

**TOMALES VILLAGE COMMUNITY SERVICES DISTRICT
WASTEWATER FACILITIES
OPERATION, MANAGEMENT AND MAINTENANCE AGREEMENT**

THIS AGREEMENT is made and entered into this 29 day of Sept 1999, by and between Tomales Village Community Services District, hereinafter "District" and Phillips Services Inc., dba Phillips & Associates, hereinafter "Contractor", in the manner following:

WITNESSETH

WHEREAS, District is responsible for the operation and maintenance of certain wastewater collection, treatment, storage and disposal facilities in and around the community of Tomales in Marin County, California, and

WHEREAS, Contractor specializes in the operation and maintenance of such facilities,

NOW, THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions stated herein, the parties hereto agree as follows:

I. SCOPE OF SERVICES

- A. Contractor shall furnish labor, materials, services and supplies to operate and maintain the District facilities in accordance with the "Specifications for Contract Operation, Management and Maintenance of TVCSD Wastewater Facilities (Specifications) After September 30, 1999" attached as Exhibit A which is hereby incorporated by reference as though fully set forth and made part of this Agreement.

II. TERM AND DURATION OF AGREEMENT

- A. Term - Services under this Agreement shall commence on 10-1-99 and shall be provided for five (5) years, unless this Agreement is terminated sooner, or extended, with the provisions set forth herein.

III. COMPENSATION

- A. Except as otherwise noted herein, compensation shall be as described in Exhibit A.
- B. Monthly Service Charge for the first year of this Agreement shall be \$3,475.
- C. Compensation for subsequent years will be adjusted annually in accordance with Exhibit A.

IV. AMENDMENTS

- A. This document expresses the entire Agreement between District and Contractor and supercedes any previous or contemporaneous communications, representations or agreements.
- B. This Agreement may be modified only by written amendment signed by both parties, and failure on the part of either party to enforce any provision of the Agreement shall not be construed as a waiver of the rights to compel enforcement of such provision or provisions.

V. ASSIGNMENT

- A. Neither District or Contractor shall assign their interest in this Agreement without the written consent of the other.

VI. NOTICES

A. Notice - Contractor is licensed in General Engineering #751807 and is required to provide the following notice: Contractors are required by law to be licensed and regulated by the Contractor's State License Board which has jurisdiction to investigate complaints against contractors if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. A complaint regarding latent acts or omissions pertaining to structural defects must be filed within 10 years of the date of the alleged violation. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, PO Box 26000, Sacramento, CA 95826.

B. All notices shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid. Notices to be given to Contractor shall be addressed as follows:

Gary W. Phillips, President
Phillips & Associates
2203 Jefferson Street
Napa, CA 94558

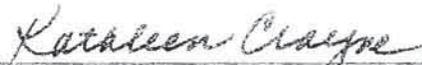
Notices required to be given to the District shall be addressed as follows:

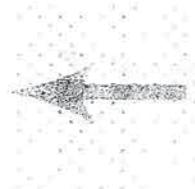
President of the Board
Tomales Village Community Services District
P.O. Box 303
Tomales, CA 94971

or to such other address as may be specified in written notice.

IN WITNESS WHEREOF, the District and Contractor have caused this Agreement to be duly executed as of the day and year first above written.

TOMALES VILLAGE COMMUNITY SERVICES DISTRICT


Kathleen Crayne, President of the Board



ATTEST:


District Secretary

PHILLIPS SERVICES, INC.


Gary W. Phillips, President

Exhibit A

**SPECIFICATION FOR CONTRACT
OPERATION, MANAGEMENT AND MAINTENANCE OF
TVCSD WASTEWATER FACILITIES**

After September 30, 1999

1 INTENT

- 1.1 It is the intent of these specifications to describe to the extent practical the scope of work and performance standards for operation, management and maintenance (OM&M) of District facilities described herein.

