



Metropolitan Wastewater MANAGEMENT COMMISSION REQUEST FOR PROPOSAL (RFP)

PROJECT NUMBER(S)	To Be Determined (P80109, P80110, P80111, P80116, P80118, etc.)	
PROJECT NAME	Task Order Services (2024 to 2029)	
PROJECT LOCATIONS	Eugene/Springfield, Oregon - such as: Water Pollution Control Facility, 410 River Avenue, Eugene, Oregon	
RFP DEADLINE	September 9, 2024 2:00 p.m. (PDT) <small>Late, faxed, electronic mail, or unsigned Proposals will be rejected.</small>	
SUBMIT PROPOSAL TO THIS ADDRESS	CITY OF SPRINGFIELD DEVELOPMENT AND PUBLIC WORKS DEPARTMENT ENVIRONMENTAL SERVICES DIVISION 225 FIFTH STREET (SUITE 101) SPRINGFIELD, OR 97477	
DIRECT ALL INQUIRES TO	NAME	Nicolas Thrasher & Troy McAllister
	TITLE	MWMC Project Manager
	PHONE #	541-744-3377 (email is recommended)
	EMAIL(s)	nthrasher@springfield-or.gov tmcallister@springfield-or.gov
	WEBSITE	www.mwmcpartners.org

DATE RFP ISSUED: August 9, 2024

PROPOSAL SUBMISSION CHECKLIST

# of Proposal Documents	Proposal Delivery
<input type="checkbox"/> (5) hardcopies (1 original & 4 copies) <input type="checkbox"/> (1) electronic copy of your Proposal in PDF format on a flash drive	<input type="checkbox"/> Sealed envelope/package containing Proposals and labeled with: <ul style="list-style-type: none"> - Proposer's Business Name and Address - Engineering Services for MWMC - Proposal Due Date & Time

PROPOSALS MUST BE DATE & TIME STAMPED BY A CITY OF SPRINGFIELD STAFF MEMBER

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1.0 GENERAL INFORMATION

1.1 Introduction

The purpose of this document is to provide interested parties with information to enable them to prepare and submit a Proposal to provide Engineering/Technical/Inspection Services for the Metropolitan Wastewater Management Commission (MWMC), according to the specifications set forth within this document.

The MWMC intends to use the results of this process to select and award at least one (1) consultant contract for services stated in this RFP.

The MWMC Project Manager (Nicolas Thrasher or Troy McAllister) is the sole point of contact for questions and issues that may arise during the RFP process.

No formal pre-proposal meeting will be held. Proposers can at their option contact the MWMC Project Manager via email to set up a phone meeting to obtain further information.

MWMC related information but not limited to:

- MWMC P80101 Facilities Planning “draft” tech memos
- MWMC and City of Eugene construction documents
 - MWMC Primary Clarifiers: C2 (1980 construction), P80033 & P80045
 - MWMC P80045 Odorous Air (2009 & 2010 changes)
 - MWMC Final Treatment & Outfall: C6 & C14 (1983 construction) and P80056 (2009)
- MWMC P80096 Disaster Mitigation & Recovery Plan (March 2020)
- MWMC Stormwater Master Plan (December 2021)
- MWMC 5-year capital budget planning (2024 to 2029)
- MWMC permit #102486 (effective 11/1/2022) from Oregon DEQ, etc.
- MWMC Geotechnical Investigations

1.2 Clarification of the Specifications

All inquiries concerning this RFP must be directed to the **person (Nicolas Thrasher or Troy McAllister) indicated on the cover page** of the RFP Document. Email is the preferred method of RFP questions and feedback.

Any questions concerning this RFP must be submitted in writing to the MWMC Project Manager by mail or email on or before the stated date on the **Calendar of Events** (Section 1.5).

Proposers are expected to raise any questions, exceptions, or additions they have concerning the RFP document at this point in the RFP process. If a proposer discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in this RFP, the proposer shall immediately notify the MWMC Project Managers listed above and request modification or clarification of the RFP document.

Proposers are prohibited from communicating directly with any employee of the City of Eugene or the City of Springfield, except as described herein. No employee or representative

SECTION 1 – GENERAL INFORMATION

other than those individuals listed as contacts in this RFP is authorized to provide any information or respond to any question or inquiry concerning this RFP.

1.3 Reasonable Accommodations

The MWMC will provide reasonable accommodations, including the provision of informational material in an alternative format, for qualified individuals with disabilities upon request. If you need accommodations, promptly contact the MWMC Project Manager(s) listed above.

1.4 Addendums and/or Revisions

In the event that it is necessary to amend, revise, or supplement any part of the RFP, addenda will be posted to the MWMC website: <http://www.mwmcpartners.org/capital-improvements/request-for-Proposals/>, and will be directly provided to all of the consultants that have requested to be on the related RFP list. This includes the amendment of dates in the RFP Schedule. Any addenda so issued are to be considered part of the specifications of the RFP. The MWMC is not responsible for any explanation, clarification, interpretation, or approval made or given in any manner except by written addenda issued by the MWMC. In case of any doubt or differences of opinion as to the services to be furnished hereunder, or the interpretation of the provisions of the RFP, the decision of the MWMC shall be final and binding upon all parties.

1.5 Calendar of Events

Listed below are specific and estimated dates and times of actions related to this RFP. Actions with specific dates must be completed as indicated unless otherwise changed by the MWMC. In the event the MWMC finds it necessary to change any of the specific dates and/or times in the calendar of events listed below, it will do so by issuing an addendum to this RFP and posting such addendum on the MWMC website, [Request for Proposals – MWMC Partners](#). There may or may not be a formal notification issued for changes in the estimated dates and times.

DATE	EVENT
August 9, 2024	RFP Issued & Publish Advertisement
August 26, 2024, 6:00 p.m. PDT	Last day to email written inquiries, feedback, and/or RFP written protest
August 30, 2024, before 9:30 a.m. PDT	Last day for Addendums or supplements to be posted to the RFP posted on the MWMC's website: Request for Proposals – MWMC Partners to address written inquiries
September 9, 2024, 2:00 p.m. PDT	Proposals due: If needed, set up your onsite delivery time before deadline with the MWMC Project Manager.
Estimate: October 1, 2024	Notification of intent to award sent to Proposers
Estimate: October 8, 2024	End of seven-day protest period
Estimate: October 9, 2024	Proposer provide hourly rates & fees for 2024
Estimate: October 2024	Establish draft consultant contract agreement & related insurance coverage
Estimate: October 11, 2024 or November 8, 2024	MWMC authorization to negotiate finalized contract with selected vendor(s)
Estimate: November 2024	Finalize agreement and receive consultant insurance

1.6 Contract Term

The contract shall be effective on the contract execution date and shall run until the contract duration, as specified in the contract, has been reached. Pursuant to MWMC procurement rule 137-048-0200, the MWMC reserves the option to directly appoint the finalist (consulting firm) for future professional services contract work identified or studied under this RFP solicitation document.

1.7 Proposal Submittal Instructions

Proposals must be received in by the MWMC Project Manager by the specified time stated on the cover page. All Proposals shall be received by the City of Springfield Development and Public Works Department, Environmental Services Division (address shown on the cover page) and time-stamped by City of Springfield staff before the required deadline. Proposals not so stamped will not be accepted.

Proposals received in response to this solicitation will not be returned to the proposers.

The MWMC is not liable for any cost incurred by proposers in replying to this RFP.

