

<b>COUNTY OF SONOMA AGENDA ITEM SUMMARY REPORT</b>	<b>Clerk of the Board Use Only</b>	
	<b>Meeting Date</b> _____ <b>Agenda Item No:</b> _____	<b>Held Until</b> _____ <b>Agenda Item No:</b> _____

<b>Department:</b> Russian River County Sanitation District	( ) 4/5 Vote Required
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<b>Contact:</b> Douglas Messenger	<b>Phone:</b> (707) 547-1952	<b>Board Date:</b> 05-05-09	<b>Deadline for Board Action:</b>
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**AGENDA SHORT TITLE:**  
Russian River CSD Disinfection Upgrade Project

**REQUESTED BOARD ACTION(S):**  
See Supplemental Page

**CURRENT FISCAL YEAR FINANCIAL IMPACT**

<u>EXPENDITURES</u>		<u>ADD'L FUNDS REQUIRING BOARD APPROVAL</u>	
<b>Estimated Cost</b>	\$ 43,050	<b>Contingencies</b>	\$
<b>Amount Budgeted</b>	\$ 43,050	<b>(Fund Name: )</b>	
<b>Other Avail Approp</b>	\$	<b>Unanticipated Revenue</b>	\$
<b>(Explain below)</b>		<b>(Source: )</b>	
<b>Additional Requested:</b>	\$ _____ -0-	<b>Other Transfer(s)</b>	\$
		<b>(Source: )</b>	
		<b>Add'l Funds Requested:</b>	\$ _____ -0-

**Explanation (if required):**  
Funding is available from the \$43,050 appropriation in the FY 2008/2009 budget for the Fund entitled Russian River County Sanitation District - Expansion (Construction) (Account No. 652305-8510).

**Prior Board Action(s):**  
09/11/07 Authorized Agency's General Manager/Chief Engineer to execute agreements with Ozonia NA in the form of the drafts presented to the Board.  
06/08/04 Resolution No. 04-0547 authorizing certain department heads to amend agreements related to construction projects within certain limits.

**Alternatives - Results of Non-Approval:**  
The District may violate future discharge limits. Based on current disinfection byproduct concentrations in the District's discharge, the existing chlorine disinfection system could violate the future disinfection byproduct limit.

## SUPPLEMENTAL PAGE

### REQUESTED BOARD ACTION(S):

1. Authorize Chairman to execute the Agreement to Provide Design Services for Russian River County Sanitation District's (District) Disinfection Upgrade Project between the Russian River County Sanitation District and Ozonia North America, Inc. (Ozonia Design Agreement) (\$43,050).
2. Authorize Chairman to execute the Agreement to Provide Manufacturing, Supplying, and Related Services for District's Disinfection Upgrade Project between the District and Ozonia North America, Inc. (Ozonia Manufacturing Agreement) (\$0).
3. Authorize Agency's General Manager/Chief Engineer acting on behalf of the District to terminate the Ozonia Design Agreement on five calendar days' written notice without cause and immediately upon written notification for cause.
4. Authorize Agency's General Manager/Chief Engineer acting on behalf of the District to terminate the Ozonia Manufacturing Agreement on five calendar days' written notice without cause and on three business days' written notification for cause.
5. Authorize the Agency's General Manager/Chief Engineer acting on behalf of the District to amend the Agreement to Provide Design Services for Russian River County Sanitation District's Disinfection Upgrade Project, provided amendments do not cumulatively increase the total cost to the District by more than \$25,000 (taking into account all prior amendments) and do not substantially change the scope of work.
6. Authorize the Agency's General Manager/Chief Engineer acting on behalf of the District to amend the Agreement to Provide Manufacturing, Supplying, and Related Services for Russian River County Sanitation District's Disinfection Upgrade Project, provided amendments do not cumulatively increase the total cost to the District by more than \$25,000 (taking into account all prior amendments) and do not substantially change the scope of work.

**Background:** Agreements on file with the Clerk.

The Russian River County Sanitation District (District) currently uses chlorine gas for wastewater disinfection. The District's National Pollutant Discharge Elimination System (NPDES) permit contains future stringent limits for chlorine disinfection byproducts. While chlorine disinfection byproducts are not detected in raw sewage entering the District's wastewater treatment plant (WWTP), chlorine disinfection byproducts are created within the wastewater treatment process during chlorine disinfection. To comply with future disinfection byproduct limits, the District has planned to replace its existing chlorine disinfection system with an ultraviolet light disinfection system (UV System) as part of the Russian River County Sanitation District Disinfection Upgrade Project.