2 DEFINITIONS

- 2.1 District - The Tomales Village Community Services District, also known as TVCSD.
- 2.2 Contract - The contract between the District and the Contractor to furnish services in accordance with this Contract.
- 2.3 Contractor - The company performing the services in accordance with this Contract.
- 2.4 Administrator - The person designated by the District to serve as the liaison with the Contractor.
- 2.5 Plant Manager - The individual authorized by the Contractor to administer the affairs of the Contractor pursuant to these Specifications.
- 2.6 Plant Employees - The on-site personnel employed by the Contractor.
- 2.7 Regulatory Agencies - Those entities empowered to regulate the affairs of the District and/or Contractor.
- 2.8 Facilities - Buildings, grounds, structures, mechanical equipment, electrical equipment, instrumentation, piping, roads, fencing and all appurtenances thereto.
- 2.9 Contract Influent Flows (Flow) - The flows recorded by the Influent Parshall Flume. Load is based on the annual average (mean).
- 2.10 Contract Influent COD (Load) - The chemical oxygen demand based on samples taken of the influent. Load is based on the annual average (mean).
- 2.11 Influent TSS - The suspended solids (as non-filterable residue) based on samples taken of the influent.
- 2.12 Non Scheduled Work - Work performed by the Contractor which is outside the scope of these Specifications and is compensable.
- 2.13 OM&M - Operations, Management and Maintenance Services
- 2.14 Capital Expenditure - New equipment or modifications to existing facilities that have a value

over \$1,000 and a useful life in excess of one year.

3 SCOPE OF WORK

- 3.1 Relationship - The relationship of Contractor to District shall at all times be that of an independent contractor.
- 3.2 Ownership
 - 3.2.1 Facilities, Supplies and Equipment - Property and Facilities owned, operated and maintained by the District, as well as tools, furniture, parts, documents and supplies owned by the District shall be the sole property of the District. Property provided by Contractor shall remain the sole property of the Contractor, except those items provided by Contractor for which specific payment has been received from District by Contractor for those items.
 - 3.2.2 Data - Documents pertaining to operation, management and maintenance of the Facilities as currently exist, or as may be gathered by the Contractor in accordance with these Specifications, shall remain the sole property of the District. Written and/or electronic records shall be maintained on District property. Contractor's internal correspondence, personnel records, confidential financial reports, and other documents shall remain the property of the Contractor.
- 3.3 Facilities Included
 - 3.3.1 General - Contractor shall operate and maintain in accordance with these specifications.
 - 3.3.2 Tomales Facilities - Facilities shall include all District collection system, pipelines, cleanouts and manholes; lower town lift station and force main; treatment plant facilities, effluent force main, storage reservoirs and irrigation system. Note that side sewers from the District "Y" connection are the property owners responsibility.
 - 3.3.3 Existing Conditions - Facilities are provided in their existing condition. Contractor shall not be responsible to maintain equipment abandoned in place and not in good repair and/or operating condition as of October 1, 1999. It is hereby noted that 1) the chlorination system need replacement; 2) the sand filtration and pumping systems have been abandoned in place; 3) miscellaneous electrical controllers have been abandoned in place or removed; 4) the irrigation pump inlet pipeline and irrigation heads need replacement; and 5) there exists operations and engineering reports prepared in 1997, 1998 & 1999 which detail conditions of several components of the Facilities.
- 3.4 District Requirements
 - 3.4.1 Competency of Workers - Contractor shall provide personnel adequately skilled to perform their assigned duties. Where applicable, workers shall comply with certification, registration or license requirements for their duties.
 - 3.4.2 Staffing Levels - Contractor shall provide adequately staff to meet these Specifications.
 - 3.4.3 Plant Manager
 - 3.4.3.1 Contractors Representative - Contractor shall designate a Plant Manager to

conduct the business of the Contractor.

3.4.3.2 Scope of Duties - The Plant Manager, or his designee, shall have responsibility for managing the Contractors activities under these Specifications.

3.4.3.3 Qualifications - The Plant Manager shall be certified at a minimum of a Grade III Wastewater Treatment Plant Operator and shall have experience in the operation, management and maintenance of a treatment system similar to the District Facilities.

3.4.3.4 Availability - The Plant Manager shall be available to consult with District staff during normal business hours. During non-business hours the Plant Manager or designee shall be available by telephone or pager seven (7) days per week, twenty four (24) hours per day.

