



**Marin Wildfire Prevention Authority
1600 Los Gamos Dr., Suite 345
San Rafael, CA 94903
415-539-6972**

REQUEST FOR PROPOSALS

**Environmental Compliance Consulting Services
for Wildfire Prevention/
Hazard Mitigation Projects**

February 19, 2024

**PROPOSALS DUE:
Wednesday, March 29, 2024
by 5:00 PM**

I. OVERVIEW AND BACKGROUND

The Marin Wildfire Prevention Authority (MWPA) consists of 17 member agencies covering nearly all of Marin County and was established by a voter-approved parcel tax (Measure C). MWPA is a joint powers authority (JPA). The Board of Directors is composed of 17 representatives from member agencies with taxing and fire management responsibility within Marin County. MWPA is funded by Measure C, which took effect in the 2020/21 fiscal year and, unless renewed, will expire in 2029/30. These funds, estimated at approximately \$20 million annually, are managed and utilized by MWPA for Core projects and distributed by MWPA to local member agencies for projects that are consistent with the priorities outlined in the Marin County Community Wildfire Protection Plan (CWPP) and other guiding documents.

The MWPA is working to create fire-adapted communities using sound science, innovative financial strategies, sound ecological practices, thoughtful vegetation management, effective community education, and reliable evacuation and warning systems with the support of its member and partner agencies.

The MWPA Board of Directors developed five goals to describe the activities that the MWPA intends to pursue. MWPA's activities support one or more of the following goals directly or indirectly. They include:

1. Vegetation Management and Local Wildfire Prevention Mitigation
2. Wildfire Detection, Alert, and Evacuation Program Improvements
3. Grants and Partnerships
4. Public Outreach and Education
5. Defensible Space Evaluations and Home Hardening

Environmental compliance is required for many MWPA Core and local member agency projects. The selected Consultant will be responsible for ushering the Core projects through all environmental reviews. This includes producing technical studies and reports for environmental evaluation under the California Environmental Quality Act (CEQA), including but not limited to Notices of Exemption, Initial Studies, Negative Declarations, Mitigated Negative Declarations, Notices of Determination, and Project Specific Analyses (PSAs) under the California Vegetation Treatment Program Environmental Impact Report (CalVTP PEIR), where applicable, for vegetation management, defensible space and hazard mitigation projects within the MWPA jurisdictional boundaries. In addition to CEQA compliance, the selected Consultant will be responsible for any NEPA compliance and permits from local, state, and federal regulatory agencies.

Historically, MWPA has spent approximately \$750,000 to \$1,000,000 on environmental consulting services annually.

II. SCOPE OF WORK:

MWPA invites proposals from firms interested in providing environmental compliance consulting services. The contract term will be three (3) years with an option for a two (2) year extension for services. No specific projects have been identified at this time; however, a list of current and past

vegetation management projects can be found at: <https://www.marinwildfire.org/vegetation-management>

Services may include but are not limited to the following:

- CEQA (including Cal VTP PEIR) and NEPA compliance, including regulatory compliance guidance
- Obtaining regulatory permits from regulatory agencies including, but not limited to, Sections 401 and 404 of the Clean Water Act, federal and California Endangered Species Acts, Porter-Cologne Act, California Department of Fish and Wildlife Lake and Streambed Alteration Agreements, and California Coastal Act, Coastal Public Works Plans, and various county and local permits
- Surveys and studies, including wildlife, botanical, cultural, and geotechnical/geological
- Design, implementation, and monitoring of restoration projects
- Air quality and greenhouse gas emissions analysis
- Cultural resources database searches, field surveys, consultation assistance, and impact analysis
- Recreation studies and analysis
- Public meeting and workshop planning and facilitation

In addition to the MWPA Core project related work described above, each MWPA local member agency will be responsible for complying with CEQA for the projects undertaken on their own. Those local agencies may wish to enlist the assistance of the Consultant for similar environmental review and compliance work, however, this work is outside the scope of this RFP and will not fall under the agreement between the MWPA and the Consultant. If Consultant services are requested by local agencies, the MWPA recommends that the Consultant offer a separate “piggyback” contract to those agencies with terms at least equal to those terms agreed to by MWPA and the Consultant.