All Proposals must be packaged, sealed, and show the following information on the outside of the package:

- ☒ Proposer’s Business Name and Address
- ☒ Engineering Services for MWMC
- ☒ Proposal Due Date & Time

1.8 Multiple Proposals - NOT USED

1.9 Required Copies

Proposers must submit **an original and the required number of copies** of all materials required for acceptance as instructed on the cover page of the RFP.

All hard copies of the Proposal must be on 8.5"x11" individually securely bound. **In addition, proposers must submit one complete electronic copy in PDF format saved on a flash drive.**

1.10 Proposal Organization and Format

Proposals should be organized to comply with the section numbers and names as shown in Section 4.0: Proposal Preparation Requirements.

1.11 Trade Secrets and Public Records Law

All Proposals become the property of the MWMC and will not be returned to the vendor. The MWMC shall retain the RFP and one copy of each original Proposal received, together with copies of all MWMC documents pertaining to the award of the contract. These documents will be made a part of a file or record, which shall be open to public inspection after Proposal selection(s) and award(s) announced. If a Proposal contains any information that is considered a trade secret under ORS 192.345 (2), Proposers must mark each sheet of such information with

SECTION 1 – GENERAL INFORMATION

the following legend: **“This data constitutes a trade secret under ORS 192.345 (2), and shall not be disclosed except in accordance with the Oregon Public Records Law, ORS Chapter 192.”**

Oregon Public Records Law exempts from disclosure only bona fide trade secrets, and the exemption from disclosure applies only “unless the public interest requires disclosure in the particular instance.” Therefore, non-disclosure of any MWMC documents or any portion of a MWMC document submitted as part of a Proposal may depend upon official or judicial determination made pursuant to Oregon Public Records Law.

In order to facilitate public inspection of the non-confidential portion of the Proposal, material designated as confidential shall accompany the Proposal, but shall be readily separable from it. Prices, makes, model, or catalog numbers of items offered, scheduled delivery dates, and terms of payment shall be publicly available regardless of any designated to the contrary. **Any Proposal marked as a trade-secret in its entirety will be considered non-responsive** .

1.12 Protest Procedures

Protest procedures for the RFP or the contract award may be found in the MWMC Division 48 Procurement/Contracting Rules at Rule 137-048-0240.

1.13 Proposal Confidentiality

ORS 279C.107 (1)(a): Notwithstanding ORS 192.311 to 192.478, the contracting agency may open proposals so as to avoid disclosing contents to competing proposers during, when applicable, the process of negotiation.

ORS 279C.107 (1)(b): Notwithstanding ORS 192.311 to 192.478, the contracting agency need not open proposals for public inspection until after the contracting agency executes a contract.

ORS 279C.102 (2): Notwithstanding any requirement to open proposals to public inspection after the contracting agency executes a contract, a contracting agency shall withhold from disclosure to the public trade secrets, as defined in ORS 192.345 (Public records conditionally exempt from disclosure), and information submitted to a public body in confidence, as described in ORS 192.355 (Public records exempt from disclosure), that are contained in a proposal. Opening a proposal at a public meeting, as defined in ORS 192.610 (Definitions for ORS 192.610 to 192.690), does not make the contents of the proposal subject to disclosure, regardless of whether the public body that opens the proposal fails to give notice of or provide for an executive session for the purpose of opening proposals. If a request for proposals is canceled after proposals are received, the contracting agency shall, subject to ORS 192.345 (Public records conditionally exempt from disclosure) and 192.355 (Public records exempt from disclosure), return a proposal and all copies of the proposal to the proposer that made the proposal. The contracting agency shall keep a list of returned proposals in the file for the solicitation.

1.14 The MWMC Values Statement

The MWMC strives to provide high-quality services that achieve, sustain, and promote balance between community, environmental, and economic needs while meeting customer service expectations. The MWMC's values are:

- Clean Water
- Protecting Community Health
- Providing Excellent Customer Service
- Sustain Environmental Stewardship
- Collaboration with Partners
- Maintaining Fiscal Responsibility

SECTION 2 – PROPOSAL SELECTION AND AWARD PROCESS

2.0 PROPOSAL SELECTION AND AWARD PROCESS

2.1 Non-Responsive Proposals

Vendors are responsible for carefully reading all the terms and conditions contained in the RFP (including the terms and conditions contained in any attachments, exhibits, or schedules to the RFP), and for following the instructions given. Proposals that do not contain all the information requested may be rejected as non-responsive. The MWMC may reject any Proposal not in compliance with all prescribed public procurement procedures and requirements and may cancel this solicitation or reject for good cause any or all Proposals upon a finding by the MWMC that it is in the public interest to do so.

2.2 Proposal Scoring

Accepted Proposals will be scored by a Proposal Review Committee consisting of representatives from the City of Springfield and City of Eugene and scored against the stated criteria and weighting described in Section 2.4. This scoring will determine the ranking of vendors based upon their written Proposals.

2.3 Evaluation Criteria

The Proposals will be scored using the following criteria:

#	Criterion description	Total possible points
1	Business/Proposer's capabilities, experience, & resource management (See section 4.3)	30
2	Staff qualifications/expertise & management (See section 4.4)	35
3	Reference checking [performance history & deliverables for the public sector] (See section 4.5)	35
	<u>Information used to break scoring tie regarding equal total points:</u> Oregon business office(s): 1) professional engineering staff representation & 2) car travel time to the MWMC treatment plant in Eugene, Oregon	
Total Points Possible		100

2.4 Right to Reject Proposals and Negotiate Contract Terms

The MWMC reserves the right to:

- Change the schedule of the RFP and the selection process;
- Delay, suspend, or cancel the procurement or reject any or all Proposals in accordance with ORS 279C.395;
- Seek clarification of each vendor's Proposal if necessary during the evaluation process; and

SECTION 2 – PROPOSAL SELECTION AND AWARD PROCESS

- Adjust the final scope of work and include additional items, or remove items, from the scope of work so that the project(s) can be completed on time and within the allocated budget(s) for each approved work/task order.

2.5 Award and Final Offers

The award will be granted in one of two ways. The award may be granted to the highest scoring responsive and responsible proposer. Alternatively, the highest scoring proposer or proposers may be requested to submit final and best offers. If final and best offers are requested, they will be evaluated against the stated criteria, scored, and ranked. The MWMC award will then be granted to the highest scoring proposer for professional services agreement. The MWMC controls its options of how the “task order” work will be distributed moving forward based on consultant performance, expertise, availability, and cost impacts/control.

2.6 Notification of Intent to Award

As a courtesy, the MWMC may send a notification of intent to award memo to responding consultants/vendors at the time of the award. The consultant contract awarded under this RFP process must also be approved by the MWMC governing body. Certain consultant work will require MWMC updates and/or written approvals before proceeding with the work.

SECTION 3 – PROJECT OVERVIEW AND SCOPE OF SERVICES

3.0 PROJECT OVERVIEW AND SCOPE OF SERVICES

3.1 Definitions and Links

The following definitions and links are used throughout the RFP:

DEQ means Oregon Department of Environmental Quality

EWEB means Eugene Water and Electric Board

MWMC means Metropolitan Wastewater Management Commission

NTE means Not to Exceed

PDT means Pacific Daylight Time and Oregon local time

Proposer/vendor/firm means a firm submitting a proposal in response to this RFP

RFP means Request For Proposal(s)

SUB means Springfield Utility Board

WPCF means Water Pollution Control Facility

The MWMC website is: www.mwmcpartners.org

3.2 Scope of Services/Specification Overview

The purpose of this document is to provide interested parties with information to enable them to prepare and submit a Proposal for the engineering /technical/inspection services contract.

