listed in Section A.2. Projects must be similar in scope to the District's project. Consultant experience that does not include the individuals listed in Section A.2 will not be considered. Provide references for each of the listed projects. (Maximum of 1 page per project)

Section A.8 Resumes – Provide a resume for all key personnel listed in Section A.2. Resumes should not exceed 2 pages per individual.

Section A.9 Insurance – Provide a summary of the firm's (and sub-consultant's insurance coverage. Minimum limits and types of insurance (Maximum of 1 page).

Part B

Scope of Work

Provide a detailed description of the Consultant's proposed scope of work. List the basic services to be performed by the Consultant and assumptions regarding what will be provided by the District. The Consultant is expected to supplement these task descriptions as they deem necessary to complete each phase of the project. For purposes of this proposal, the District's project consists of the following improvements:

- New pretreatment process
- New secondary treatment process

Descriptions of the recommended improvements are generally described in Part 3 (Section 7), and Part 4 (Section 9) of the District's Wastewater Facilities Plan.

Additional tasks or modifications to the task list that the consultant feels will produce a more cost effective or timely project should be included in the proposal.

All deliverables are expected to include four (4) bound hard copies, and electronic PDF copies of each document included with the deliverable. All drawings shall be submitted in half-size (11" x 17"). In addition, two full-size (22" x 34), unbound copy of the drawings, and one unbound, single-sided, copy of the specifications shall be submitted with the final contract documents. AutoCAD files for all drawings shall be included with each submittal.

Engineer's estimates of probable construction costs shall incorporate gradually decreasing contingency factors at each progress submittal.

The minimum scope of work for basic engineering services is expected to include the following tasks, at this time:

Task B.1 Project Management – Includes project staffing, project administration, management, of overall project organization and refinements in program administrative planning, QA/QC process, progress reporting, correspondence and monthly invoicing. Consultant shall assume weekly conference calls to update District on work performed, effort planned for the following week, and all issues that may affect scheduled delivery dates and costs. Management effort is expected to include a quarterly project meeting at the District office and a meeting at the conclusion of each District review period. Establish and maintain a web-based project management and communications system to include such things as: project updates and executive status reports; notices; project information exchange; and scheduling; correspondence inventory and retrieval system. Provide advice on Federal and State laws, regulations, and guidelines and assist with communication with regulatory agencies. All invoices shall include a one-page status report that identifies work accomplished during the invoiced period, and work planned for the upcoming invoice period and a recap of fund expended/ funds remaining for project.

Task B.2 Review of Background Documents – Collect and review background documents including but not limited to the final facilities plan, monthly and annual Self Monitoring Reports, correspondence with the Regional Water Quality Control Board and other permitting funding agencies.

Task B.3 CEQA and Permit Assistance – During consideration of the task descriptions the Consultant shall recommend necessary regulatory compliance requirements. Accordingly, Consultant shall recommend level of California Environmental Quality Act (CEQA) documentation required and necessary environmental permits needed along with corresponding timelines. Once the level of environmental documentation has been determined by the Consultant and District staff, Consultant shall prepare necessary CEQA compliance documentation. Consultant shall assume that a mitigated negative declaration will be required for purposes of estimating the proposed level of effort for basic services.

In addition, Consultant shall provide environmental permit assistance. At a minimum, this effort is expected to include: initial environmental studies (wetland delineations, Environmentally Sensitive Habitat identifications), Army Corps of Engineers 404 compliance, and Regional Water Quality Board, and California Coastal Commission requirements. Consultant shall prepare a list of necessary permits required for construction.

Consultant shall fill out necessary permit applications and coordinate regulatory compliance with designated staff from the District. If environmental studies are needed to complete permit applications, they shall also be included under this task.

District will contract separately with Remy Moose Manley, LLP for review of draft CEQA and permit documents prepared by the Consultant. Consultant is expected to incorporate review comments into the final documents, and make a presentation to the District's Board of Directors.

Task B.4 Background Map Preparation – Prepare a topographic survey and map of the treatment plant site (Figure 1). Include 1-foot contour lines, all existing property boundaries adjacent to affected parcels, buried utilities, easements and rights of way that are adjacent to or intersecting the site. Level of detail indicated on the background map shall be sufficient to complete the detailed design. Provide horizontal and vertical control points for use during construction. Horizontal and vertical accuracy of buried utilities shall be sufficient to facilitate detailed design.