Interested Consultants are encouraged to prepare a proposal to provide the following services:

As-Needed Environmental CEQA/CalVTP/NEPA Consultation

- Provide as-needed consultation and support for MWPA Staff for various CEQA/CalVTP/NEPA environmental questions;
- Participate in one-on-one calls and fact-to-face meetings, conference calls and present to the Board of Directors or other groups, as needed;
- Respond to staff comments and questions and develop memorandums or reports and associated revisions as needed;
- Assist with public meeting and workshop planning and facilitation; and
- Remain knowledgeable of contemporary environmental practices and advise the MWPA of advances/changes in laws, regulations and practices.

CEQA/NEPA Documentation

Prepare a full range of documentation required pursuant to CEQA/NEPA, including, but not limited to:

- Notices of Exemption;
- Initial Studies/Negative Declarations/Mitigated Negative Declarations;
- Notices of Determination;
- Project Specific Analysis/Project Specific Analysis and Addendum under the CalVTP PEIR;
- Mitigation Monitoring and Reporting Programs;

- Administrative Records;
- Environmental Impact Report, only if other CEQA compliance tools are not applicable;
- Rarely, NEPA documents, such as Environmental Assessments, Environmental Impact Statements, Findings of No Significant Impact, Notices of Intent, Records of Decision, etc.;
- Public notices, as required; and
- Track costs associated with services

Other Environmental Services: Research/Surveys/Studies/Monitoring

- Complete database searches; literature reviews; botanical, wildlife, cultural, geologic, or other field surveys in support of project planning, environmental compliance, implementation, and/or post-activity monitoring;
- Review and summarize existing literature on various topics to support MWPA's science-based approach to fire fuels reduction and ecological stewardship; and
- Coordinate with MWPA staff, local member agencies, land management agencies, landowners, other consultants, and partners to secure rights-to-enter and prepare field investigations, maps, surveys, data collection tools, monitoring and technical reports as necessary.

Regulatory Permit Assistance

- Obtain regulatory permits as required, including, but not limited to California Coastal Act permits, Lake and Streambed Alteration Agreements, and others;
- Prepare documents in a manner consistent with local, regional, state and federal regulations, CEQA Guidelines and applicable case law; and
- Coordinate Tribal consultation and coordination.

III. TIMELINE

February 19, 2024	Notice inviting Request for Proposals/Qualifications released
March 8, 2024	Final questions due from Consultants
March 15, 2024	Final MWPA responses to questions due
March 29, 2024	Proposals due to MWPA
April 18, 2024	Consultant selection approved by MWPA Board of Directors
May 3, 2024	Agreement executed with Consultant(s)

IV. PROPOSAL SUBMISSION

A. Content

The proposal shall include a table of content and page numbers and be structured as follows:

Section 1: Signed Proposal Cover Page

Section 2: Consultant Statement of Qualifications

- Description of the company, its competencies and experience,
- Explanation of Consultant's understanding of the MWPA's needs related to this project, as outlined in the Scope of Work.

- Relevant samples of work for each service, including at least two references with name of organization, contact person, and contact information.
- Personnel to be assigned to the work, including qualifications such as education and professional experience, and brief examples of similar completed project scopes that these staff members have contributed to.
- Identify the principal and the primary project manager.
- Summarize the staffing and management plan.

Section 3: Rates

- Provide a rate estimate for each of the tasks outlined in the Scope of Work and all services included in this proposal and all personnel and billing rates.

Section 4: Insurance

- Provide proof of insurance consistent with the requirements set forth in Attachment A: Professional Services Agreement.

Section 5: Revisions to Professional Services Agreement

- Identify any proposed revisions to the attached Professional Services Agreement. Lack of response shall indicate proposer's agreement with all terms and conditions contained therein.