Project Overview

The MWMC is a governing body that oversees and manages wastewater treatment services for the Eugene/Springfield metropolitan area. It is a partnership between the cities of Eugene, Springfield, and Lane County in Oregon. For more information about the MWMC partnership, service area, governance, facilities, and other details, please visit www.mwmcpartners.org.

The MWMC is seeking engineering/technical/inspection services for “task order” work related to the MWMC infrastructure. The MWMC owns some wastewater collection and pumping systems in Eugene and Springfield, Oregon. The MWMC provides treatment services at the regional Eugene/Springfield Water Pollution Control Facility (WPCF) located at 410 River Avenue, Eugene, Oregon 97404. The MWMC has other facilities for biosolids and recycled water programs. The age of infrastructure can range from year 1952 to 2024.

SECTION 3 – PROJECT OVERVIEW AND SCOPE OF SERVICES

Project Objectives

Consultant/vendor services shall be provided in a manner that:

- Is cost effective
- Provides reliable and resilient infrastructure
- Available and meets agreed upon deliverable deadlines
- Allows sufficient time for deliverable review by the MWMC representatives
- Is checked for quality and accuracy prior to submittal of deliverables
- Meets successful outcomes for the project and public utility
- Is able to ramp-up services and deliverables to address MWMC urgent topics
- Considers environmental impacts and sustainability including the following:
 - energy conservation/efficiency
 - reduction of material waste
 - hazardous wastes and disposal requirements
 - possible waste recycling and increased use of recycled materials
 - impacts to the MWMC's greenhouse gas emissions
 - operations and maintenance (O&M) impacts/requirements
 - infrastructure life cycle (environment/community/economics)

Project Scope: "task order" services as needed

The selected Consulting Firm(s) shall provide project management, technical, inspection, and engineering resources to the MWMC. The project budgets are explained below. The following types of services are being considered but not limited to the scope of work and deliverables contemplated:

- Project/Task management
- Engineering/technical/inspection services
- Utilize MWMC software systems after receiving user training (MWMC software tools can change)
- Confirm project scope of work, deliverables, project phasing recommendations, and create work breakdown structure. Examples but not limited to:
 - As needed: Planning, evaluating, designing, cost estimating, project permits/approvals, bid phase, update operations/maintenance documentation, technical support during construction & commissioning/start-up, etc.
 - Evaluate existing wastewater odorous air systems, operational strategies/controls, and provide recommendations to address problems
 - Evaluate MWMC existing concrete/structure issues and specify repair and/or placement work (construction bid packages)
 - As needed: Evaluate and document the MWMC existing outfall/diffuser systems (permit #102486 effective 11/1/2022) and as needed recommend repair work of the infrastructure
 - As needed: Upgrade/change stormwater management systems
 - As needed: Recommend and design solutions to extend the useful life of MWMC existing infrastructure
- As needed: Evaluate existing infrastructure and collect information from stakeholders (MWMC management, operations and maintenance, etc.)

SECTION 3 – PROJECT OVERVIEW AND SCOPE OF SERVICES

- Evaluate condition and remaining useful life of existing systems
- Evaluate subsurface conditions
- As needed, Disaster Mitigation follow-up, etc.
- As needed, Resiliency follow-up: Disaster Mitigation and Recovery
 - Existing plan and consultant recommendations dated March 2020
 - As needed, provide engineering/technical/inspection services for recovery before, during and after disaster(s) that impact the MWMC
- As needed: Engineering peer review services
- Provide Quality Assurance and Quality Control (QA/QC) services
- Recommend solutions, innovation, and technology to improve/optimize the MWMC infrastructure
- Cost estimating and/or if needed Business Case Evaluation (considering life-cycle cost, environment, and people) to compare options/solutions and prioritize infrastructure recommended improvements
- Improvements must meet federal, state, and local requirements
- Recommend optional consultant/vendor work tasks for MWMC consideration
- Document findings, solutions, and recommendations
- As needed: Hire sub-consultants and/or vendors
- As needed: Assistance with public relations and outreach including but not limited to the creation of the project key messaging, informational materials, graphics, presentations, and website and social media content
- As needed: Recommend improvements to mode of operations and systems
- As needed: Evaluate risks/issues and recommend mitigation options
- As needed: Provide consultant services and/or support for MWMC project delivery but not limited to: workshops/meetings, predesign, design documents, project permits/approvals, pre-purchase procurement, construction bidding/procurement, construction phase, inspection, QA/QC, training, commissioning/startup, project closeout, and one-year contractor warranty
- As needed: Use MWMC construction front-end specs (confirm before design phase)

Project Budget

The MWMC approved budget for FY 24-25 (July 1, 2024) has allocated the following:

P80118 - Repair Clarifiers & Final Treatment: starting at \$1,500,000

P80109 - Resiliency Follow-Up: about \$300,000

P80110 - Engineering Services: \$500,000

P80111 - WPCF Stormwater Infrastructure: \$600,000

Cost Control: The MWMC assigned project manager will monitor the work/task orders and project expenses and seek cost estimating information from the consultant. Monthly consultant communication and written updates will be required during active workweeks.

SECTION 4 – PROPOSAL PREPARATION REQUIREMENTS

4.0 PROPOSAL PREPARATION REQUIREMENTS

Proposals should be organized to comply with the section numbers and names as shown below. Each section heading should be separated by tabs or otherwise clearly marked. Hardcopies shall be bound in an 8½" x 11" format, but 11"x17" pages for graphics may be included via Z-folding method in landscape or portrait orientation. The RFP sections which should be submitted/responded to are:

4.1 [Required Form – Attachment A – Vendor Information](#)

4.2 Table of Contents

Provide a table of contents that, at a minimum, includes all of the sections as identified below. Listings of sub-sections and graphics/tables also may be included. Section dividers are permitted.

4.3 Tab 1: Business Capabilities, Experience & Resource Management

Provide a detailed description of company's capabilities, resources, workload, and demonstrated experience related to the MWMC types of requested services, including a detailed list of projects of similar scope and complexity with related dates of consultant services. Provide any technical details that add to the firm's qualifications for the MWMC upcoming work.

4.4 Tab 2: Staff Qualifications/Expertise

Regarding the upcoming five (5) years (2024 to 2029), identify key staff and leadership that will provide services. Provide resumes describing the educational, work experiences, licenses, and expertise for each of the key staff and leadership staff available for task order work/services, as well as their projected workloads and an estimate of the time they may spend on task order work/services. Who will be the primary contact person for coordination of "task order" scoping, pricing and negotiating of each topic?

4.5 Tab 3: References and Performance History

Provide a list of no fewer than five (5) different customer organizations, including points of contact (name, address, email, and telephone number), which can be used as references to check the performance of your business and key people identified in your Proposal, with attention to performance history of meeting deadlines, quality of work, cost controls. Explain the nature of services provided. At least three (3) agencies must be wastewater infrastructure related to public sector.