Figure 1 - McKinleyville CSD WWTP Project Site



Pothole existing buried utilities at all anticipated connections and crossings. Provide a pothole schedule that lists the utility and/or service, surveyed elevation, location, and material. Show all pothole locations on the background map. Consultant shall assume twenty (20) pothole locations for purposes of estimating the level of effort. Potholing effort is expected to occur after the Basis of Design is completed.

Perform survey of each pond to quantify pond depth, volumes and densities of existing wastewater sludge.

Include an additional optional task to provide a geo-referenced color orthorectified aerial photo of the project site.

Task B.5 Geotechnical report preparation – Describe sub-surface exploration program, dewatering requirements, settlement criteria, soil loading criteria, pond liner and leachate collection requirements compliant with Title 27 CCR, shoring requirements, considerations to prevent buoyant uplift, seismic-design information, and all other geotechnical considerations necessary to complete design and construction.

Task B.6 Preliminary Design – Prepare a Basis of Design Report (BODR) that will be used as the basis for CEQA and permit documents. At a minimum, the BODR shall provide a detailed description of the following:

- All unit processes, including a process flow diagram, process and instrumentation diagram, communication block diagram, tankage requirements, design flow and loading rates, hydraulic profile, equipment list, electrical single-line diagram, and solids balance.

- Site layout, superimposed on the background map, that shows the size and location of all tankage, buildings and impoundments in relation to existing property boundaries. Identify all proposed easements and other property acquisitions necessary to construct the project. Preliminary piping layout shall be shown in sufficient detail to identify appropriate pothole locations.
- Proposed architectural treatment for new building structures. Landscaping is not anticipated for this project.
- Estimated construction schedule and sequencing plan.
- Engineer's estimate of probable construction costs. Accuracy of cost estimate shall conform to AACE's Recommended Practice 17R-97, Class 3.
- Engineer's estimate of anticipated operations costs. Operational costs shall include, at a minimum, chemicals, electricity, fuel, and sludge disposal. Include staffing requirements in terms of full-time equivalents, based on EPA guidelines.

In addition to preparation of a BODR, Consultant is expected to participate in one (1) value engineering (VE) workshop at the District's office. The workshop is expected to last two full days, and will occur one calendar month after submittal of the draft BODR. Consultant shall submit a final BODR that addresses District and VE team comments. District's VE consultant will lead the VE workshop. The District will contract for these services separately from this contract.

District staff will submit the draft BODR to Regional Water Quality Control Board (Region 1). Consultant shall plan for a 60-day RWQCB review period.

Consultant shall make a presentation to the District's Board of Directors after the final BODR is submitted.

Task B.7 Contract Documents

Task B.7.1 - 50% submittal

Drawings shall include all of the drawings previously included with the Basis of Design Report. In addition, the drawings shall include the following:

- Civil site plan showing the facility layout, all surface improvements, site drainage;
- Civil yard piping plan showing all anticipated process piping;
- Architectural floor plans showing the proposed layout of rooms and spaces, building elevations showing proposed finishes and materials, and code requirements;
- Mechanical plans showing the proposed tankage, equipment layout and interconnecting piping;
- Electrical plans showing the proposed electrical equipment layout; and
- Estimated construction schedule and sequencing plan.

In addition, the 50% submittal shall include:

- Written responses to all District and RWQCB review comments;
- Updated copy of Engineer's estimate of probable construction costs. Accuracy of cost estimate shall conform to AACE's Recommended Practice 17R-97, Class 3;
- Updated equipment list that includes catalog-cut sheets for all equipment valued at \$10,000 or greater;
- List of specifications anticipated for the final design;
- Draft specifications for work valued over \$100,000; and
- Updated construction schedule and sequencing plan.

The District may conduct a second VE effort, similar in scope to the preliminary design review, after the 50% submittal. Consultant shall include the effort to participate in this task as an additional optional service.

Task B.7.2 - 90% submittal

Draft versions of all drawings and specifications shall be provided with the 90% submittal. Quality and completeness of 90% documents shall be ready for Engineers' seals. District's 50% review comments shall be incorporated into the 90% submittal.

In addition, the 90% submittal shall include:

- Pro forma copy of District's bid forms, construction agreement, and conditions of the construction contract. District will provide instructions to Consultant for purposes of establishing damage clauses, licensing and certification, bonding and insurance requirements;
- Updated copy of Engineer's estimate of probable construction costs. Accuracy of cost estimate shall conform to AACE's Recommended Practice 17R-97, Level 3; and
- Updated construction schedule and sequencing plan.