Proposals are due to the MWPA no later than 5:00 pm on March 29, 2024. Submit as single PDF document via email to Anne Crealock (acrealock@marinwildfire.org).

INQUIRIES: No phone calls will be accepted. Written questions may be submitted to Anne Crealock (acrealock@marinwildfire.org) no later than 5:00 pm on March 8, 2024. MWPA responses to all written questions will be posted to the MWPA website no later than March 15.

B. MWPA's Right to Reject or Terminate RFP

MWPA expressly reserves the right to further consider, accept or reject any or all Proposals submitted in response to this RFP; to request additional information or clarification of information submitted; to cancel or modify, in part or in its entirety, this RFP, or to request new Proposals or pursue any other means for obtaining the services contemplated by this RFP and/or the PSA.

V. SELECTION CRITERIA

Proposals will be evaluated based on the following criteria:

- Thoroughness of proposal;
- Professional qualifications and demonstrated knowledge, experience, and ability to perform work listed in the Scope of Work, including:
- Demonstrated ability to work in a collaborative, integrated way, with a team comprised of multiple disciplines;
- Demonstrated ability to perform work in a cost-effective and efficient manner – proven ability to be creative in leveraging limited financial resources;
- The significance and extent of proposed changes to the Professional Services Agreement.

VI. SELECTION PROCESS

The MWPA Executive Officer and/or assigned MWPA staff will evaluate all proposals according to the demonstrated technical competence and suitability of the prospective Consultant. The selection process may involve narrowing the total number of interested Consultants to a short list.

These Consultants may be interviewed, with one Consultant being recommended for selection by the MWPA Board of Directors, which will make the final selection and award the contract.

VII. GENERAL CONDITIONS

1. Addenda. The MWPA will post any RFP addenda to the MWPA website. Proposers shall be responsible for ensuring that responses to all addenda are included in their submissions. It is the proposer's sole responsibility to monitor the MWPA website for possible addenda to this RFP.
2. Acceptance. Submission of any response indicates acceptance of the conditions contained in this RFP.
3. All reports, data and/or materials and all other work products produced under an agreement with MWPA shall be the sole property of the MWPA and may not be used or reproduced in any form without the explicit written permission of the MWPA.
4. All submittals become the property of the MWPA, regardless of whether the MWPA enters into a contract with the Consultant, and no submittals will be returned to a Consultant. In accordance with California law relating to access to public records, the MWPA may be required to publicly disclose all submitted information and materials to third parties requesting such information. At the MWPA's sole discretion, it may delay disclosure of submittals until negotiations with the selected Consultant(s) has concluded, if such disclosure would compromise the MWPA's negotiating position. If the submitting Consultant claims that any submitted information constitutes a trade secret or is proprietary, the bidder shall identify the trade secret or proprietary information in the submittal. Hourly rates and pricing are not considered a trade secret or proprietary information.
5. This RFP does not commit the MWPA to award a contract, to pay any costs incurred in the preparation of the proposal response to this request, or to produce or contract for services or supplies. The MWPA reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source, or to cancel in part or in its entirety this RFP if it is in the best interest of the MWPA to do so. The MWPA may require the selected Consultant to participate in negotiations and to submit such price and technical or other revisions to their proposals, as may result from negotiations.
6. All proposers are hereby notified that, during any prospective performance, Consultant must agree to provide Equal Employment Opportunity and shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, national origin, sexual orientation or HIV positive findings. Such actions shall include but are not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeships.
7. In the event of Consultant's noncompliance with the non-discrimination provisions of the prospective contract, the MWPA shall impose such contract sanctions as it may determine to be appropriate including, but not limited to, withholding of payments to Consultant under the contract until Consultant complies and/or cancellation, termination, or suspension of the contract, in whole or in part.
8. This RFP and any resultant Professional Services Agreement shall be governed by the laws of the State of California. The parties agree to the jurisdiction and venue of the appropriate courts in the County of Marin and the State of California.
9. All data and information provided by MWPA or referred to in this RFP is furnished for the convenience of interested parties in preparing a Proposal. The responding Consultant shall defend, indemnify and hold harmless MWPA from any and all liability, claims, or expenses

whatsoever, incurred by, or on behalf of, the Consultant's response to this RFP. MWPA expressly disclaims any and all liability for representation or warranties, express or implied, contained in the RFP or any other written or oral communication transmitted or made available to interested parties, including any errors of omission.