4.6 [Required Form – Attachment B – Insurance Levels Disclosure Form](#)

**5.0 COST PROPOSAL – NOT USED
(Qualifications Based Selection)**

SECTION 6 – REQUIRED FORM – ATTACHMENT A

VENDOR INFORMATION	
VENDOR NAME:	

Vendor Information (address below will be used to confirm Local Vendor Preference)			
Address			
City		MWMC	Task Order Services
State		Zip+4	
Vendor Rep. Name		Title	
Email		Telephone	

Signature Affidavit			
<p>I, the undersigned, have submitted a Proposal to a Request for Proposals (“RFP”) to contract with the Metropolitan Wastewater Management Commission (“MWMC”). I request and authorize you to furnish to the MWMC any and all information you may have regarding my employment or my firm’s employment, including but not limited to, evaluations or assessments of my/my firm’s work performance and qualifications.</p> <p>I request and authorize you to provide the information requested or to participate in a phone or in-person interview with a representative of the MWMC.</p> <p>In consideration of your cooperation with this request, I hereby release you, and any and all other persons employed by or connected with your firm, the MWMC and/or organization from any and all liability and/or claims now or in the future arising from the furnishing of any information, including good faith expressions of opinion, to the MWMC as requested. I further agree not to sue the MWMC, you, or any and all other persons employed by or connected with your firm/the MWMC/organization as a result of the furnishing of any information, including good faith expressions of opinion, to the MWMC.</p> <p>I am aware and understand that the information and good faith opinions furnished to the MWMC pursuant to this request will remain confidential with the MWMC if requested by you, and will not be disclosed to me or to any other person, except as required by law.</p> <p>The individual signing on behalf of Proposer hereby accepts all terms and conditions contained in the foregoing Request and Authorization to Release Information:</p>			
Signature		Title	
Name (Printed)		Date	

SECTION 6 – REQUIRED FORM – ATTACHMENT A

Addenda to the RFP				
<p>A. The MWMC reserves the right to make changes to the RFP and the resulting Contract, by written Addendum, prior to the deadline for submissions. Addenda will be posted on the MWMC’s website. The MWMC is not responsible for a Proposer’s failure to receive any addenda. Addenda shall only be issued by the MWMC and upon issuance are incorporated into the RFP or the resulting contract. If required by the Addendum, Proposers shall sign and return the Addendum prior to the deadline for submissions.</p> <p>B. By Proposer’s signature on its Proposal, Proposer ACKNOWLEDGES, AGREES, and CERTIFIES TO THE FOLLOWING:</p> <ol style="list-style-type: none"> 1. If any Addenda are issued in connection with this RFP, Proposer has received and duly considered such Addenda, and has completed the blanks below identifying all Addenda issued, and acknowledging and agreeing to the terms of all such Addenda as those terms revise the terms and conditions associated with this RFP. 2. IN ADDITION to checking the appropriate boxes below to identify all Addenda, if any, issued under this RFP, Proposer shall sign and return any Addendum that states that it must be signed and returned. 				
<p>Addendums – this vendor hereby acknowledges receipt/review of the following addendums, if any (please circle items).</p>				
Addendum #1	Addendum #2	Addendum #3	Addendum #4	Addendum #5
Addendum #6	Addendum #7	Addendum #8	Addendum #9	None

Business Name: _____

Signature: _____

Title: _____

Name (Printed): _____ Date: _____, 2024

SECTION 6 – REQUIRED FORM – ATTACHMENT A

RESPONSIBILITY INQUIRY/ CONTRACTOR REFERENCES

A. The MWMC reserves the right, pursuant to MWMC Rule 137-047-0500 and 137-047-0600 to investigate and evaluate, at any time prior to award and execution of the Contract, the apparent successful Proposer's responsibility to perform the Contract. Submission of a signed Proposal shall constitute approval for the MWMC to obtain any information the MWMC deems necessary to conduct the evaluation. The MWMC shall notify the apparent successful Proposer(s), in writing, of any other documentation required, which may include, but is not limited to, recent profit-and-loss history; current balance statements; assets-to-liabilities ratio, including number and amount of secured versus unsecured creditor claims; availability of short and long-term financing; bonding capacity; credit information; material; equipment; facility and personnel information; performance record; etc. Failure to promptly provide this information shall result in Proposal rejection.

B. The MWMC may postpone the award of the Contract after announcement of the apparent successful Proposer(s) in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for Proposal rejection, as required under MWMC Rule 137-047-0500.

FOREIGN CONTRACTOR

If the amount of the Contract exceeds ten thousand dollars (\$10,000), and if Proposer is not domiciled in or registered to do business in the State, Proposer shall promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. The MWMC shall be entitled to withhold final payment under the Contract until Proposer has met this requirement.

CERTIFICATION OF COMPLIANCE WITH TAX LAWS

By my signature on this Proposal, I, hereby attest or affirm under penalty of perjury: That I am authorized to act on behalf of the Contractor in this matter, that I have authority and knowledge regarding the payment of taxes, and that Contractor is, to the best of my knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 403.200 to 403.250, ORS Chapters 118, 314, 316, 317, 318, 320, 321, 323 and the elderly rental assistance program under ORS 310.630 to 310.706, and any local taxes administered by the Department of Revenue under ORS 305.620.

CERTIFICATION OF COMPLIANCE WITH NON-DISCRIMINATION LAWS

By my signature on this Proposal, I hereby attest or affirm under penalty of perjury: that I am authorized to act on behalf of Proposer in this matter, and to the best of my knowledge Proposer has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because a subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns, or an emerging small business.

SIGNATURE OF PROPOSER'S DULY AUTHORIZED REPRESENTATIVE

THIS PROPOSAL MUST BE SIGNED IN INK BY AN AUTHORIZED REPRESENTATIVE OF THE PROPOSER; ANY ALTERATIONS OR ERASURES TO THE PROPOSAL MUST BE INITIALED IN INK BY THE UNDERSIGNED AUTHORIZED REPRESENTATIVE.

The undersigned acknowledges, attests, and certifies individually and on behalf of the Proposer that:

A. He/She is a duly authorized representative of the Proposer, has been authorized by Proposer to make all representations, attestations, and certifications contained in this Proposal and all Addenda, if any, issued.

B. Proposer, acting through its authorized representatives, has read and understands all RFP instructions, terms, and conditions contained in this RFP document (including all listed attachments and Addenda, if any, issued);

C. The Proposal submitted is in response to the specific language contained in the RFP, and Proposer has made no assumptions based upon either (a) oral or written statements not contained in the RFP, or (b) any previously-issued RFPs, if any.

SECTION 6 – REQUIRED FORM – ATTACHMENT A

D. The MWMC shall not be liable for any claims or be subject to any defenses asserted by Proposer based upon, resulting from, or related to, Proposer’s failure to comprehend all requirements of the RFP.

E. The MWMC shall not be liable for any expenses incurred by Proposer in preparing and submitting its Proposal or in participating in the Proposal evaluation/selection process. Proposer understands and agrees that the MWMC is not obligated as a result of the submittal of a Proposal to enter into a contract with any Proposer and that Proposer, in responding to this solicitation, does so solely at its own expense.

F. The Proposal was prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty.

G. Proposer is bound by and will comply with all requirements and terms and conditions contained in this Proposal (including all listed attachments and Addenda, if any, issued);

H. Proposer will furnish the designated item(s) and/or service(s) in accordance with the RFP requirements, and will comply in all respects with the terms of the resulting contract upon award;

I. Proposer represents and warrants that Proposer has the power and authority to enter into and perform the contract and that the Contractor, when executed and delivered, shall be a valid and binding obligation of Contractor enforceable in accordance with its terms; and

J. All affirmations and certifications contained in this Proposer Certification are true and correct.

Signature of Authorized Representative *Date*

Name of Firm

SECTION 6 – REQUIRED FORM – ATTACHMENT B

INSURANCE LEVELS DISCLOSURE FORM

Each firm/business on the Proposer’s team must fill out and submit a separate form with the Proposal.

