

Olivehurst Public Utility District

Agenda Item Staff Report



Meeting Date: August 15, 2019

Item description/summary:

Consider publishing an RFP for a water study to serve the South Yuba County.

Due to the rapid expansion and interest in the South Yuba County area, options for water service in the area must be considered. We have received rough cost estimates in the past but they range widely. This RFP would aim to give us a detailed cost estimate so that we can better understand our position moving forward.

Fiscal Analysis:

Yuba Water Agency approved funding for this study up to \$50,000.

Sample Motion/Staff Recommendation:

Community and agency outlook on the area as a whole are very positive. This is a necessary step in the process to bringing services to the area and I therefore recommend approving the publishing of this RFP.

Prepared by:

Christopher Oliver, Public Works Engineer

Olivehurst Public Utility District



Request for Proposals
For

Engineering Services: Water Study for South Yuba County

Date Issued 08/16/2019

Proposal Submission Deadline:

Tuesday, September 10th 2019 12:00 PM Pacific Time

Pre-proposal Conference

08/21/2019

1970 9th Avenue, Olivehurst, CA 95961

Proposal Submission Instructions:

1. Submit one (1) hard copy of complete proposal to:

US Mail, Fed Ex, UPS, etc. to:
Olivehurst Public Utility District
1970 9th Avenue, Olivehurst, CA
95961

or

Hand Deliver to:
Olivehurst Public Utility District
1970 9th Avenue, Olivehurst, CA 95961

AND

2. Submit one (1) copy of complete proposal in PDF format to: coliver@opud.org
Note: This email address is to be used only for proposal submission.

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1. SUMMARY

Olivehurst Public Utility District, hereby referred to as “OPUD” is requesting proposals from all interested providers of engineering services

The term “offeror” as used herein shall refer to providers submitting proposals in response to this Request for Proposals (RFP). The term “Firm” or “Provider” is also used to describe the successful offeror(s) in the context of providing services under a contract resulting from this RFP.

Each proposal received in response to this RFP will be evaluated on the criteria described herein. All proposals must be sealed, clearly marked “PROPOSAL – Engineering Services” and must include all elements described in the **PROPOSAL CONTENT AND FORMAT REQUIREMENTS** section of this RFP. One unbound, signed original proposal and one copy in PDF format must be submitted as directed on page 1 before the date and time listed in the **CONTRACT AWARD SCHEDULE** section of this RFP. OPUD will not be responsible for proposals delivered to a person or location other than that specified herein, and reliance on the postal service will not excuse late proposals.

Questions or requests for clarification of this Request for Proposals must be submitted in writing no later than the date and time listed in the **CONTRACT AWARD SCHEDULE** section of this RFP. Responses to questions will be published in an addendum after the question submittal deadline has passed. OPUD reserves the right to decline to respond to any questions.

Any amendment or addendum to this RFP is valid only if issued in writing by OPUD.

2. CONTRACT AWARD SCHEDULE

Publish RFP	08/16/2019
Pre-proposal Conference	08/21/2019
Deadline for Questions	09/02/2019, 2 PM
Proposal Submission Deadline	09/10/2019, 12 PM
Contract Approval (tentative)	09/19/2019
Services to Begin (tentative)	09/20/2019

3. GENERAL CONDITIONS

- 3.1. **Prime Responsibility:** The selected Firm(s) will be required to assume full responsibility for all services and activities offered in its/their proposal(s), whether or not provided directly. Further, OPUD will consider the selected Firm(s) to be the sole point of contact with regard to contractual matters, including payment of any and all charges resulting from the contract.
- 3.2. **Assurance:** Any contract awarded under this RFP must be carried out in full compliance with Title VI and VII of the Civil Rights Act of 1964 as amended, and Section 504 of the Rehabilitation Act of 1973 as amended. The Provider must guarantee that services provided will be performed in compliance with all applicable county, state and federal laws and regulations pertinent to this project. Prior to executing an agreement the Provider will be required to provide evidence substantiating the necessary skill to perform the duties through the submission of references.