VIII. INSURANCE REQUIREMENTS

The Consultant shall maintain the minimum insurance during the duration of the project or potential litigation, maintain Errors and Omissions insurance and maintain records for seven (7) years as described in Attachment A Professional Services Agreement.

Please note the agreement will not be executed by the MWPA until after the Consultant is selected and the appropriate insurance certificates are received and approved by the MWPA.

IX. FORM OF AGREEMENT

The Consultant will enter into an agreement with the MWPA based upon the contents of this RFP, the Consultant's proposal, and a standard form of Professional Services Agreement attached hereto. The MWPA also reserves the right to modify the Agreement.

ATTACHMENT A: Professional Services Agreement

AGREEMENT FOR PROFESSIONAL SERVICES

FOR _____

This Agreement is made and entered into this _____ day of _____, 20____, by and between the MARIN WILDFIRE PREVENTION AUTHORITY (hereinafter "**MWPA**"), and _____ (hereinafter "**CONSULTANT**").

RECITALS

WHEREAS,

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **MWPA’S Project Manager.** The _____ is hereby designated the PROJECT MANAGER for the **MWPA** and said PROJECT MANAGER shall supervise all aspects of the progress and execution of this Agreement.

B. **CONSULTANT’S Project Director.** **CONSULTANT** shall assign a single PROJECT DIRECTOR to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. _____ is hereby designated as the PROJECT DIRECTOR for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute PROJECT DIRECTOR, for any reason, the **CONSULTANT** shall notify the **MWPA** within ten (10) business days of the substitution.

2. **DUTIES OF CONSULTANT.**

CONSULTANT shall perform the duties and provide services as set forth in the Scope of Work attached hereto and Exhibit A (“Services”) and incorporated herein by reference. Should **CONSULTANT** utilize any third parties, subcontractors, or independent contractors (“subcontractors”) to perform the Services, **CONSULTANT** shall require all subcontractors to abide by the terms of this Agreement and shall be liable to **MWPA** for any acts or omissions of subcontractors as if they were **CONSULTANT**’s own act or omissions.

3. **DUTIES OF MWPA.**

MWPA shall pay the compensation as provided in Paragraph 4, and perform the duties as follows:

- a. MWPA shall promptly provide or direct the appropriate stakeholder to provide responsive information and data necessary for **CONSULTANT** to perform the Services to **CONSULTANT** upon **CONSULTANT**'s written request for such information and/or data.
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4. COMPENSATION.

For the full performance of the services described herein by **CONSULTANT**, **MWPA** shall pay **CONSULTANT** as specified in the Payment Schedule attached hereto as Exhibit B and incorporated herein by reference.

Payment will be made monthly upon receipt by **PROJECT MANAGER** of itemized invoices submitted by **CONSULTANT**.

5. TERM OF AGREEMENT.

The term of this Agreement shall be for (____) year(s) commencing on _____ and ending on _____. Upon mutual agreement of the parties, and subject to the approval of the Executive Officer the term of this Agreement may be extended for an additional period of up to (____) year(s).

6. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Data.** Upon termination, any and all **MWPA** Data, as defined below, provided to or made accessible to **CONSULTANT** and any and all of **CONSULTANT**'s Work, as defined below, shall be delivered to **MWPA** as soon as possible, but not later than thirty (30) days after termination.

7. OWNERSHIP OF DOCUMENTS AND MWPA.

“MWPA Data” means any data or information supplied to or made available to CONSULTANT by or on behalf of MWPA or its member agencies, including but not limited to, documents, materials, databases, applications, and tools (Examples of MWPA Data include OneTam, CalTopo, Avenza, CalMapper, MarinMap, data related to home inspections, grants associated with home inspections, location of sensitive plant and animal species, cultural resources information, Assessor Parcel Number information, fire risk associated with neighborhoods and homes).