	Refer to Section 7 below, in part 17, <u>Insurance Requirements</u> for MWMC’s required insurance levels and provisions for each category listed below	Firm can provide as shown in part 17 (Insurance)? (Yes/No)	If no, list what your firm/business can provide in place of the MWMC insurance requirement
a.	Workers’ Compensation Insurance		
b.	Commercial General Liability Insurance		
c.	Automobile Liability Insurance		
d.	Professional Liability/Errors and Omissions Insurance		
e.	Pollution Liability Insurance		
f.	Extended Reporting Coverage (“Tail Coverage”)		
g.	Umbrella Liability		
h.	Maximum Deductible/Self - Retention		
i.	Additional Insureds		
j.	Insurance Certificates		
k.	Subcontractor Insurance		
l.	Primary Coverage		

INDEPENDENT CONSULTANT AGREEMENT

[Project Title]

MWMC Project Number P800##

This Independent Consultant Agreement (“Agreement”) is made by and between the Metropolitan Wastewater Management Commission (“MWMC”) and [CONSULTANT NAME], (“Consultant”) according to the following terms, conditions, and provisions:

1. Identity of Consultant.

Name:

- Type of Entity: [] Sole Proprietorship
[] Partnership
[] Corporation
[] Limited Liability Company

Address:

City, State, Zip:
Business Telephone:
Business Fax:
Social Security #:
Federal I.D. #:
Oregon Tax ID#:

- 2. Job to Be Performed. Consultant shall perform engineering and consulting services for the MWMC project titled "PROJECT TITLE", MWMC Project number P80###. The improvements related to this project are to be constructed at the MWMC Water Pollution Control Facility located at 410 River Avenue, Eugene, OR 97404, Eugene, Oregon.
3. Scope of Work. The Consultant shall provide consulting services as particularly described in the Scope of Work ("Work") identified in Exhibit "A" and incorporated herein by reference.
4. Work Performed. The Work comprises services generally performed by Consultant in its usual line of business as well as any other Work specifically identified.
5. Agreement Duration. Except as otherwise provided for under the terms and conditions of this Agreement, the duration of this Agreement is from the date of the Notice to Proceed issued by the MWMC until completion of the Work or until [DATE OF CONTRACT COMPLETION] whichever occurs first, or as modified by the MWMC in its sole discretion.
6. General. The MWMC has need for the services of an independent consultant with the particular training, ability, knowledge, expertise and experience possessed by the Consultant. The Consultant shall furnish all qualified personnel, facilities, materials, equipment, supplies, and other services necessary to perform the Work. The Consultant's project team is identified in Consultant's Proposal dated [DATE, YEAR]. The Consultant shall not change any of the project team members identified as key members without the MWMC's prior written consent, with the exception of an unforeseen circumstance such as death, termination of employment or retirement. Furthermore, the Consultant shall provide timely written notice, defined for this purpose as not more than three (3) business days, to the MWMC of any other changes to the project team during

SECTION 7 – STANDARD TERMS AND CONDITIONS

the project. The key project team members that cannot be changed without the MWMC's prior written consent are as follows:

_____, Principal-in-Charge
_____, Project Manager
_____, Project Quality Assurance / Quality Control Person

7. **Compensation.** Subject to the terms and conditions of this Agreement, the MWMC shall pay Consultant the fees set forth in Exhibit "B" for the Work defined in Exhibit "A" up to the Not-to-Exceed (NTE) amount of \$#. The NTE amount may be exceeded only upon prior written increase in scope of Work, accompanied by written authorization for an increase in fee from the MWMC Executive Officer or his or her authorized designee. If there is no change in scope of Work, the Consultant shall complete all identified scope of Work within the NTE amount (\$#). Current known additional or optional tasks are listed in Exhibit "B."

To be entitled to monthly progress payments, Consultant shall make monthly application for progress payments as described in Exhibit "B", complete with necessary billing documentation. Within 30 calendar days after the date MWMC receives and approves Consultant's billing, the MWMC shall make monthly progress payments to Consultant for the Work in an amount due for services rendered during the month for which the billing is submitted.

If the MWMC requests clarification of any billing within 30 calendar days after its receipt, payment is then due within 30 calendar days after clarification has been provided by the Consultant to the MWMC's reasonable satisfaction.

Progress payment requests proposed by the Consultant are subject to the MWMC evaluation and approval based on deliverables related to specific tasks, subtasks, and the Work completed.

Notwithstanding the above, the MWMC, in its sole discretion, may adjust the final scope of Work to remove items from the scope of Work so that the project can be completed on time and within the allocated budget.

8. **Additional Work.** In the event the MWMC determines the scope of Work must be modified during the project, the parties shall engage in good faith negotiations in order to agree on a supplemental scope of Work and this Agreement will be amended according to Section 31. The Consultant agrees to provide all such additional services at the rates identified in Exhibit "C" for the duration of this Agreement.
9. **Schedule.** The project schedule is attached to this Agreement as Exhibit "D". The Consultant shall maintain the project schedule monthly using the critical path method (CPM) until the project is awarded to a construction contractor. The schedule must be provided as a Microsoft Project document and include milestones for deliverables that require MWMC review or other actions/activities. The Consultant shall promptly notify MWMC of any milestone dates that Consultant reasonably anticipates may not be met to allow both parties the ability to consider implementing methods to meet the schedule outlined in Exhibit "D." At the time the construction contract is awarded, the Consultant shall coordinate with the MWMC and construction contractor to ensure the construction schedule is prepared and maintained properly.

The Consultant shall not begin the Work until MWMC issues a Notice to Proceed to Consultant. The MWMC may, at any time and in its sole discretion, deliver to Consultant a temporary order to stop Work. Upon receipt of such stop Work order, Consultant shall, at no additional cost to the MWMC, stop Work on the project until further directed by the MWMC to proceed.

SECTION 7 – STANDARD TERMS AND CONDITIONS

10. **Status.** While performing the Work, Consultant is at all times acting and performing as an Independent Consultant and not as an employee, officer or agent of the MWMC, as those terms are used or defined in ORS 30.260,30.265 and 670.600. No agent, employee, officer or servant of Consultant is an employee, agent, officer or servant of the MWMC. The MWMC is interested only in the results obtained under this Agreement; the manner and means of conducting the Work are under the sole control of Consultant. However, the Work must meet the approval of MWMC and is subject to the MWMC's general right of inspection and supervision to secure satisfactory performance of the Work.
11. **Notice To Consultant Regarding Its Tax Duties And Liabilities.** Neither federal, nor state, nor local income tax nor payroll tax of any kind will be withheld or paid by the MWMC on behalf of Consultant or the employees of Consultant. Consultant understands that it is responsible to pay, according to law, all of Consultant's taxes regardless of type. If Consultant is not a corporation, Consultant further understands that it may be liable for self-employment (Social Security) tax, to be paid by Consultant according to law.
12. **Reimbursement of Expenses.** The MWMC is not liable to Consultant for any expenses paid or incurred by Consultant unless otherwise agreed in writing.
13. **Equipment, Tools, Materials or Supplies.** Consultant shall supply necessary materials, equipment, tools and supplies to accomplish the Work.
14. **No Authority to Bind the MWMC.** Consultant has no authority to enter into contracts on behalf of the MWMC, its officers, agents and/or employees. This Agreement does not create a partnership or any other relationship other than a contractual owner and consultant relationship between the parties.
15. **Federal Employment Status.** In the event payment made pursuant to this Agreement is to be charged against federal funds, Consultant certifies that it is not currently barred from working on federally funded projects nor is it employed by the federal government. Furthermore, the amount charged does not exceed Consultant's normal charge for the type of services provided.
16. **Indemnification, Defense and Hold Harmless.** Consultant shall defend (with counsel of the MWMC's choice), indemnify and hold harmless the MWMC, the Cities of Springfield and Eugene, and Lane County, their agents, officers, directors and employees from and against all loss, expense, claims, demands or liability whatsoever (including attorney fees at arbitration, trial and/or appeal) arising out of or resulting from Consultant's performance of the Work pursuant to this Agreement. The MWMC agrees to promptly notify Consultant in writing of any such claim or demand to indemnify, defend and/or hold harmless and agrees to cooperate with Consultant in a reasonable manner to facilitate the defense of such claim.
17. **Insurance.** The Consultant and all of its subcontractors of any tier shall provide insurance coverage and limits as described below. All insurance carried by the Consultant or a subcontractor must be primary to and non-contributory with any insurance carried by the MWMC or self-insurance of the MWMC. Provide Consultant and subcontractor insurance documentation for review by the MWMC at time of contract signing.
 - a. **Workers' Compensation Insurance.** No Workers' Compensation Insurance has been or will be obtained by the MWMC for Consultant or Consultant's employees and subconsultants. Consultant shall provide coverage for its employees, officers, agents or