- 3.3. If this contract involves protected health information and the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-199 (HIPAA) applies: Any contract awarded under this RFP must comply with the requirement of 42 U.S.C. §§ 1171 et seq., Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its subsequent amendments, related to Protected Health Information (PHI), in performing any task or activity related to this Agreement.
- 3.4. Independent Firm: In performance of the work, duties and obligations assumed by the offeror, it is mutually understood and agreed that the offeror, including any and all of the offeror's officers, agents and employees, will at all times be acting and performing in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner or associate of OPUD.
- 3.5. Vendors may submit alternate proposals. Alternate proposals shall be clearly marked as such.
- 3.6. OPUD prohibits discrimination in employment or in the provision of services because of race, color, religion, religious creed, sex, age, marital status, ancestry, national origin, political affiliation, physical disability or medical condition. This clause does not require the hiring of unqualified persons.
- 3.7. OPUD reserves the right to reject any and all proposals, to negotiate specific terms, conditions, compensation, and provisions on any contracts that may arise from this solicitation; to waive any informalities or irregularities in the proposals; and to accept the proposal(s) that appear(s) to be in the best interest of District. In determining and evaluating the proposals, costs will not necessarily be controlling; the experience of those who will be providing services under the contract, quality, equality, efficiency, utility, suitability of the services offered, and the reputation of applicants will be considered, along with other relevant factors.
- 3.8. OPUD reserves the right to:
 - Request clarification of any submitted information;
 - Not enter into any agreement;
 - Not to select any applicant;
 - Amend or cancel this process at any time;
 - Interview applicants prior to award and request additional information during the interview;
 - Negotiate a multi-year contract or a contract with an option to extend the duration;
 - Award more than one contract if it is in the best interest of OPUD; and/or
 - Issue similar RFPs in the future.
- 3.9. Qualified vendors must be prepared to enter into OPUD's standard Contract, a sample of which is attached as Attachment A to this RFP. Please review the details of Attachment A carefully. By reference, it incorporates many standards, terms and conditions required as part of this RFP. OPUD intends to award contracts substantially in the form of the sample agreement to the selected vendor(s). Portions of this RFP and the vendor's proposal may be made part of any resultant contract and incorporated in the Contract.
- 3.10. Prior to commencement of services, the Firm must provide evidence of the following insurance coverages: Worker's Compensation, Commercial General Liability (naming OPUD as additional insured), Comprehensive Business or Commercial Automobile Liability for Owned Automobiles and Non-owned /Hired Automobiles, and may also be required to provide Errors and Omissions insurance, Professional Liability or Malpractice Insurance depending on the nature and risks associated with the services provided. The Firm will be required to maintain the required coverages, at its sole cost and expense, throughout the entire term and any subsequent renewal terms of the contract.
- 3.11. OPUD encourages its Firms and subFirms to use the US. Citizenship and Immigration Services E-Verify system to verify that employees are eligible to work in the United States. Information about the E-Verify system is available at www.dhs.gov/e-verify.
- 3.12. Proprietary Information: Trade secrets or similar proprietary data that the prospective Firm does not wish disclosed to other than personnel involved in the proposal evaluation effort or post-award contract administration will be kept confidential to the extent permitted by law as follows.

Each page alleged to contain proprietary information shall be identified by the prospective Firm in boldface text at the top and bottom as "PROPRIETARY." Any section of the proposal that is requested to remain confidential shall also be so marked in boldface text on the title page of that section. Despite what is labeled as confidential, proprietary, or trade secret, the determination as to whether or not certain material is confidential, proprietary or trade secret shall be determined in accordance with applicable law. If a prospective Firm designates any information in its proposal as proprietary pursuant to this provision, the prospective Firm must also submit one copy of the proposal from which the proprietary information has been excised. The proprietary material shall be excised in such a way as to allow the public to determine the general nature of the material removed and to retain as much of the content of the proposal as possible.

4. BACKGROUND

4.1. Background

- 4.1.1. Due to recent business operations in southern Yuba County, the demand of utility infrastructure has increased dramatically.
- 4.1.2. As the provider of water and wastewater services, OPUD wishes to explore various possible ways to serve the expanding community.
- 4.1.3. This RFP will focus on the water side of operations.