The District may conduct a second VE effort, similar in scope to the preliminary design review, after the 90% submittal. Consultant shall include the effort to participate in this task as an additional optional service.

Consultant shall make a presentation to the District's Board of Directors after the 90% documents are submitted.

Task B.7.3 – Final Bid Documents

Incorporate District review comments to the 90% submittal, and submit sealed final bid documents.

Submit updated copy of engineer's estimate of probable construction costs. Accuracy of cost estimate shall conform to AACE's Recommended Practice 17R-97, Class 2.

Task B.8 Bid Phase Assistance

The following effort describes the anticipated support services necessary to advertise and bid the project. Basic engineering services are anticipated to include the following:

- Provide written responses to Bidders' requests for information;
- Facilitate pre-bid meeting and job walk;
- Preparation of up to three (3) addendum;
- Support for review of Contractors' bids; and
- Preparation of conformed contract documents. Conformed documents shall include all contract changes that occurred through the addendum process.

District staff will be responsible for all bid advertisement activities, including issuance of addenda and reproduction and distribution of bid documents.

Task B.9 Construction Phase Assistance

The following effort describes the Consultant's additional optional services that will be provided during construction:

- Construction management for the duration of the construction contract;
- Inspections, materials testing, and construction observation;
- Mitigation monitoring as described in the approved CEQA document;
- Submittal reviews;
- Responses to Contractor's requests for information;
- Assist District with negotiating and preparation of contract change orders;
- Preparation work-order directives;
- Administration of construction progress meetings;
- Review and approve Contractor's progress payment requests and certified payroll documents;
- Training of District staff. Training shall consist of explaining the design intent, operational controls and monitoring, and coordination with existing facilities;
- Testing and startup assistance. The Consultant shall assist the Contractor and District in the testing of each system and subsystem. The purpose of this assistance is to ensure that the installed system meets the design intent;
- Responses to Contractor's Requests for Information (RFIs); and
- Preparation of record drawings that incorporate Contractor's as-built data and information.

Consultant shall describe their approach for providing these additional optional services. The level of effort and fee budget for this task will be negotiated separately after final contract documents are accepted by the District.

Task B.10 Post-Construction Services

- Preparation of Project Performance Certification Report as required by the State Revolving Fund and the Regional Water Quality Control Board (and/or other relevant funding agency). Describe Consultant's technical approach and provide level of effort and fee estimate for this additional optional service.

- Preparation of an Operations and Maintenance (O&M)/ Standard Operating Procedures (SOP) Manual that conforms with EPA published guidelines. Describe Consultant's technical approach and provide level of effort and fee estimate for this basic engineering service.
- Assist District with updating their asset register. District currently uses SEMS asset management software. Describe Consultant's technical approach for this additional optional service. The fee for this optional service will be negotiated separately.

Task B.11 – District-Provided Services

The following services will be provided by the District in support of the planning, permitting and engineering efforts:

- Legal review of the CEQA and permitting documents;
- Value engineering;
- Public outreach;
- Funding assistance;
- Constructability reviews; and
- Bid advertisement, reproduction and administration of the bidding process.

Part C

Selection Criteria

A technical review panel composed of District staff and/or others will evaluate and rate each proposal based on the following items:

- Introductory Letter (Pass/Fail)
- Approach and Project Organization (50 points)
- Schedule (10 points)
- Personnel Effort for basic engineering services (15 points)
- Management Control Program (10 points)
- Consultant Experience and References (40 points)
- Insurance (Pass/Fail)
- Location of project office and project manager within 300 miles of project site (5 points)
- Interview/Oral Presentation (20 points)

Estimates for additional optional services will be used as a basis for negotiating a fee budget with the selected consultant, if the District elects to obtain these services. These estimates will not be used as a basis for Consultant selection. However, a final recommendation will be made by the selection panel upon completing a review of all responsive proposals. Cost is a factor in a firm's selection, but will not be used until each member of the review committee has completed their rating. The General Manager will negotiate the final scope and cost of services with the selected Consultant. If the District and selected Consultant are unable to agree on final terms and conditions, the District reserves the right to select the next highest rated Consultant.

The District expects to hold interviews with a short list of Consultants prior to final selection. District will attempt to negotiate with the recommended consultant team. However, the District reserves the right to waive all proposals. Consultant selection, scope and cost will be presented to the Board of Directors for final approval.