SECTION 7 – STANDARD TERMS AND CONDITIONS

partners including employers' liability with limits not less than \$1,000,000/ \$1,000,000/ \$1,000,000 and provide the MWMC with evidence of such coverage or verification of their election not to be covered pursuant to ORS 656.027(7) (Sole Proprietors Exception). In the event Consultant elects to not be covered pursuant to ORS 656.027(7), Consultant assumes full responsibility for any liability and exposure under law relating to Workers' Compensation because of any performance of services under this Agreement and will indemnify, defend and hold the MWMC, the Cities of Springfield and Eugene, Lane County and all their directors, officers, principals, agents, employees and affiliates harmless from any liability associated with industrial accidents that occur.

- b. **Commercial General Liability Insurance.** Consultant shall at all times carry a Commercial General Liability insurance policy for at least \$2,000,000 combined single limit per occurrence and at least \$3,000,000 in the aggregate per project, for Bodily Injury, Property Damage, and Personal Injury. The Consultant shall include as additional insureds under the above commercial general liability policy or policies the MWMC, City of Springfield, City of Eugene, Lane County, and all of their directors, officers, principals, agents and employees by Endorsements CG2010 0704 and CG2037 0704 or the equivalent to the above policy or policies. The additional insured status must be continued for at least 12 consecutive calendar months after the MWMC project is completed and final acceptance has been given by the MWMC. Such insurance shall include "cross-liability" coverage as provided under standard ISO Forms "Separation of Insured" clause.
- c. **Automobile Liability Insurance.** Consultant and all of its subcontractors shall at all times carry Automobile Liability Insurance in the amount of \$2,000,000 combined single limit per accident for bodily injury and property damage covering the ownership, maintenance or use of any motor vehicle.
- d. **Professional Liability/Errors and Omissions Insurance.** Consultant and all of its subcontractors shall at all times carry a Professional Liability/Errors and Omissions type insurance policy with limits of not less than \$4,000,000 each occurrence (or each claim if coverage is afforded on a claims made basis) and \$4,000,000 in the annual aggregate. If this policy is a "claims made" type policy, the policy type and company shall be approved by the MWMC prior to commencement of the Work.
- e. **Pollution Liability Insurance** – Consultant and all of its subcontractors shall at all times carry a Pollution Liability type insurance policy with limits of not less than \$2,000,000 each occurrence (or each claim if coverage is afforded on a claims made basis) and \$2,000,000 in the annual aggregate. If this policy is a "claims made" type policy, the policy type and company shall be approved by the MWMC prior to commencement of the Work.
- f. **Extended Reporting Coverage ("Tail Coverage").** Tail coverage extends the time for filing claims under a "claims made" policy beyond the term of the policy for wrongful acts that occurred within the term of the "claims made" policy. "Claims made" policy means that any claim under the policy must be reported during the policy period.

For Professional Liability/Errors & Omissions Insurance written on a "claims made" basis and for any other required liability insurance provided on a "claims made" basis, Consultant shall provide "tail" coverage at the completion of the Agreement for a duration of thirty-six (36) months or continuous "claims made" liability coverage provided for thirty-six (36) months following the Agreement completion. Continuous "claims made" coverage will be acceptable in lieu of "tail" coverage provided the retroactive date of the coverage is on or before the effective date of this Agreement.

SECTION 7 – STANDARD TERMS AND CONDITIONS

- g. **Umbrella Liability.** Consultant shall at all times carry umbrella liability insurance written on an occurrence basis with limits no less than \$3,000,000 per occurrence and \$3,000,000 in the aggregate.
 - h. **Maximum Deductible/Self-Retention.** Any deductible or self-retention must be disclosed on the certificate of insurance and no deductible or retention may exceed \$25,000 without the prior written consent of the MWMC.
 - i. **Additional Insureds.** The MWMC, the Cities of Springfield and Eugene and Lane County, their agents, employees and officials all while acting within their official capacity as such, must be named as additional insureds on all insurance, other than Workers' Compensation and Professional Liability/Errors and Omissions insurance, required under this Agreement. Such coverage shall be provided in a form acceptable to the MWMC.
 - j. **Insurance Certificates.** Consultant and all subcontractors shall deliver to the MWMC, prior to the commencement of the Work, a certificate of insurance or the actual insurance policy/policies evidencing all policies required by this Agreement. Either the certificates of insurance or the policies shall contain the promise of the insurer to give the MWMC written notice at least 30 calendar days prior to the effective date of any lapse, cancellation, non-renewal or material reduction in any of the required coverage's. In the event the insurer cannot or will not provide such written notice to the MWMC, Consultant has an affirmative duty to provide the notice of lapse, cancellation, and non-renewal or material reduction to the MWMC within 24 hours of the Consultant receiving such notice itself. The MWMC has the right to reject any certificate and/or policy if the MWMC in its sole discretion determines that either the coverage or the insurance company is unacceptable. Evidence of continuous coverage is required, including renewal certificates for any policies that renew during the project.
 - k. **Subcontractor Insurance.** The Consultant shall require that all of its subcontractors of any tier provide insurance coverage and limits identical to the insurance required of the Consultant under the Agreement, unless this requirement is expressly waived in writing by the MWMC. The sufficiency of subcontractor insurance and coverage limits is subject to the MWMC's approval and must be shown by appropriate insurance certificates in a form acceptable to the MWMC. Without limitation to any other indemnification provision under this Agreement, if the Subcontractors' insurance coverage and limits are not identical to the Consultant, the Consultant assumes all liability on behalf of the subcontractors insufficient insurance, and limits and will indemnify, defend, and hold harmless MWMC as stated in Section 16.
 - l. **Primary Coverage.** All insurance carried by the Consultant or a subcontractor required by this Agreement must be primary to and non-contributory with any insurance carried by the MWMC or self-insurance of the MWMC. Any insurance held by the MWMC is excess and solely for damages or losses for which the MWMC is responsible.
18. **Termination.**
- a. **Termination for Convenience.** The performance of the Work may be terminated by the MWMC, in whole or in part, whenever and for any reason the MWMC determines that such termination is in the best interest of the MWMC. Any such termination is effective upon delivery to the Consultant of a Notice of Termination specifying the extent to which performance of the Work is terminated and the date on which such termination becomes effective.

SECTION 7 – STANDARD TERMS AND CONDITIONS

Upon delivery to the Consultant of a Notice of Termination under this Section, the Consultant and the MWMC shall attempt to negotiate an appropriate written modification to the Agreement governing Consultant's completion of the portion of the Work designated by the MWMC and payment therefore by the MWMC. If the parties cannot reach agreement within 20 calendar days, the MWMC's liability to Consultant will not exceed the amount that would be due on a progress billing for uncompensated Work performed prior to the designated termination date.