5. DESCRIPTION OF SERVICES REQUIRED

5.1. Scope of Services

- 5.1.1. The District has budgeted \$50,000 to cover the cost of services requested in this RFP. If projected costs are higher, please provide a detailed explanation.
- 5.1.2. All options considered in the study will need to be reported to OPUD along with the firm's recommendation.
- 5.1.3. Services are only required for the length of the study, unless it is made clear that the applying Firm has the ability to design the distribution system identified in the study. In that case, OPUD may elect to use the same Firm for design.

5.2. Detailed Description(s) of Services Required

- 5.2.1. Proposal **MUST** include the following:
 - 5.2.1.1. The most efficient location for the well/water treatment plant to serve the target area including full service to the entirety of Rancho Road and service to the sports and entertainment zone on the East side of Forty Mile Road. Some basic modeling of similar use areas will be required to accurately size the distribution system for this area.
 - 5.2.1.2. Detailed cost estimates of treatment plant and distribution system, including intertie with existing water system at McGowan Parkway and Olive Ave.

6. PROPOSAL CONTENT AND FORMAT REQUIREMENTS

Interested offerors shall submit one original copy of their proposal and one copy in PDF format as directed on Page 1 of this RFP.

Proposals shall be delivered no later than the date and time listed in the CONTRACT AWARD SCHEDULE and shall contain at a minimum the following items:

6.1. Cover Sheet (Attachment B)

- 6.1.1. Provide the full legal name of the Firm who will execute the contract. Provide specific information concerning the agency, including: the agency's legal name, type of entity, and Federal Tax ID #.
- 6.1.2. The cover sheet must be signed by an owner, corporate officer, or agent authorized by the Firm.

6.2. Description of Services, Background and Staff – 60 points

Services

- a. Itemize the complete list of services to be provided
- b. Note instances where services exceed the scope or detail offered in this proposal
- c. Note instances where services do not meet the scope offered in this proposal
- d. Address instances where possible cost efficiencies may be gained, quality may be improved or OPUD may otherwise benefit from adopting your proposal over the generally listed terms of this RFP

6.2.1. Background and Experience

- a. Provide an overview of the types of work and history of your organization. Include a high level account of your qualifications as they relate to this proposal.
- b. Provide examples and references that substantiate your (organization's) experience in providing the types of service requested in this proposal. This needs to be detailed and verifiable.
- c. Please describe any current, pending or past litigation (within the last 10 years) that the organization has been, is, or is expected to be a party to.

6.2.2. Staffing

- a. Provide names and qualifications of key employees to assigned to this work
- b. Provide a staffing plan for meeting the requirements
- c. Provide other relevant information that can aid OPUD in its selection process

6.3. Proposed Costs – 40 points

- a. Break out costs by category or item as presented in the description of services (or by milestones or by time increment).
- b. Provide a costing strategy that breaks out fixed and variable costs.
- c. Describe the cost basis for all variable charges. (E.g. hourly rates for staff)
- d. Describe the basis for costing adjustments on subsequent years in contract or for potential future contract extensions.

7. SELECTION PROCEDURES

Proposals will be evaluated on the criteria out lined in the PROPOSAL CONTENT AND FORMAT REQUIREMENTS section, with a maximum possible score of 100 points.

After an initial review and evaluation of each of the proposals, the offerors submitting the most highly rated proposals may be invited for interviews prior to final selection, to further elaborate on their proposals. OPUD retains the right to award a contract without holding interviews, in the event the written proposals provide a clear preference on the basis of the criteria described.

The Firm(s) selected for this project will be required to accept OPUD's standard contract and to comply with insurance standards as deemed acceptable to OPUD's General Manager. No agreement with OPUD is in effect until both parties have signed a contract.

8. INQUIRIES

Direct all inquiries regarding the proposal process or proposal submissions to:

Christopher Oliver or
John Tillotson
Olivehurst Public Utility District
1970 9th Avenue
Olivehurst, CA 95961
(530) 743-4657

PROFESSIONAL SERVICES AGREEMENT BETWEEN CLIENT AND CONSULTANT

Client No. _____

Agreement entered into at Olivehurst, California on this date of _____, by
and between:

Client:	Olivehurst Public Utility District	Consultant:
Name:	John Tillotson, PE, General Manager	Name:
Address:	1970 9 th Avenue	Address:
City, St, Zip	Olivehurst, CA 95960	City, St, Zip
Phone:	530-743-8573	Phone:
Fax:		Fax:
Email:	jtillotson@opud.org	Email:
		License No:

Contract Amount NOT To EXCEED _____ per attached quote.