Part D

MCSD Professional Service Agreement

**McKinleyville Community Services District
PO Box 2037, McKinleyville California 95519
Telephone (707) 839-3251 - FAX (707) 839-8456**

Professional Services Agreement

This Professional Services Agreement (this "Agreement") is made and entered between the parties listed below as of the date(s) set forth below. For your protection, make sure that you read and understand all provisions before signing. The terms recited as sections a through t on Pages 2 & 3 are incorporated in this document and, along with this page, constitute material terms and conditions of the Agreement between the parties.

To: _____ Date: _____

Agreement No. _____

The undersigned Consultant offers to furnish the following services (the "Services"):

As described in the proposal submitted by Consultant dated DATE HERE, which is attached hereto as **Exhibit A** and incorporated herein by reference. The Services shall be provided on a time and materials basis not to exceed the amounts described in **Exhibit B**, which is attached hereto and incorporated herein by reference. The scope of work for this project includes the following:

Contract price

Completion date _____

Payment Intervals: Monthly

Instructions: Sign and return original. Upon acceptance by McKinleyville Community Services District, a copy will be signed by its authorized representative and promptly returned to you. Insert below, the names of your authorized representative(s).

Accepted: McKinleyville CSD

Consultant:

(Business Name)

By _____

By _____

Title _____

Title _____

Other authorized representative(s):

Other authorized representative(s):

Consultant agrees with McKinleyville Community Services District that:

- a. **Indemnification.** To the fullest extent permitted by law and consistent with California Civil Code §2782.8(a), Consultant will defend, indemnify and hold harmless McKinleyville Community Services District, its directors, officers, employees, and authorized volunteers (collectively "District") from and against all claims, demands and damages of all persons and entities that arise out of, pertain to, or relate to the Consultant's negligent acts or omissions, recklessness, or willful misconduct in the performance (or non-performance) of the Services under this Agreement. Consultant shall not be obligated to defend or indemnify the District from and against all claims, demands and damages that arise out of, pertain to, or relate to the District's own negligent acts or omissions, recklessness, or willful misconduct or the negligent acts or omissions, recklessness, or willful misconduct of others.
- b. **Standard of Care.** In providing the Services under this Agreement, Consultant shall exercise that degree of skill and care ordinarily used by other reputable members of Consultant's profession, practicing in the same or similar locality and under similar circumstances.
- c. **Workers Compensation Insurance.** By his/her signature hereunder, Consultant certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Consultant will comply with such provisions before commencing the performance of the professional services and work under this Agreement. Consultant and sub-consultants will keep workers' compensation insurance for their employees in effect during all Services covered by this Agreement.
- d. **Professional Liability Insurance.** Consultant will file with McKinleyville Community Services District, before beginning professional services, a certificate of insurance satisfactory to the McKinleyville Community Services District evidencing professional liability coverage of not less than \$1,000,000 per claim and annual aggregate, requiring 30 days notice of cancellation (10 days for non-payment of premium) to McKinleyville Community Services District. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by McKinleyville Community Services District. The retroactive date (if any) is to be no later than the effective date of this Agreement. Consultant shall maintain such coverage continuously for a period of at least three years after the completion of the contract Services. Consultant shall purchase a one-year extended reporting period i) if the retroactive date is advanced past the effective date of this Agreement; ii) if the policy is canceled or not renewed; or iii) if the policy is replaced by another claims-made policy with a retroactive date subsequent to the effective date of this Agreement. In the event that the Consultant employs other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above prior to the commencement of any Services by the sub-consultant.
- e. **Insurance Certificates.** Consultant will file with McKinleyville Community Services District, before beginning professional services, certificates of insurance satisfactory to McKinleyville Community Services District evidencing general liability coverage of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least

**REQUEST FOR PROPOSALS, WASTEWATER TREATMENT SYSTEM AND UPGRADE
PROJECT, MCKINLEYVILLE COMMUNITY SERVICES DISTRICT**

April 26, 2012

Page 18 of 21

\$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring 30 days (10 days for non-payment of premium) notice of cancellation to McKinleyville Community Services District. The general liability coverage is to state or be endorsed to state "such insurance shall be primary and any insurance, self-insurance or other coverage maintained by McKinleyville Community Services District, its directors, officers, employees, or authorized volunteers shall not contribute to it". The general liability coverage shall give McKinleyville Community Services District, its directors, officers, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by McKinleyville Community Services District. In the event that the Consultant employs other consultants (sub-consultants) as part of the Services covered by this Agreement, it shall be the Consultant's responsibility to require and confirm that each sub-consultant meets the minimum insurance requirements specified above.