- b. **Termination for Cause.** If the Consultant fails to perform the Work within the time specified in this Agreement or any extension thereof, or if Consultant fails to comply with any other provisions of this Agreement or any other Contract Documents, or to cure such breach within the time set forth in the applicable contract, the MWMC may terminate this Agreement for default. The MWMC shall terminate by delivering to Consultant a Notice of Termination specifying the nature of the default. The Consultant will only be paid the contract price for the Work performed in accordance with the manner or performance set forth in this Contract. If, after termination for failure to fulfill contract obligations, it is determined that the Consultant was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the MWMC.
- c. **Other Termination.** The MWMC may terminate this Agreement on written notice to Consultant, effective immediately, if any federal, state or local laws, regulations, or guidelines are modified or interpreted in such a way that either the Work is prohibited or the MWMC is prohibited from paying, or no longer able to pay, for such Work from the planned funding source.

19. **Rights in Data.**

All documentation originated and prepared for the MWMC pursuant to this Agreement is the exclusive property of the MWMC. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Consultant or jointly by Consultant and the MWMC may be used by either party in any way it deems appropriate.

It is understood and agreed that the work products such as plans and specifications prepared by the Consultant under this Agreement are instruments of professional service. The work products become the property of the MWMC upon completion of all services and receipt by the Consultant of all professional fees and reimbursements provided for under this Agreement. Professional drawings produced by the Consultant for the MWMC shall conform to the drawing specifications presented as Exhibit "E." The MWMC may use the ideas, concepts, know-how, techniques, plans, specifications, and work products developed as appropriate in future projects.

In consideration thereof, the MWMC waives all claims against the Consultant, arising out of the MWMC's use of the plans and specifications on any project other than the project that is the subject of this Agreement.

Material already in Consultant's possession, independently developed by Consultant outside the scope of this Agreement or rightfully obtained by Consultant from third parties, belongs to Consultant.

This Agreement does not preclude Consultant from developing materials, which are competitive, irrespective of their similarity to materials that might be delivered to the MWMC pursuant to this Agreement. Consultant shall not, however, use any written materials developed under this Agreement in developing materials for others, except as provided in this Section.

SECTION 7 – STANDARD TERMS AND CONDITIONS

20. **Confidentiality.** Consultant will not disclose Confidential Information, directly or indirectly, under any circumstances or by any means, to any third person without express written consent of the MWMC.

Confidential Information means (a) proprietary information of the MWMC, (b) information marked or designated by the MWMC as confidential, (c) information, whether or not in written form and whether or not designated as confidential, that is known to Consultant (including but not limited to its employees, owners, and agents) as being treated by the MWMC as confidential, and (d) information provided to the MWMC by third parties that the MWMC is obligated to keep confidential. Confidential Information includes, but is not limited to, discoveries, ideas, designs, drawings, specifications, techniques, models, data, programs, documentation, processes, know-how, and financial and technical information.

The confidentiality obligations of this Agreement shall not apply to any information that the recipient demonstrates by clear and convincing documentary evidence (a) is now or becomes generally known to the public by lawful means and without breach of any confidentiality obligation, (b) is disclosed by the recipient with the MWMC's prior written consent to unrestricted disclosure, (c) was known to and reduced to writing by the recipient before the date of this Agreement, (d) is independently developed by the recipient without use of any Confidential Information, or (e) is lawfully obtained by the recipient from any third party who did not obtain the information, directly or indirectly from the MWMC. The term generally known to the public refers to information that is generally known to the public in the United States of America, and the term does not include information that can be derived only through significant expenditure of time or effort to assemble, compile, or reconstruct, even though individual portions of the information may be publicly available.

21. **Assignment/Subcontract.** Consultant shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of the MWMC. No such written approval relieves Consultant of any obligations under this Agreement, and any transferee or subconsultant is considered the agent of Consultant. Consultant remains liable as between the original parties to the Agreement as if no such assignment had occurred.
22. **Successors In Interest.** The provisions of this Agreement are binding upon and inure to the benefit of the parties to the Agreement and their respective successors and assigns.
23. **Compliance With All Government Regulations.** Consultant shall comply with all federal, state and local laws, codes, regulations and ordinances applicable to the Work. Failure to comply with such requirements constitutes a breach of this Agreement and is grounds for termination of this Agreement. Damages or costs resulting from noncompliance are the sole responsibility of Consultant and its subcontractors.
24. **Dispute Resolution.** Consultant shall refer questions regarding the meaning and intent of this Agreement, and any exhibits thereto, in writing to the MWMC Project Manager for the MWMC Project Manager's decision. The MWMC Project Manager shall respond to the Consultant in writing with its decision. If the Consultant disagrees with the MWMC Project Manager's decision, Consultant may appeal the decision to the MWMC. Any related Work performed by the Consultant prior to the MWMC Project Manager's decision is done at Consultant's risk unless authorized by the MWMC Project Manager. The MWMC Project Manager will not consider direct questions from subcontractors, suppliers, manufacturers, or others not a party to this Agreement.

In the event the Consultant disagrees with any such decision of the MWMC Project Manager, the Consultant agrees first to try in good faith to settle the dispute by appealing the Project Manager

SECTION 7 – STANDARD TERMS AND CONDITIONS

Decision to the MWMC before resorting to arbitration, litigation, or some other dispute resolution procedure. The Consultant may, within ten (10) days of the date of such decision, appeal the decision to the MWMC for review by giving Notice, as set out in Section 39 of this Agreement. The appeal must be in writing and must set forth the question referred to the MWMC Project Manager, the MWMC Project Manager's decision and the Consultant's basis for disagreement. Consultant shall deliver a copy of the appeal to the MWMC Project Manager at the time it is filed with the MWMC. The MWMC shall make all reasonable efforts to review the appeal and deliver its decision in writing to the Consultant within thirty (30) days from the date of receipt of the appeal. Failure of the Consultant to appeal the decision of the MWMC Project Manager within said 10-day period constitutes a waiver of the Consultant's right to thereafter assert any claim resulting from such decision. This procedure is not meant to preclude or discourage informal resolution of disagreements between the MWMC Project Manager and the Consultant.

In the event the MWMC elects to do so, the MWMC may establish a "Claims Review Board" either to assist in reviewing appeals hereunder or to consider Consultant appeals directly. Once established, this Review Board will hear all future appeals of claims for this Contract.

During the pendency of any appeal, any related Work performed by the Consultant shall be done at its risk unless authorized by the MWMC Project Manager.

Except as otherwise provided in this Agreement, any controversy, claim, or dispute arising out of or relating to the Agreement, or the breach thereof, must be resolved by arbitration in accordance with the Oregon Uniform Arbitration Act and the terms herein. Where a conflict exists between the terms herein and the Oregon Uniform Arbitration Act, the terms herein supersede to the extent allowed by law. A decision by two of the three arbitrators shall be final and binding, and judgment may be entered thereon.

The Consultant shall not delay the Work because arbitration or other legal proceedings are pending, unless they have written permission from the MWMC Project Manager to do so. Such delay is limited to the time required by the arbitrators or court to determine whether the Work will continue or be suspended pending decision on the dispute by the arbitrators or court. Any request for arbitration must be in writing and must be delivered to the MWMC and MWMC Project Manager and any adverse party either by personal delivery or by registered mail addressed to the last known address of the parties in dispute.

In the event the MWMC or Consultant initiates arbitration, the MWMC shall pay all fees and costs associated with arbitration.