This Professional Services Agreement (PSA) enables the Client to authorize Consultant to provide services to Olivehurst Public Utility District (District) in accordance with the Terms and Conditions set forth herein. The following sections describe the Terms and Conditions for this PSA.

**TERMS AND
CONDITIONS**

This agreement is subject to the Terms and Conditions contained in paragraphs 1 through 53, and the provisions of the exhibits attached hereto and made a part hereof. Client and Consultant agree that the following provisions shall be part of this agreement:

1. Client and Consultant agree to cooperate with each other in order to fulfill their responsibilities and obligations under this agreement. Both Client and Consultant shall endeavor to maintain good working relationships among members of the project team. Work will be performed at the direction of the District General Manager and/or Public Works Engineer. Specific work scope and schedule of deliverables for tasks will be detailed in written correspondence between Client and Consultant, upon request of engineering services by Client.
2. This agreement shall be binding upon the heirs, executors, administrators, successors and assigns of Client and Consultant.
3. This agreement shall not be assigned by either Client or Consultant without the prior written consent of the other.
4. Consultant shall not provide services outside the PSA Scope of Service without prior written consent from the District of the additional services in the form of a signed PSA Amendment unless otherwise directed by the District.
5. This agreement contains the entire agreement between Client and Consultant relating to the project and the provision of services for the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this agreement shall be in writing and signed by both Client and Consultant.

6. Consultant's or Client's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. Consultant's or Client's waiver of any breach of this agreement shall not constitute the waiver of any other breach of the agreement.
7. If any term, condition or covenant of this agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on Client and Consultant.
8. This agreement shall be governed by and construed in accordance with the laws of the State of California.
9. If the scope of services includes Consultant's assistance in applying for governmental permits or approvals, Consultant's assistance shall not constitute a representation, warranty or guarantee that such permits or approvals will be acted upon favorably by any governmental agency.
10. Client acknowledges all reports, plans, specifications, field data and notes and other documents, including all documents on electronic media, prepared by Consultant are instruments of service, and shall remain the property of Consultant and may be used by Consultant without the consent of Client. Upon request and payment of all costs involved, Client is entitled to a copy of all final plans and specifications for use in connection with the project for which the plans and specifications have been prepared. Client acknowledges that its right to utilize final plans and specifications and the services of Consultant provided pursuant to this agreement will continue only so long as Client is not in default, pursuant to the terms and conditions of this agreement, and Client has performed all its obligations under this agreement.
11. Client agrees not to use or permit any other person to use plans, specifications, drawings, cost estimates, reports or other documents prepared by Consultant which plans, specifications, drawings, cost estimates, reports or other documents are not final and which are not signed and stamped or sealed by Consultant. Client shall be responsible for any such use of non-final plans, specifications, drawings, cost estimates, reports or other documents not signed and stamped or sealed by Consultant. Client hereby waives any claim for liability against Consultant for such use. Client further agrees that final plans, specifications, drawings, cost estimates, reports or other documents are for the exclusive use of Client and may be used by Client only for the project described on page 1 of 8 of this agreement. Such final plans, specifications, drawings, cost estimates, reports or other documents may not be changed or used on a different project without written authorization or approval by Consultant. If signed check-prints are required to be submitted with a stamp or seal, they shall not be considered final for purposes of this paragraph.
12. In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by Consultant, Client covenants and agrees that all such electronic files are instruments of service of Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

Client agrees not to reuse these electronic files, in whole or in part, for any purpose or project other than the project that is the subject of this agreement. Client agrees not to transfer these electronic files to others without the prior written consent of Consultant. Client further agrees to waive all claims against Consultant resulting in any way from any unauthorized changes or reuse of the electronic files for any other project by anyone other than Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of fifteen (15) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

Client is aware that differences may exist between the electronic files delivered and the printed hard copy construction documents. In the event of a conflict between the signed construction documents prepared by Consultant and electronic files, the signed and stamped or sealed hard copy construction documents shall govern.