f. **Renewal Certificates.** If any of the required coverages expire during the term of this Agreement, the Consultant shall deliver the renewal certificate(s) including the general liability additional insured endorsement to McKinleyville Community Services District at least ten (10) days prior to the expiration date.

g. **General Manager Authority.** Consultant shall not accept direction or orders from any person other than the General Manager or the person(s) whose name(s) is (are) inserted on Page 1 as "other authorized representative(s)" on behalf of McKinleyville Community Services District.

h. **Payment Intervals.** Payment, unless otherwise specified on Page 1, is to be 30 days after acceptance of a written invoice by McKinleyville Community Services District.

i. **Permits and Licenses.** Permits and licenses required by governmental authorities in connection with Consultant's services will be obtained at Consultant's sole cost and expense, and Consultant will comply with applicable local, state, and federal regulations and statutes including Cal/OSHA requirements.

j. **Amendments and Modifications.** Any change in the scope of the professional Services to be done, method of performance, nature of materials, work provided or price thereof, or to any other matter materially affecting the performance or nature of the Services will not be paid for or accepted unless such change, addition or deletion is approved in advance, in writing by a supplemental Agreement executed by McKinleyville Community Services District. Consultant's "authorized representative(s)" has (have) the authority to execute such written change for Consultant.

k. **Warranties.** Consultant represents and warrants that it is now, and will remain for the duration of its Services, properly licensed, qualified, experienced, and equipped to perform the Services. Consultant also represents and warrants that the Services shall be completed in strict accordance with this Agreement. Consultant further represents and warrants that the Services and the sale or use of the Services shall not infringe, directly or indirectly, on any valid patent, copyright or trademark, and Consultant shall, at Consultant's sole cost and expense, indemnify, defend and hold harmless McKinleyville Community Services District from and against any and

**REQUEST FOR PROPOSALS, WASTEWATER TREATMENT SYSTEM AND UPGRADE
PROJECT, MCKINLEYVILLE COMMUNITY SERVICES DISTRICT**

April 26, 2012

Page 19 of 21

all claims and causes of action based on alleged or actual infringements thereof. These warranties shall survive the expiration or termination of this Agreement, and are in addition to any warranties provided by law. No payment to Consultant for any Services performed hereunder (including, without limitation, final payment) shall constitute a waiver of any Claims by McKinleyville Community Services District against Consultant relating to the Services.

l. **Ownership of Drawings and Samples.** Consultant shall submit promptly for all drawings, details, samples and other data required or specifically requested by McKinleyville Community Services District in connection with provision of the Services, and such drawings, details, samples and other data created in connection with performance of the Services and provision of the work shall constitute the property of the McKinleyville Community Services District.

m. **Compliance with Law/Safety.** In performance of the Services, Consultant shall, at its expense, exercise due professional care, comply strictly with, and cause all sub-consultants to comply strictly with, all laws, orders, rules and regulations of governmental authorities, including those relating to the storage, use or disposal of hazardous wastes, substances or materials, and including the procurement and payment for all necessary permits, certificates and licenses required in connection with the Services. If either Consultant or McKinleyville Community Services District receives notice of any violation by Consultant of any laws relating to Consultant or McKinleyville Community Services District receives notice of any violation by Consultant of any laws relating to Consultant's (or sub-consultants) services or work provided hereunder, such party shall promptly inform the other party in writing of the existence thereof. Consultant shall comply with all applicable laws relating to safety, including without limitation the Occupational Safety and Health Act of 1970 as it may be amended from time to time, and all regulations and standards issued pursuant thereto. Consultant shall conform to the current prevailing standards of safety practice and shall observe and comply with all policies, procedures, rules and regulations of McKinleyville Community Services District.

n. **Equal Opportunity.** In the performance of the Services there shall be no discrimination on account of race, religion, sex, sexual orientation, age or national origin and Consultant shall comply with applicable federal, state and local laws and regulations pertaining to fair employment practices, including without limitation the provisions of Executive Order 11246 as amended by the President of the United States and the rules and regulations issued pursuant thereto, unless exempted.