3.5 Operation of Facilities

3.5.1 Design Capacity - For the purposes of these Specifications, the design capacity of the treatment plant is 38,000 gallons per day.

3.5.2 Flow - For the purposes of these Specifications, the Contract Flow is based on the annual average (mean) from October 1998 through September 1999. If these values are unavailable, then 29,096 gallons per day will be used, based on August 1998 through July 1999 influent flow data.

3.5.3 Load - For the purposes of these Specifications, the Contract Load is based on the annual average (mean) from October 1998 through September 1999.

3.5.4 Regulatory Requirements - Contractor and District agree to operate, manage and maintain the Facilities in compliance with applicable regulations, including but not limited to:

A) San Francisco Regional Water Quality Control Board and Waste Discharge Order 86-86

B) Bay Area Air Quality Management District

C) California Division of Industrial Safety (Cal OSHA)

D) State Water Resources Control Board Operator Certification Regulations

E) Environmental Protection Agency (EPA)

F) Contractor shall prepare and submit routine operating reports required by current regulations.

G) Contractor is required to report all noncompliance events in accordance with these Specifications and the Waste Discharge Order.

3.6 Maintenance of Facilities

3.6.1 Preventive and Corrective Maintenance - Contractor shall provide preventive and corrective maintenance as defined herein, and maintain the Facilities in good working

order and repair.

- 3.6.2 Deductible - Contractor shall be responsible for preventive and corrective maintenance up to the amounts listed below. If the Contractor estimates the costs will exceed the amounts listed below, the Contractor shall submit the proposed method of repair or replacement to the District. In cases of an emergency nature, Contractor shall be authorized to proceed after a reasonable attempt is made to contact the District. Costs in excess of the deductible will be Non Scheduled Work, unless agreed otherwise in writing by Contractor and District.
- 3.6.3 Rotating Equipment - Contractor shall provide and pay for all costs of preventive and corrective maintenance up to \$500 per occurrence, per component. Components are intended to be rotating or moving equipment such as motors, pumps, and valves. (Note: Irrigation spray heads are excluded due to excessive wear and lack of replacement parts. Corrective repairs will be considered as Non Scheduled Work)
- 3.6.4 Fixed Facilities - Contractor shall provide and pay for all costs of preventive and corrective maintenance up to \$500 per occurrence for all other Facilities not listed above; and include stationary facilities such as grounds, roads, levies, fences, buildings, landscape, pipelines, manholes, motor control centers, electronics, etc.
- 3.6.5 Sludge, Residue and Residuals - District is responsible for disposal of sludge, residue, grit, grease, chemicals, abandoned equipment and/or other residual materials produced by the District's facilities.
- 3.6.6 Standard Maintenance Program - Contractor shall develop and provide a systematic maintenance program, which comply with the Operations and Maintenance Manuals, equipment manufacturers recommendations or best industry practice; whichever Contractor believes is most appropriate. Copies will be located at the treatment plant.
- 3.6.7 Maintenance Reports - Reports will be maintained and filed at the wastewater treatment plant on a monthly basis.
- 3.6.8 Performance Standards - Contractor shall perform all work in a neat and workmanlike manner. Any damage to District facilities caused by Contractor willful misconduct or negligence shall be repaired at Contractor's sole expense. All work shall be completed in a timely manner and of a quality in compliance with industry standards.
- 3.6.9 Special Requirements - Grounds shall be maintained, as weather permits, in a manner that limits vegetation to eighteen inches or less in the treatment plant area and maintains drainage free of excessive vegetation. Roadways shall be maintained in a relatively vegetation free condition and graded or repaired as needed to control potholes. Vegetation shall be controlled in ponds and reservoirs so not to obstruct proper operation and sanitation. Rodents shall be controlled as necessary.

3.7 Operational Standards

- 3.7.1 Operations and Maintenance Manuals - Contractor shall operate and maintain the Facilities at a minimum in accordance to the Operations and Maintenance Manual. Manuals shall be maintained and kept at the wastewater treatment plant.
- 3.7.2 Reporting - Contractor shall provide the District with a copy of all routine or special operating reports. Contractor shall prepare reports as requested by the District to

document process upsets, noncompliance events, damage to equipment, emergency situations, and other such matters related to the operation of the Facilities in accordance with these Specifications.