In addition, Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants against all damages, liabilities or costs, including

reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than Consultant or from any reuse of the electronic files without the prior written consent of Consultant.

Under no circumstances shall delivery of electronic files for use by Client be deemed a sale by Consultant, and Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall Consultant be liable for indirect or consequential damages as a result of Client's use or reuse of the electronic files.

13. Consultant makes no representations concerning soils or geological conditions unless specifically included in writing in this agreement, or by amendments to this agreement, and shall not be responsible for any liability that may arise out of the making of or failure to make soils or geological surveys, subsurface soils or geological tests, or general soils or geological testing.
14. Client acknowledges Consultant has the right to complete all services agreed to be rendered pursuant to this agreement. In the event this agreement is terminated before the completion of all services, unless Consultant is responsible for such early termination, Client agrees to release Consultant from all liability for services performed. In the event all or any portion of the services by Consultant are suspended, abandoned, or otherwise terminated, Client shall pay Consultant all fees and charges for services provided prior to termination, not to exceed the contract limits specified herein, if any. Client acknowledges if the project services are suspended and restarted, there will be additional charges due to suspension of the services which shall be paid for by Client as extra services pursuant to paragraph 29. Client acknowledges if project services are terminated for the convenience of Client, Consultant is entitled to reasonable termination costs and expenses, to be paid by Client as extra services pursuant to paragraph 29.
15. Client may terminate an individual PSA or this PSA (including all PSAs) without cause with a minimum of seven (7) calendar day's written notice. Within seven (7) calendar days of termination by either party, Consultant shall submit its final invoice to recover labor costs and reimbursable expenses incurred up to the date termination.
16. If the scope of services to be provided by Consultant pursuant to the terms of this agreement includes the preparation of grading plans but excludes construction staking services, Client acknowledges that such staking services normally include coordinating civil engineering services and the preparation of record drawings based upon information provided by others, and Client will be required to retain such services from another consultant or pay Consultant pursuant to this agreement for such services as extra services in accordance with paragraph 29.
17. Unless the scope of services to be provided by Consultant expressly includes Consultant's assistance in determinations regarding the application of prevailing wages, Client and Consultant acknowledge that it is Client's exclusive responsibility to determine whether the project, which is the subject of this agreement, is a "public work" as defined in California Labor Code Section 1720, or whether prevailing wage rates are to be paid to certain workers in connection with the project, or determine the rate of prevailing wages to be paid certain workers. Consultant will develop its schedule of labor rates in reliance on the determinations of Client. In the event of a dispute regarding whether the project is a "public work", whether prevailing wages are to be paid, or the amount of prevailing wages to be paid to individual workers, Client agrees to pay Consultant for any and all additional costs and expenses (including additional wages, penalties & interest) incurred by Consultant and further agrees to the maximum extent permitted by law to defend, indemnify and hold harmless Consultant, its officers, directors, employees, agents and subconsultants from all damages, liabilities or costs, including reasonable attorneys' fees and costs, arising from or related to the Client's determinations regarding the application of or payment of prevailing wages.
18. If the scope of services contained in this agreement does not include construction-phase services for this project, Client acknowledges such construction-phase services will be provided by Client or by others and Client assumes all responsibility for interpretation of the contract documents and for construction observation and supervision and waives any claim against Consultant that may in any way be connected thereto. In addition, Client agrees to indemnify and hold Consultant harmless from any loss, claim, or cost, including reasonable attorneys' fees and costs of defense, arising or resulting from the performance of such services by other

persons or entities and from any and all claims arising from the modification, clarification, interpretation, adjustments or changes made to the contract documents to reflect changed field or other conditions, except for claims arising from the sole negligence or willful misconduct of Consultant.