o. **Termination.** McKinleyville Community Services District may, at its option, terminate this Agreement without cause at any time. If at the time of any such termination, any Services have already been provided by Consultant but are unpaid for, McKinleyville Community Services District's only obligation, if Consultant is not in default, shall be to pay for such Services actually provided by Consultant prior to the date of termination. Upon receipt of notice of termination, Consultant shall immediately stop all performance hereunder except as otherwise directed by McKinleyville Community Services District, and if Consultant is not in default, McKinleyville Community Services District shall pay to Consultant (a) the prorata portion of the agreed price based on the percentage completion of the Services which was satisfactorily completed at the time of termination, and (b) the actual net costs incurred by Consultant directly connected with the Services that was not completed prior to the date of termination; provided, however, that under no circumstances shall the total under (a) and (b) exceed the contract price

**REQUEST FOR PROPOSALS, WASTEWATER TREATMENT SYSTEM AND UPGRADE
PROJECT, MCKINLEYVILLE COMMUNITY SERVICES DISTRICT**

April 26, 2012

Page 20 of 21

stated on page one (1) of this Agreement, above. Upon such payment, title to any such items or uncompleted Services shall, at McKinleyville Community Services District's option, pass to McKinleyville Community Services District.

p. **Default.** Upon any default by Consultant hereunder, or in the event of proceedings by or against Consultant in bankruptcy or for the appointment of a receiver or trustee or an assignment for the benefit of creditors, McKinleyville Community Services District may, at its option, terminate this Agreement without penalty or liability (except for payment for any Services completed and accepted by McKinleyville Community Services District). Consultant shall be liable to McKinleyville Community Services District for all expenses incurred by McKinleyville Community Services District in finishing the Services and any damage incurred through any default, which at the option of McKinleyville Community Services District, may be charged against any amounts due from McKinleyville Community Services District to Consultant hereunder, but Consultant's liability hereunder shall not be limited thereby and such liability shall survive the expiration or termination of this Agreement. Any remedies provided for in this Agreement are cumulative and shall be in addition to, and not in limitation of, any other rights and remedies that may be available at law or in equity. Neither party shall be in default of this Agreement until such party has received three (3) days written notification (except in the instance of a health or safety concern, in which case failure to immediately remediate the health or safety violation shall be grounds to declare a default of this Agreement), and an opportunity to cure, or in the case of an alleged default which requires more than three (3) days to cure, a reasonable time so long as the alleged defaulting party commences the remediation of the default immediately, and thereafter diligently prosecutes the same to completion.

q. **Notices.** Notices, requests, demands, and other communications hereunder shall be in writing and delivered personally, sent by reputable overnight courier or mailed by first class, United States mail, with postage prepaid, to McKinleyville Community Services District, **PO Box 2037, McKinleyville California 95519, Attention: Norman Shopay**, and to Consultant at the address set forth below its signature, or at any other address that may be given by either party to the other in the manner provided above. Notices delivered personally or sent by overnight courier shall be deemed delivered upon receipt. Notices delivered by mail shall be deemed delivered upon the earlier of (i) receipt or (ii) the date three (3) U.S. mail delivery days after the notice was placed in the United States mail as provided above.

r. **Headings.** All section headings are provided for convenience only, and shall not be deemed to constitute material terms and conditions of this Agreement.

s. **Interpretation.** Both Consultant and McKinleyville Community Services District are deemed to have jointly participated in the negotiation and preparation of this Agreement. Consequently, both Consultant and McKinleyville Community Services District are considered to have drafted this Agreement in equal parts and, if any ambiguity is found to exist, all rules of law and evidence requiring ambiguities to be interpreted to the detriment of the drafting party shall not apply.

t. **Attorneys Fees and Venue for Disputes.** If litigation becomes necessary to enforce the terms and provisions of this Agreement or as a result of any breach by Consultant or District of this Agreement, the prevailing party in any such litigation shall be entitled to recover reasonable attorney's fees and costs. The Humboldt County Superior Court for the State of

***REQUEST FOR PROPOSALS, WASTEWATER TREATMENT SYSTEM AND UPGRADE
PROJECT, MCKINLEYVILLE COMMUNITY SERVICES DISTRICT***

April 26, 2012

Page 21 of 21

California shall have exclusive jurisdiction over any dispute arising out of this Agreement or Consultant's provision of Services hereunder, and shall serve as the venue for any such dispute. All parties expressly consent to this designation of jurisdiction and venue.