“Work” is the data, information, databases, applications, programs, tools, documents and materials prepared by the **CONSULTANT** in connection with the performance of Services under this Agreement. Work shall be the sole property of **MWPA**. **MWPA** may use Work for any purpose, including projects not contemplated by this Agreement.

In addition, as between **MWPA** and **CONSULTANT**, (a) all MWPA Data is the property of **MWPA**, and (b) **MWPA** retains all rights, title and interest in and to the MWPA Data, including all copies, modifications, extensions and derivative works thereof. **CONSULTANT** may also obtain data used for Work from other sources besides MWPA (“Other Data”).

CONSULTANT shall comply with **MWPA** instructions regarding return or deletion of MWPA Data at the conclusion or termination of this Agreement. **CONSULTANT** shall also cooperate with **MWPA** regarding preservation of MWPA Data or Work to comply with any court order, subpoena, public records act request, or litigation hold received by **MWPA**.

a. Limitation on Use and Confidentiality.

MWPA Data and Work shall not be used by **CONSULTANT** for any other purpose than performing Services under this Agreement. This includes, but is not limited to, prohibiting **CONSULTANT** from using MWPA Data or Work for marketing, internal product development, or research and development. **CONSULTANT** shall keep MWPA Data and Work confidential and shall not disclose, share, or allow access to MWPA Data or Work except to MWPA and MWPA member agencies, agents, consultants, or other public entities if any, with whom MWPA instructs **CONSULTANT** in writing to share MWPA Data or Work. **CONSULTANT** may share specified MWPA Data or Work with the public only if MWPA directs, in writing, that **CONSULTANT** create and share public facing information. This provision shall survive termination of the Agreement.

b. Access Limits.

Only **CONSULTANT**’s employees and subcontractors who require access to MWPA Data and Work to perform Services under this Agreement shall be permitted to access MWPA Data and Work.

c. Security.

CONSULTANT shall implement and maintain industry standard physical, administrative, and technical safeguards that keep up with evolving threats to protect MWPA Data and Work from unauthorized access, disclosure, or use.

d. Other Data

Should **CONSULTANT** obtain Other Data for use in provision of the Services or Work which are subject to any regulations, laws, or contractual terms that are more strict than the terms contained herein or differ materially in any way from the terms herein, **CONSULTANT** warrants and represents

that it shall obey and abide by these regulations, laws, or contractual terms that apply to Other Data and shall notify MWPA in writing of the regulations, laws, or contractual terms which apply to Other Data. If no regulations, laws, or contractual terms that are more strict than the terms contained herein apply to Other Data, Other Data shall be treated by CONSULTANT like MWPA Data.

8. INSPECTION AND AUDIT.

Upon reasonable notice, **CONSULTANT** shall make available to **MWPA**, or its agent, for inspection and audit, all Work, and MWPA Data, if any, maintained by **CONSULTANT** in connection with its performance of Services under this Agreement. **CONSULTANT** shall fully cooperate with **MWPA** or its agent in any such audit or inspection.

9. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

10. INSURANCE.

A. **Scope of Coverage.** During the term of this Agreement, **CONSULTANT** shall maintain, at no expense to **MWPA**, the following insurance policies:

1. A commercial general liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, for death, bodily injury, personal injury, or property damage.

2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million dollars (\$1,000,000) dollars per occurrence.

3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million dollars (\$1,000,000) per occurrence/two million dollars (\$2,000,000) aggregate, to cover any claims arising out of the **CONSULTANT's** performance of services under this Agreement. Where **CONSULTANT** is a professional not required to have a professional license, **MWPA** reserves the right to require **CONSULTANT** to provide professional liability insurance pursuant to this section.

4. If it employs any person, **CONSULTANT** shall maintain worker's compensation insurance, as required by the State of California, with statutory limits, and employer's liability insurance with limits of no less than one million dollars (\$1,000,000) per accident for bodily injury or disease. **CONSULTANT's** worker's compensation insurance shall be specifically endorsed to waive any right of subrogation against **MWPA**.