19. Consultant shall notify the District whenever circumstances arise that affect the proposed schedule.
20. The costs for Consultant's services will be billed on a Time and Materials basis according to the billing rate schedule active at the time services were performed, unless otherwise specified in the "Compensation" section of the PSA.
21. Consultant shall not exceed the estimated fee for a PSA with "Time and Materials, Not to Exceed" compensation without prior written consent from the District unless otherwise directed by the District.
22. If payment for Consultant's services is to be made on behalf of Client by a third-party lender, Client agrees that Consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services.
23. Consultant may use the services of subconsultants as identified in PSAs or as directed by the Client.
24. All fees and other charges due Consultant will be billed monthly and shall be due at the time of billing unless specified otherwise in this agreement. If Client fails to pay Consultant within thirty (30) days after invoices are rendered, Consultant shall have the right in its sole discretion to consider such default in payment a material breach of this entire agreement, and, upon written notice, Consultant's duties, obligations and responsibilities under this agreement may be suspended or terminated. In such event, Client shall promptly pay Consultant for all outstanding fees and charges due Consultant at the time of suspension or termination. If Consultant elects to suspend or terminate Consultant's services pursuant to this provision, Consultant is entitled to reasonable suspension or termination costs or expenses.
25. Client agrees that all billings from Consultant to Client are correct and binding on Client unless Client, within ten (10) days from the date of receipt of such billing, notifies Consultant in writing of alleged inaccuracies, discrepancies, or errors in billing.
26. Client agrees to pay a monthly late payment charge, which will be the lesser of one and one-half percent (1-1/2%) per month or a monthly charge not to exceed the maximum legal rate, which will be applied to any unpaid balance commencing thirty (30) days after the date of the billing.
27. If Consultant, pursuant to this agreement, produces plans, specifications, or other documents and/or performs field services, and such plans, specifications, or other documents and/or field services are required by any governmental agency, and such governmental agency changes its ordinances, codes, policies, procedures or requirements after the date of this agreement, any additional office or field services thereby required shall be paid for by Client as extra services in accordance with paragraph 29.
28. Not used.
29. Client agrees that if Client requests services not specified in the scope of services described in this agreement, Client will pay for all such additional services as extra services, in accordance with Consultant's billing rates utilized for this agreement.
30. In the event that any staking or record monuments are destroyed, damaged or disturbed by an act of God or parties other than Consultant, the cost of restaking shall be paid for by Client as extra services in accordance with paragraph 29.
31. Client acknowledges that the design services performed pursuant to this agreement are based upon field and other conditions existing at the time these services were performed. Client further acknowledges that field and other conditions may change by the time project construction occurs and clarification, adjustments, modifications and other changes may be necessary to reflect changed field or other conditions. Such clarifications, adjustments, modifications and other changes shall be paid for by Client as extra services in accordance with paragraph 29.

- 32.** Client shall pay the costs of all checking and inspection fees, zoning and annexation application fees, assessment fees, soils or geotechnical engineering fees, soils or geotechnical testing fees, aerial topography fees, and all other fees, permits, bond premiums, applicable taxes on professional services, title company charges, blueprints and reproductions, and all other similar charges not specifically covered by the terms of this agreement.
- 33.** Consultant agrees to indemnify and hold harmless the Client, its officers, directors and employees from and against all claims, losses, demands, damages or costs, including attorneys' fees, arising from the negligent acts, errors or omissions of Consultant, its officers, directors and employees, or anyone for whom Consultant is legally liable, arising out of the performance of this agreement.

Client agrees to indemnify and hold harmless Consultant, its officers, directors and employees from and against all claims, losses, demands, damages or costs, including attorneys' fees, arising from the negligent acts, errors or omissions of the Client, its officers, directors and employees, or anyone for whom the Client is legally liable, arising out of the performance of this agreement.