- 3.7.3 Non-degradation - Contractor shall not employ any practices which result in excessive wear or degradation of the Facilities.
- 3.7.4 Emergency Response - Contractor shall promptly respond to all alarms and notifications of emergency conditions. Emergency response is not considered eligible for reimbursement as a Non-Scheduled Work expenditure, although actual emergency repairs may be eligible.

3.8 Communications

- 3.8.1 District - Contractor shall maintain staffing and procedures necessary to insure timely professional communications with the District.
- 3.8.2 Document Forwarding - Both District and Contractor shall immediately forward to each other any document or information received which concerns the operations, management and maintenance of the Facilities.
- 3.8.3 Customers - Contractor shall develop and provide a work request tracking system to document calls from District customers. The system shall include a method for action tracking and reporting. The system shall be in place by January 1, 2000.
- 3.8.4 Regulators - Contractor shall provide written and oral communications with regulatory agencies concerning the operations and maintenance of the Facilities.
- 3.8.5 District - Contractor shall provide copies to the District of written communications with regulatory agencies and report substantive conversations or communications which may affect the District. At least quarterly the Contractor shall attend a Board of Directors meeting and present an operations and maintenance report.

3.9 Non-Standard Operation - This section is intended to provide a mechanism to equitably manage changes in facility operations and maintenance which are considered to be beyond the normal scope as described in these Specifications.

- 3.9.1 District Initiated Work - When authorized by the District, Contractor may perform work outside the scope of these specifications as Non Scheduled Work.
- 3.9.2 Emergencies - In the event of an emergency situation, Contractor shall make a reasonable effort to contact the District before incurring costs for Non Scheduled Work. In the event the Contract can not reach the District, Contractor is authorized to make reasonable and necessary expenditures to alleviate the emergency condition. In the event such expenditures were made, Contractor shall notify the District the next normal work day and provide a written report to the District as soon as practical.
- 3.9.3 Changed Conditions - Due to events outside the control of the Contractor and/or District, such as changed laws, regulations or requirements, changed processes or procedures, latent conditions unknown by Contractor, loss of supply, judgement or stipulation; including but not limited to changes in annual flow above or below 5% of the stated actual flow specified in these Specifications; Contractor will bill District as Non Scheduled Work, or give credit as appropriate. Within eighteen months Contractor

shall amend its agreement with the District to reflect the costs of the new or modified conditions.

- 3.9.4 Special Operations and Maintenance - Winter irrigation, and other non-routine tasks not covered by these Specifications shall be approved by the District in writing as Non Scheduled Work, except in an emergency, in advance of Contractor beginning the work.
- 3.9.5 New Construction - When requested by the District, Contractor shall undertake the operation, management and maintenance of new or modified facilities as Non Scheduled Work. Within eighteen months Contractor shall amend its agreement with the District to reflect the costs of the new or modified facilities.
- 3.9.6 Work by Others - District may have work done by others which impacts Contractor. Work performed by Contractor necessary to coordinate with others shall be billed to District as Non Scheduled Work.

3.10 District Responsibilities

- 3.10.1 Capital Improvements and Capital Expenditures - District shall be responsible for planning, scheduling, designing and implementing all capital improvement work necessary to replace, modify, add or remove facilities. Annually the District and Contractor will meet and evaluate capital improvements for purposes of planning and budgeting. The District may authorize capital improvements to be completed by Contractor, or may make arrangements with others. If improvements are not performed by Contractor, District will closely coordinate this work with the Contractor to minimize impacts on plant operations. The following are included as capital improvements.
 - 3.10.1.1 Engineering - Provide all engineering for new construction or modifications to facilities, and provide for Contractor to review and comment on work. District will provide all specifications and record drawings for work as well as manufacturers equipment submittals and operations and maintenance manuals.
 - 3.10.1.2 Construction - Provide all new or modification construction to facilities and require outside parties to coordinate work with Contractor.
 - 3.10.1.3 Spare Parts - All specified spare parts will be furnished to Contractor.
 - 3.10.1.4 Initial Training - Any new or modified facilities will include District provided training for Contractor's staff.
- 3.10.2 District Records - Official District Records will be maintained by the District and include easements, maps, etc.; which shall be made available to Contractor as the need arises.
- 3.10.3 District Administration - District administration, accounting, legal and professional work is performed by District and is not included in these Specifications.
- 3.10.4 Agreements, Permits and Licenses - District shall maintain all agreements, easements, permits, licenses, etc. to lawfully operate District facilities and agrees to cooperate with Contractor in order to maintain compliance with all local, state and federal regulations; and to provide facilities that are safe and in compliance with all safety and health regulations for workers.