5. **CONSULTANT** will at all times during the term of this Agreement maintain "errors and omissions" insurance coverage which is customarily carried by consultants performing

functions that are similar to those performed under this Agreement and in an amount which is comparable to that which is customarily maintained by consultants performing such functions.

6. CONSULTANT will at all times during the term of this Agreement maintain Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by CONSULTANT in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties, as well as credit monitoring expenses.

B. Other Insurance Requirements. The insurance coverage required of the CONSULTANT in subparagraph A of this section above shall also meet the following requirements:

1. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall be specifically endorsed to include the **MWPA**, its officers, agents, employees, and volunteers, as additional insureds (for both ongoing and completed operations) under the policies.

2. The additional insured coverage under **CONSULTANT'S** insurance policies shall be "primary and noncontributory" with respect to any insurance or coverage maintained by **MWPA** and shall not call upon **MWPA's** insurance or self-insurance coverage for any contribution. The "primary and noncontributory" coverage in **CONSULTANT'S** policies shall be at least as broad as ISO form CG20 01 04 13.

3. Except for professional liability insurance or worker's compensation insurance, the insurance policies shall include, in their text or by endorsement, coverage for contractual liability and personal injury.

4. By execution of this Agreement, **CONSULTANT** hereby grants to **MWPA** a waiver of any right to subrogation which any insurer of **CONSULTANT** may acquire against **MWPA** by virtue of the payment of any loss under such insurance. **CONSULTANT** agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not **MWPA** has received a waiver of subrogation endorsement from the insurer.

5. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years.

6. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement.

7. The limits of insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and

noncontributory basis for the benefit of **MWPA** (if agreed to in a written contract or agreement) before **MWPA'S** own insurance or self-insurance shall be called upon to protect it as a named insured.

8. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits shall be available to **MWPA** or any other additional insured party. Furthermore, the requirements for coverage and limits shall be: (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater. No representation is made that the minimum Insurance requirements of this agreement are sufficient to cover the obligations of the **CONSULTANT** under this agreement.

C. **Deductibles and SIR's.** Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the PROJECT MANAGER and General Counsel and shall not reduce the limits of liability. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured or **MWPA** or other additional insured party. At **MWPA's** option, the deductibles or self-insured retentions with respect to **MWPA** shall be reduced or eliminated to **MWPA's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

D. **Proof of Insurance.** **CONSULTANT** shall provide to the PROJECT MANAGER or **MWPA'S** General Counsel all of the following: (1) Certificates of Insurance evidencing the insurance coverage required in this Agreement; (2) a copy of the policy declaration page and/or endorsement page listing all policy endorsements for the commercial general liability policy, and (3) excerpts of policy language or specific endorsements evidencing the other insurance requirements set forth in this Agreement. **MWPA** reserves the right to obtain a full certified copy of any insurance policy and endorsements from **CONSULTANT**. Failure to exercise this right shall not constitute a waiver of the right to exercise it later. The insurance shall be approved as to form and sufficiency by PROJECT MANAGER and the General Counsel.

E. **Subcontractors.** **CONSULTANT** shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

11. INDEMNIFICATION.

A. Except as otherwise provided in Paragraph B., **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend with counsel approved by **MWPA**, and hold harmless **MWPA**, its member agencies, officers, agents, employees and volunteers (collectively, the "**MWPA Indemnitees**"), from and against any claim, demand, suit, judgment, loss, liability or expense of any kind, including but not limited to attorney's fees, expert fees and all other costs and fees of litigation, (collectively "**CLAIMS**"), arising out of **CONSULTANT'S**, or any of its subcontractors', performance of Services, its obligations, or conduct of its operations under this Agreement. The **CONSULTANT's** obligations apply regardless of whether or not a liability is caused or contributed to by the active or passive negligence of the **MWPA Indemnitees**. However, to the extent that liability is caused by the active negligence or willful misconduct of the **MWPA Indemnitees**, the **CONSULTANT's** indemnification obligation shall be reduced in proportion to the **MWPA Indemnitees'** share of liability for the active negligence or willful misconduct. In addition,