- 34.** Consultant is not responsible for delay caused by activities or factors beyond Consultant's reasonable control, including but not limited to, delays by reason of strikes, lockouts, work slowdowns or stoppages, accidents, acts of God, failure of Client to furnish timely information or approve or disapprove of Consultant's services or instruments of service promptly, faulty performance by Client or other contractors or governmental agencies. When such delays beyond Consultant's reasonable control occur, Client agrees Consultant shall not be responsible for damages nor shall Consultant be deemed to be in default of this agreement. Further, when such delays occur, Client agrees that, to the extent such delays cause Consultant to perform extra services, such services shall be paid for by Client as extra services in accordance with paragraph 29.
- 35.** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect or consequential damage that either party may have incurred from any cause or action.
- 36.** Consultant shall not be liable for damages resulting from the actions or inactions of governmental agencies including, but not limited to, permit processing, environmental impact reports, dedications, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, project or plan approvals, and building permits. Client agrees that it is the responsibility of Client to maintain in good standing all governmental approvals or permits and to timely apply for any necessary extensions thereof.
- 37.** If the scope of services requires Consultant to estimate quantities, such estimates are made on the basis of Consultant's experience and qualifications and represent Consultant's best judgment as a professional generally familiar with the industry. However, such estimates are only estimates and shall not constitute representations, warranties or guarantees of the quantities of the subject of the estimate. If the scope of services requires Consultant to provide its opinion of probable construction costs, such opinion is to be made on the basis of Consultant's experience and qualifications and represents Consultant's best judgment as to the probable construction costs. However, since Consultant has no control over costs or the price of labor, equipment or materials, or over the contractor's method of pricing, such opinions of probable construction costs do not constitute representations, warranties or guarantees of the accuracy of such opinions, as compared to bid or actual costs.
- 38.** Estimates of land areas provided under this agreement are not intended to be, nor should they be considered to be, precise. The estimate will be performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
- 39.** Client acknowledges that Consultant is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its subcontractors.

40. Consultant makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed pursuant to generally accepted standards of professional practice in effect at the time of performance.
41. In the event (1) Client agrees to, authorizes, or permits changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (2) Client agrees to, authorizes or permits construction of unauthorized changes in the plans, specifications or documents prepared by Consultant, which changes are not consented to in writing by Consultant, or (3) Client does not follow recommendations prepared by Consultant pursuant to this agreement, which changed recommendations are not consented to in writing by Consultant: Client acknowledges that the unauthorized changes and their effects are not the responsibility of Consultant and Client agrees to release Consultant from all liability arising from the use of such changes, and further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, agents, employees and subconsultants from and against all claims, demands, damages or costs, including attorneys' fees, arising from the unauthorized changes.
42. Client agrees that in accordance with generally accepted construction practices, the construction contractor and construction subcontractors will be required to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property, and that this requirement shall apply continuously and not be limited to normal working hours. Neither the professional activities of Consultant nor the presence of Consultant or his or her employees or subconsultants at a construction site shall relieve the contractor and its subcontractors of their obligations, duties and responsibilities including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending or coordinating all portions of the work of construction in accordance with the contract documents and applicable health or safety requirements of any regulatory agency or of state law.
43. Client agrees to require its contractor and subcontractors to review the plans, specifications and documents prepared by Consultant prior to the commencement of construction-phase work. If the contractor and/or subcontractors determine there are deficiencies, conflicts, errors, omissions, code violations, improper uses of materials, or other deficiencies in the plans, specifications and documents prepared by Consultant, contractors and subcontractors shall notify Client so those deficiencies may be corrected by Consultant prior to the commencement of construction-phase work.
44. If during the construction phase of the project Client discovers or becomes aware of changed field or other conditions which necessitate clarifications, modifications or other changes to the plans, specifications, estimates or other documents prepared by Consultant, Client agrees to notify Consultant and retain Consultant to prepare the necessary changes or modifications before construction activities proceed. Further, Client agrees to require a provision in its construction contracts for the project which requires the contractor to promptly notify Client of any changed field or other conditions so that Client may in turn notify Consultant pursuant to the provisions of this paragraph. Any extra work performed by Consultant pursuant to this paragraph shall be paid for as extra services pursuant to paragraph 29.
45. Client agrees to purchase and maintain, or cause Contractor to purchase and maintain, during the course of construction, builder's risk "all risk" insurance which will name Consultant as an additional named insured as its interest may appear.
46. Not Used.
47. Client hereby agrees to bring no cause of action on any basis whatsoever against Consultant, its officers and directors, principals, employees, agents and subconsultants if such claim or cause of action in any way would involve Consultant's services for the investigation, detection, abatement, replacement, use or specification, or removal of products, materials or processes containing asbestos, asbestos cement pipe, and/or any hazardous or toxic materials. Client further agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subconsultants from any asbestos and/or hazardous or toxic material related claims that may be brought by third parties as a result of the services provided by Consultant pursuant to this agreement, except claims caused by the sole negligence or willful misconduct of Consultant.