3.11 Contractor Responsibilities

- 3.11.1 Specifications - Contractor shall comply with these Specifications.
- 3.11.2 Cooperation - Contractor shall cooperate with the District's engineers, attorneys, consultants or others engaged by the District to investigate, evaluate, modify, construct, demolish or remove facilities. Non Schedule Work may apply where appropriate.
- 3.11.3 Professionalism - Contractor shall conduct their business in a professional manner and conduct themselves appropriately when dealing with District customers, regulators, citizens at large, politicians or others while conducting business on behalf of the District.

3.12 Non Compliance with Specifications

- 3.12.1 Contractor Non Compliance - In the event the District believes the Contractor may not be in compliance with these Specifications, the District shall inform the Contractor in writing of the specific non compliance. Upon receipt, Contractor shall respond within five (5) working days addressing the non compliance, and what actions and timetable will be used to achieve satisfactory resolution.
- 3.12.2 District Non Compliance - In the event the Contractor believes the District may not be in compliance with these Specifications, the Contractor shall inform the District in writing of the specific non compliance. Upon receipt, District shall respond within five (5) working days addressing the non compliance, and what actions and timetable will be used to achieve satisfactory resolution.
- 3.12.3 Arbitration - In the event resolution can not be achieved, both parties agree to mediation for dispute resolution. In the event mediation does not produce a satisfactory resolution, both parties agree to binding arbitration for all matters between the Contractor and District. Costs for mediation and arbitration will be paid equally by District and Contractor.

4 COMPENSATION

- 4.1 Monthly Service Charge - The annual service charge shall be equally divided into twelve parts and billed to the District at the beginning of each month services are to be provided. This fee is intended to cover all routine operation, management and maintenance services for the Facilities up to the limits specified in these Specifications. The monthly service charge includes:
 - a. Employee salaries, benefits, employers taxes, workers compensation insurance.
 - b. Process chemicals, electricity¹, water and telephone service.
 - c. Vehicles, hand tools, maintenance supplies, office supplies and office equipment.
 - d. Plant management, supervision, record keeping and reporting.

¹ Electricity will be direct billed at actual cost for first twelve months to establish a baseline. Beginning year two electricity will be added to the Monthly Service Charge including a CPI adjustment.