Each party shall appoint an arbitrator, with the third arbitrator selected by the two party-chosen arbitrators. Once one party has asked for arbitration and appointed an arbitrator, the other party must select an arbitrator within sixty (60) days. In the event the second party fails to appoint an arbitrator within this time, the arbitrator appointed by the first party shall serve as the sole arbitrator. In the event the two party-chosen arbitrators are unable to select a third arbitrator within thirty (30) days after the two party-chosen arbitrators have been selected, the two-party chosen arbitrators shall apply to the then-Presiding Judge of Lane County Circuit Court for selection of a third arbitrator who meets the qualifications set forth in this section.

All arbitrators shall be unaffiliated with either party and shall be an active member in good standing with the Oregon State Bar.

The prevailing party in such arbitration is entitled to recover fees and costs paid to the arbitrator, if any, and the prevailing party's reasonable attorney's fees and costs therein.

SECTION 7 – STANDARD TERMS AND CONDITIONS

THIS ARBITRATION AGREEMENT SUBSTANTIALLY AFFECTS YOUR LEGAL RIGHTS. BY AGREEING TO ARBITRATE, PARTIES GIVE UP THEIR LEGAL RIGHT TO BRING A COURT ACTION AND HAVE A JURY TRIAL.

25. **Attorney Fees.** In the event an arbitration award confirmed or vacated by a court is appealed, or in the event the arbitration provision in Section 24 is held by a court to be invalid, does not apply, or is waived by the parties, and a legal action relating to the Agreement, or the breach thereof, is brought by either party, the prevailing party shall be entitled to recover from the other party reasonable attorney's fees and costs therein and in any appeal therefrom.
26. **Force Majeure.** Neither party to this Agreement is responsible for delay or default caused by fire, riot, acts of God and/or war that is beyond that party's reasonable control. The MWMC may terminate this Agreement upon written notice after determining such delay or default will reasonably prevent successful performance of the Agreement.
27. **Assistance Regarding Patent and Copyright Infringement.** Without limitation to any other indemnification provision under this Agreement, in the event of any claim or action against the MWMC and/or the Cities of Springfield and Eugene, Lane County, and/or any of their officers, directors, principals, agents, employees and/or affiliates on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or Work or services performed hereunder, Consultant shall defend, indemnify and hold harmless the MWMC and/or the Cities of Springfield and Eugene, Lane County, and/or any of their officers, directors, principals, agents, employees and/or affiliates against any such suit or claim and all expenses, court costs, and attorney's fees in connection with such claim or action.
28. **Severability.** If any provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provision are not affected; and the rights and obligations of the parties are construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
29. **Access to Records.** Consultant shall permit the MWMC and its duly authorized representatives access to books, documents, papers and records of Consultant that are related to this Agreement for the purpose of making audits, examinations, excerpts and transcripts. Consultant shall maintain the records and make them available to the MWMC until a date that is not less than seven (7) years after the date of the last payment made by the MWMC under this Agreement.
30. **Waiver.** Failure of the MWMC to enforce any provision of this Agreement does not constitute a waiver or relinquishment by the MWMC of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.
31. **Amendments.** The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner whatsoever, except upon written amendment approved by the MWMC.
32. **Nondiscrimination.** Consultant shall comply with all applicable requirements of federal, state and local civil rights and rehabilitation statutes, rules and regulations.
33. **Dual Payment.** Consultant is not entitled to compensation for Work performed under this Agreement from any party other than the MWMC.
34. **Remedies.** The rights and remedies provided in Section 18 (Termination) are not exclusive, and are in addition to any other rights and remedies provided by law or under this Agreement. Termination of this Agreement pursuant to Section 18 is without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

SECTION 7 – STANDARD TERMS AND CONDITIONS

35. Terms Required By Oregon Statute.

- a. Consultant must give notice in writing to employees who work on a public contract either at the time of hire or before commencement of Work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work.
- b. No person, unless excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime, may be employed under this Agreement for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency, or where the public policy absolutely requires it, and in such cases Consultant shall pay the laborer at least time and a half pay for all overtime in excess of eight hours in any one day or 40 hours in any one week when the work week is five consecutive days, Monday through Friday; or for all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and for Work performed on Saturday and on any legal holiday specified in ORS 279B.020 and/or 279C.540.
- c. Consultant must comply with ORS 656.017 or be exempt under ORS 656.126.

36. Conditions concerning payment.

- a. As required by Oregon law, Consultant shall:
 - i. Make payment promptly, as due, to all persons supplying Consultant with labor or material for the prosecution of the Work.
 - ii. Pay all contributions or amounts due the Industrial Accident Fund from Consultant incurred in the performance of the Work.
 - iii. Not permit any lien or claim to be filed or prosecuted against the MWMC, the state, Lane County, or any municipal corporation or subdivision thereof, on account of any labor or material furnished. In the event a lien is filed then Consultant shall remove the lien within five (5) business days either by sufficient payment to the lien claimant or by “bonding off” the lien.
 - iv. Pay to the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
 - v. Promptly, as due, make payment to any person, co-partnership, association or corporation, furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of Consultant, of all sums that Consultant agrees to pay for such services and all monies and sums that Consultant collected or deducted from the wages of employees pursuant to law, contract or agreement for the purpose of providing or paying for such service.
- b. If Consultant fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to Consultant by any person in connection with this Agreement as such claim becomes due, the proper officer or officers representing the MWMC may pay such claim to the person furnishing the labor or services and charge the amount of the payment against funds due or to become due Consultant by reason of this Agreement.

37. Governing Law; Jurisdiction; Venue.

SECTION 7 – STANDARD TERMS AND CONDITIONS

- a. The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its validity, interpretation, construction, performance, and enforcement.
 - b. Each party to this Agreement submits to the exclusive jurisdiction of the Oregon State Courts for the purposes of all arbitration, legal actions and proceedings arising out of or relating to this Agreement; except, if a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively in the United States District Court for the District of Oregon, located in Eugene, Oregon.
 - c. Except in the case of a federal claim as described above, any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring the legal action or proceeding in the Circuit Court of Lane County. Each party waives any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
38. **Level of Competence.** In providing the services under this Agreement, Consultant shall exercise the level of competency, care and diligence generally expected of national professional engineering firm performing similar services. Consultant will re-perform any services not meeting this standard without additional compensation.
39. **Notice.** Whenever it is necessary to give notice to a party under this Agreement, the notice is effective when the party delivers the notice personally, sends it by facsimile transmission or deposits it in the United States Mail, postage prepaid, addressed to the other at:

Consultant: _____

MWMC: Matt Stouder, MWMC General Manager
 Metropolitan Wastewater Management Commission
 c/o City of Springfield – Environmental Service Department
 225 Fifth Street
 Springfield, OR 97477
 Fax #: (541) 726-2309

40. **Survival.** Sections 14, 16, 17, 19, 20, 22, 24, 27, 28, 29, 30, 37, and this Section 40 survive termination of this Agreement.
41. **Entire Agreement.** This Agreement signed by both parties along with all Exhibits incorporated herein is the parties' final and entire agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents and representatives. There are no representations, promises, terms, conditions or obligations other than those contained herein.

METROPOLITAN WASTEWATER
 MANAGEMENT COMMISSION

CONSULTANT

SECTION 7 – STANDARD TERMS AND CONDITIONS

By:

By:

Matt Stouder
Title: MWMC Executive Officer
Date: _____

Title: _____
Date: _____

APPROVED AS TO FORM:

Blake Hutchins Date
MWMC Attorney