48. Client agrees to defend, indemnify and hold harmless Consultant, its officers, directors, principals, employees and subconsultants from and against all claims, losses, damages and cost caused by, arising out of, or relating to, the presence of any fungus, mildew, mold or resulting allergens, provided that such claim, loss, damage or cost is not due to the sole negligence or willful misconduct of Consultant.
49. In the event of any litigation arising from or related to the services provided under this agreement, the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, experts' fees and other related expenses.
50. Client agrees that in the event Consultant institutes litigation to enforce or interpret the provisions of this agreement, such litigation is to be brought and adjudicated in the appropriate court in the county in which Consultant's place of business is located, and Client waives the right to bring, try or remove such litigation to any other county or judicial district.
51. (a) Except as provided in subdivisions (b) and (c), in an effort to resolve any conflicts that arise during the design or construction of the project or following completion of the project, Client and Consultant agree that all disputes between them arising out of or relating to this agreement shall be submitted to nonbinding mediation, unless the parties mutually agree otherwise.

Client and Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

(b) Subdivision (a) shall not preclude or limit Consultant's right to file an action for collection of fees if the amount in dispute is within the jurisdiction of the small claims court.

(c) Subdivision (a) shall not preclude or limit Consultant's right to record, perfect or enforce applicable mechanic's lien or stop notice remedies.

52. Before any services are provided under this agreement, Consultant shall procure and maintain in effect insurance coverage in amounts not less than set forth below.

- (a) Workers' compensation and Employer's Liability: as required by the laws of the State of California.
- (b) General Liability: commercial general liability insurance for personal and bodily injury, including death and property damage, on an occurrence basis, in the amount of \$1,000,000 combined single limit each occurrence and in aggregate.
- (c) Automobile Liability: automobile liability for personal and bodily injury, including death and property damage, in the amount of \$1,000,000 for each accident.
- (d) Professional Liability: professional liability insurance for damages incurred by reason of any actual or alleged negligent act, error or omission by Subconsultant in the amount of \$1,000,000 combined single limit each occurrence and annual aggregate. If the Consultants prime agreement requires the Subconsultant to carry additional Professional Liability insurance the Subconsultant shall increase their Professional Liability insurance to meet the prime agreement's requirements for the duration of the project.

Consultant shall provide certificates of insurance evidencing coverage required above. Each certificate shall provide that the coverage afforded shall not be cancelled or ordered reduced by Consultant, except with at least thirty (30) days' prior written notice to the District. Should this occur, Consultant shall procure and furnish to the District prior to such effective date new certificates conforming to the above coverage requirements. Consultant shall not have the right to receive any payment under this agreement until all insurance certificates are received by the District.

53. Client agrees to limit the liability of Consultant, its principals, employees and subconsultants, to Client and to all contractors and subcontractors on the project, for any claim or action arising in tort, contract, or strict liability, to the sum of \$100,000 or Consultant's fee, whichever is greater. Client and Consultant acknowledge that this provision was expressly negotiated and agreed upon.

IN WITNESS WHEREOF, the parties hereby execute this agreement upon the terms and conditions stated above.

Client: Olivehurst Public Utility District

Consultant:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____

Client should mail completed contract to the address shown for Consultant.

ATTACHMENT B: COVER SHEET

Name of Person, Business or Organization:	
Federal Tax ID Number:	
Contact Person – Name	
Contact Person – Address	
Contact Person – Phone Number (s)	
Contact Person – e-mail address	

By signing this **Cover Sheet** I hereby attest: that I have read and understood all the terms listed in the RFP; have read and understood all terms listed in this proposal; that I am authorized to bind the listed entity into this agreement; and that should this proposal be accepted, I am authorized and able to secure the resources required to deliver against all terms listed within the RFP as published by OPUD, including any amendments or addenda thereto except as explicitly noted or revised in my submitted proposal.

Signature of Authorized Representative

Printed Name of Authorized Representative

Date