the acceptance or approval of the **CONSULTANT**'s Work by the **MWPA** or any of its member agencies, directors, officers or employees shall not relieve or reduce the **CONSULTANT**'s indemnification obligations. In the event the **MWPA Indemnitees** are made a party to any action, lawsuit, or other adversarial proceeding arising from **CONSULTANT**'S performance of Services, its obligations, or operations under this Agreement, **CONSULTANT** shall provide a defense to the **MWPA Indemnitees** or at **MWPA**'S option reimburse the **MWPA Indemnitees** their costs of defense, including reasonable attorneys' fees, incurred in defense of such claims.

CONSULTANT agrees to obtain executed indemnity agreements with provisions identical to those set forth in this section for each and every subcontractor **CONSULTANT** elects to utilize in the performance of Services. In the event that **CONSULTANT** does not obtain such indemnity agreements from subcontractor, **CONSULTANT** agrees to be fully responsible and to indemnify, hold harmless and defend **MWPA**, its officers, agents, employees and volunteers from and against any **CLAIMS** resulting from any negligent performance of **CONSULTANT**'s subcontractors or any other person or entity involved by, for, with or on behalf of **CONSULTANT** in the performance of this Agreement.

C. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement, and shall survive the termination or completion of this Agreement for the full period of time allowed by law.

12. NO RECOURSE AGAINST MEMBERS OF MWPA

MWPA is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to the Joint Powers Agreement and is a public entity separate from its constituent members. **MWPA** shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of **MWPA**'s constituent members in connection with this Agreement.

13. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of Services under this Agreement.

14. COMPLIANCE WITH ALL LAWS.

CONSULTANT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. To the extent the California Consumer Privacy Act ("CCPA") applies to **MWPA** Data or Work, **CONSULTANT** warrants that it does and will comply with the CCPA. **CONSULTANT** shall perform all Services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONSULTANT** shall release, defend, indemnify and hold harmless **MWPA**, its member agencies, officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

15. NO THIRD PARTY BENEFICIARIES.

MWPA and **CONSULTANT** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

16. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows:

TO **MWPA**'s Project Manager:

TO **CONSULTANT**'s Project Director:

17. INDEPENDENT CONTRACTOR.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents and employees shall act in the capacity of an Independent Contractor, and not as employees of the **MWPA**. **CONSULTANT** and **MWPA** expressly intend and agree that the status of **CONSULTANT**, its officers, agents and employees be that of an Independent Contractor and not that of an employee of **MWPA**.

18. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONSULTANT** and the **MWPA**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONSULTANT** and the **MWPA**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

19. SET-OFF AGAINST DEBTS.

CONSULTANT agrees that **MWPA** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** owes **MWPA** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

20. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

21. TAXES.

CONSULTANT shall pay any and all state and federal taxes and any other applicable taxes. **MWPA** shall not be required to pay for any work performed under this Agreement, until **CONSULTANT** has provided **MWPA** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

22. SURVIVAL OF TERMS.

Any terms of this Agreement that by their nature extend beyond the term (or termination) of this Agreement shall remain in effect until fulfilled and shall apply to both Parties' respective successors and assigns.

23. APPLICABLE LAW, JURISDICTION AND VENUE.

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

24. COUNTERPARTS AND ELECTRONIC SIGNATURE.

This Agreement may be executed by electronic signature and in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one document. Counterpart signature pages may be delivered by telecopier, email or other means of electronic transmission.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

MWPA

CONSULTANT

By: _____
Mark Brown, Executive Officer

Name: _____

Title: _____

[If CONSULTANT is a corporation, add signature of second corporate officer]

By: _____

APPROVED AS TO FORM:

Name: _____

Title: _____

MEGAN H. ACEVEDO, General Counsel