- e. Routine laboratory equipment, containers, chemicals, sampling and analysis.
 - f. Fuel, lubes, service parts and supplies, herbicides, soaps and janitorial supplies.
 - g. Gravel, rock, sand or fill for grounds or road maintenance.
 - h. Industrial equipment necessary for maintenance.
 - i. Sewer cleaning services as needed
 - j. Customer service call response.
 - k. Contractor administration, overhead and profit.
- 4.2 CPI - Annually the Contractor shall adjust the Monthly Service Charge based on the U.S. Department of Labor Statistics Consumer Price Index for Urban Wage Earners and Clerical Workers for the San Francisco - Oakland area (U.S. City Average 1982 = 100). The adjustment shall be based on the most recent twelve months available compared with the same period one year before. Contractor will modify District's invoice to reflect the calculated CPI adjustment at the beginning of each new year of the contract.
- 4.3 Non Scheduled Work - Non Scheduled Work will be billed in accordance with these Specifications in accordance with our then-current Schedule of Rates. Non Scheduled Work will be invoiced at the end of the month in which the work was performed. At the Contractor's option, small specific project billing may be accumulated, or held, for a few months until a single invoice can be prepared. (Note: Non Scheduled Work is a sole source mechanism for the District to utilize when sending out Requests for Proposals (RFPs) and obtaining multiple bids or proposals is unwarranted or uneconomical.)
- 4.3.1 Project Bids - Occasionally the District and Contractor may wish to prepare a separate contract outside the scope of these Specifications or Non Scheduled Work. Upon receipt of a Request for Proposal (RFP) from District, Contractor may, or may not, submit a bid. In the case where a bid is submitted and accepted by the District, the terms of the bid shall be exclusively those contained in the bid and shall not automatically adopt these Specifications unless specified in writing otherwise. This provision is utilized most often when projects outside the Contractor's scope arise which the District desires to receive multiple bids or proposals.
- 4.4 Electrical Efficiency - Contractor shall provide and pay for all electrical power, providing the flow or load is within 5% of the October 1998 through September 1999 influent flow and influent load. Should either flow or load exceed this amount, the contractor shall be entitled to a compensation adjustment based on the change in flow or load weighted at 80% for flow and 20% for load. (New Flow/Old Flow x 80% + New Load/Base Load x 20% = Electrical Adjustment)
- 4.5 Payment - Upon receipt of invoice from Contractor, District shall promptly direct deposit its payment into an account specified by Contractor. Invoice shall be itemized to clearly indicate Monthly Service Charges and Non Scheduled Work. Non Scheduled Work shall include supporting documentation as necessary. Separate invoices may be submitted at the discretion of the Contractor.
- 4.6 Time of Payment - Invoices are due upon receipt. District shall pay 1 ½ % per month for balances over 30 days. District shall be responsible for reasonable collection fees, including but not limited to attorneys fees, for the collection of any outstanding balance.

5 **INSURANCE AND HOLD HARMLESS**

- 5.1 Contractor's Insurance - Contractor shall maintain and keep in full force the insurances listed in this section. Additionally, the Contractor shall name the District as additional insured. Certificates of Insurance shall be provided to the District by Contractor.
 - 5.1.1 Workers Compensation Insurance - Statutory amounts in compliance with State laws.
 - 5.1.2 Commercial General Liability and Automobile: \$1,000,000 per occurrence.
 - 5.1.3 Professional Liability Insurance, including a pollution endorsement: \$1,000,000 per occurrence.
- 5.2 District's Insurance - District shall maintain and keep in full force insurance appropriate for a public utility and shall name the Contractor as additional insured. Certificates of Insurance shall be provided to Contractor by District.
- 5.3 Indemnification - District shall indemnify and hold harmless Contractor, its agents, officers or employees from (A) any action, claim, loss, liability, damage, injury, judgement, or expenses, including attorneys fees and witness costs, which arise from (i) any cause other than gross negligence of Contractor or any subcontractor of Contractor, or (ii) the discharge, dispersal, release or escape of any wastewater, effluent, fluids, gases, chemicals, biosolids, residues or odors into or upon the land, atmosphere, or any course or body of water, and (B) District agrees that wrongful, willful or negligent acts of the District through its agents, officers or employees and wrongful, willful or negligent acts of third parties, or acts of God, which cause damage to Facilities or to other third parties shall not be the responsibility of Contractor. (C) District agrees that unusual occurrences associated with organic, inorganic or hydraulic load; or flood, fire or acts of God which increase operation, management and maintenance expenses, repair expenses, or other expenses shall remain the responsibility of the District.
- 5.4 Force Majeure - Contractor shall not be liable for its failure to perform its obligations under these Specifications if such failure was the result of an Act of God, landslide, lightning, earthquake, fire, flood, explosion, sabotage, acts of a public enemy, war, blockade, insurrection, riot, civil disturbance, vandalism, work stoppage, union activities, transportation disruptions, and is not in any manner the result of the willful or negligent acts of the Contractor.

6 **ALTERATION OF TERM**

- 6.1 Extension - The term of the Agreement will automatically extend beyond the normal expiration date under the same terms of these Specifications, or as amended, until a Notice of Termination is given as provided below, and the prescribed time lapses.
- 6.2 Notice of Termination - Without cause either the Contractor or the District may terminate its agreement for OM&M Services by giving a 180 day written notice to the other party.

End of document.