To prevent the selection of a UV System based on capital cost alone, the Sonoma County Water Agency's (Agency) staff on behalf of the District issued a request for proposals (RFP) to select an effective UV System with the lowest life-cycle cost. The Agency's evaluation of life-cycle cost included capital, operation, and maintenance costs over a twenty-year period. Three suppliers responded to the RFP: Ozonia North America, Inc. (Ozonia), Trojan Technologies Inc., and Wedeco ITT. Based on the following information, Agency staff has identified Ozonia as the preferred supplier to perform the work:

1. Ozonia's UV System has the lowest life-cycle cost of the three suppliers.
2. Agency staff toured existing UV System installations from each supplier and the reviews provided by owners of Ozonia's UV Systems were excellent.

Agreements with Ozonia to perform the work include:

1. Design Services Agreement (Design Agreement): Design of the UV System will be performed pursuant to a contract between the District and Ozonia (\$43,050).
2. Manufacturing, Supplying, And Related Services Agreement (Manufacturing Agreement): Manufacturing, supplying, and related services will be performed pursuant to a contract between the District and Ozonia which, upon award, will be assigned to the successful low-bid contractor at the time of bid award. The District's payment for manufacturing, supplying, and related services, \$387,450, will be made to the successful low-bid contractor for the project as part of the construction contract, as is typical for any work performed as part of a construction contract. Therefore, once the Manufacturing Agreement is assigned, the District will no longer have a direct responsibility for paying the Manufacturing Agreement contract price, which will be assumed by the contractor. The District's direct payment obligation will thus be \$0.

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**Attachments**

**On File With Clerk:**

1. Agreement to Provide Design Services (4 Copies).
2. Agreement to Provide Manufacturing, Supplying, and Related Services for (4 Copies).
3. Assignment and Novation Agreement for (1 Copy).

**CLERK OF THE BOARD USE ONLY**

**Board Action (If other than "Requested")**

**Vote:**

## Background (continued):

3. Assignment and Novation Agreement: The Manufacturing Agreement between the District and Ozonia will be assigned to the successful low-bid contractor pursuant to the Assignment and Novation Agreement to be executed by the District and Ozonia and the selected contractor (\$0). This agreement will be submitted to the Board for approval and signature with the Board package that includes award of the construction contract.

On September 11, 2007, the Design Agreement and the Manufacturing Agreement were presented to the Board in draft form. Since that time, the agreements have been modified through negotiations with Ozonia. Because the proposed approach for this project was new, the District utilized the services of outside counsel, Carl Switzer, of Farella Braun & Martel, LLP, pursuant to a legal services contract for such specialized services recently authorized by the Board. The District was tasked with negotiating directly for supply of a manufactured product which would normally be negotiated by the construction contractor. As a result, there are some unique provisions which create a potential for greater risk to the District. However, Agency staff and Counsel believe that the risks have been minimized and are acceptably low in this instance. Risk Management has also been briefed on the risks. The unique provisions include:

1. A limitation of liability clause in both the Design Agreement and the Manufacturing Agreement which limits total liability to \$430,500.00 each, which represents the overall amount of the services to be provided by Ozonia under the agreements. Excluded from this limitation of liability are a) any loss covered by insurance to be maintained by Ozonia pursuant to the Agreements or b) Ozonia's indemnification obligations to the District or the Agency. These exclusions protect the District/Agency from liability which is insured or which is due to third party property damage or personal injury claims. Also, the Design Agreement contains a \$2 million professional liability insurance requirement, which is double the standard requirement. In addition, once the Manufacturing Agreement is assigned, this limitation of liability will not directly bind the District, although it may result in fewer prime contractors bidding or higher bids to account for the liability gap.
2. The standard indemnity clause has been modified in the Manufacturing Agreement and the Assignment and Novation Agreement to apply to the extent of negligence by Ozonia. Thus, the District and Agency will not be able to seek indemnity from Ozonia for the District's passive or active negligence in connection with an occurrence in which Ozonia was primarily at fault. Also, Ozonia's duty to defend has been re-worded in all three agreements to require Ozonia to be responsible to pay defense costs after such costs are incurred or awarded, rather than defend the action up front. Thus, the District/Agency would have to provide its own defense upfront and seek defense costs after, and to the extent, Ozonia was found at fault. In addition, Ozonia's indemnity obligation in the Manufacturing Agreement and the Assignment and Novation Agreement is limited to third party claims for personal injury and property damage, which removes the general indemnification obligation for economic loss. However, the risk of bearing liability for economic loss is substantially mitigated by the addition of provisions requiring indemnification for patent claims and claims for failure to pay labor and other contract-related costs.
3. Liquidated damages clauses in the Manufacturing Agreement contain individual caps of approximately \$43,000 each and are subject to the limitation of liability. Once the Manufacturing Agreement is assigned, these limitations will not directly bind the District, although, as with the limitation of liability, these provisions may result in fewer prime contractors bidding or higher bids to account for the liability gap.

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Continued...

**Background (continued):**

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