

DRAFT

**MASTER SERVICES AGREEMENT
VEGETATION MANAGEMENT SERVICES
BETWEEN
MARIN WILDFIRE PREVENTION AUTHORITY AND**

Name of Consultant

This Master Services Agreement (the "**Agreement**") is by and between the Marin Wildfire Prevention Authority ("**MWPA**") and Name of Consultant, a California Type of Consultant, licensed to do business in California, ("**Consultant**") relating to Vegetation Management Services ("**Services**") and is effective on the date it is fully executed by both Parties (the "Effective Date").

Recitals

WHEREAS, MWPA wishes to retain Consultant to work on a project or projects as defined by MWPA and to provide certain professional services for such projects, and Consultant desires to be retained by MWPA to perform such services for such project(s) subject to and in accordance with the terms and conditions of this Agreement; and

WHEREAS, Consultant was selected by means of MWPA's consultant selection process, and represents that they possess all necessary training, licenses and permits to perform the services required by MWPA as set forth in this Agreement, and that their performance of such services will conform to the standard of practice consistent with a firm having experience and expertise in performing professional services of like nature and complexity working on similar, successfully completed projects;

NOW, THEREFORE, MWPA and Consultant in consideration of the mutual covenants herein set forth agree as follows:

AGREEMENT

1. Services

- 1.1 Subject to the terms and conditions set forth in this Agreement, Consultant shall provide the services described in the Scope of Services appended hereto as Appendix A; and Task Order(s) assigned to Consultant under this Agreement, in the form set forth in Appendix B. Each of these documents is incorporated herein and made a part hereof as though fully set forth herein.
- 1.2 No work shall be performed under this Agreement except to the extent Consultant receives a Task Order from MWPA's Project Manager. MWPA will request proposals from Consultant for each Task Order when services are needed. Consultant shall respond with a scope and cost proposal in a reasonably prompt manner, no later than ten (10) calendar days after MWPA's request. Such proposal shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefor, the time of performance thereof, and such other matters as the parties deem appropriate for the accomplishment of such services. Upon the approval of the terms of the proposal by MWPA, MWPA's Project Manager shall issue a Task Order against this Agreement. Consultant shall commence performance and shall complete all required services no later than the dates set forth in accordance with the approved Task Order. Except to the extent modified by written amendment, all other terms and conditions of this Agreement shall be deemed incorporated in each such Task Order.

2. Term of Agreement

- 2.1 This Agreement shall commence as of the Effective Date and, unless sooner terminated as set forth herein, will continue until the later of (a) three (3) years after the Effective Date or (b) the completion and acceptance of all Services under all effective Task Orders ("Term"). The MWPA shall have the right to terminate this Agreement or any Task Order for any reason, at any time by giving written notice. Upon receipt of such notice, the Consultant shall not commit itself to any further expenditure of time or resources. In the event of termination for any reason other than the fault of the Consultant, the Consultant shall be compensated for Services actually rendered and accepted under this Agreement or any Task Order.
- 2.2 This Agreement may be extended for up to two (2) additional years by mutual agreement of the parties hereto. Any extension shall be in written form, signed by both parties, and shall specify the length of the extension and compensation. Such extension shall be agreed to by the MWPA Executive Officer.

3. Compensation

- 3.1 MWPA shall pay Consultant compensation for Services rendered pursuant to this Agreement at the time and in the amount set forth in the applicable Task Order based on this Master Services Agreement. The scope of work and specific costs will be expressly identified on the Task Order for each specific project. The payment specified on the Task Order shall be the only payment made to Consultant for services rendered pursuant to the specific engagement.
- 3.2 Notwithstanding the foregoing, the combined total of compensation and reimbursement of costs payable hereunder shall not exceed the total Maximum Costs identified in Paragraph 4 of this Agreement. The Consultant shall only be paid for services performed under this Agreement to the extent authorized by written Task Order. No overhead or other expenses can be recovered for interim periods when the Consultant's services are not utilized by MWPA. Invoices for amounts in excess of each Task Order shall not be paid unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by MWPA's Project Manager and a written Task Order amendment having been executed.
- 3.3 Compensation and reimbursement of costs and expenses hereunder shall be payable upon monthly billing therefor by Consultant to MWPA, which billing shall include an itemized statement, briefly describing by task and labor category or cost/expense items billed. Final payment will be made when all Services required under this Agreement have been completed to the reasonable satisfaction of MWPA including, without limitation, Consultant's transmittal of all deliverables to MWPA required by each Task Order.
- 3.4 All amounts paid by MWPA to Consultant shall be subject to audit by MWPA.
- 3.5 MWPA may set off against payments due Consultant under this Agreement any sums that MWPA determines that Consultant owes to MWPA because of their errors, omissions, breaches of this Agreement, delays or other acts that caused MWPA monetary damages.

4. Maximum Costs

- 4.1 MWPA's obligation hereunder shall not at any time exceed _____. All costs must be approved by MWPA for payment to the Consultant pursuant to the terms of this Agreement and the Task Order for each specific project.

5. Qualified Personnel

- 5.1 For purposes of this Agreement, except for notices specified under Paragraph 16 below, MWPA and Consultant shall direct all communications to each other as follows:

MWPA:

Anne Crealock

Planning and Program Manager
Marin Wildfire Prevention Authority
1600 Las Gomas,
Suite 345
San Rafael, CA 94903
Phone: (415) 578-8583
Email: acrealock@marinwildfire.org

Consultant:

[Contact Name](#)

[Contact Title](#)

[Full Address](#)

[Phone Number](#)

[Email Address](#)

- 5.2 Services under this Agreement shall be performed only by qualified, competent personnel under the supervision of and/or in the employment of Consultant. Consultant shall conform with MWPA's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at MWPA's request, shall be supervised by Consultant.

6. Representations

- 6.1 Consultant represents that it has reviewed the RFQ and that in its professional judgment the Services to be performed under this Agreement can be performed for the fees included in Consultant's SOQ and within the times specified for each individual Project.
- 6.2 Consultant represents that it is qualified to perform the Services and it possesses, and will continue to possess at its sole cost and expense, the necessary licenses and/or permits required to perform the Services or will obtain such licenses and/or permits prior to time such licenses and/or permits are required. Consultant also represents that it has knowledge of, and will comply with, all applicable laws, regulations and ordinances.
- 6.3 Consultant represents that it possesses all necessary training, licenses and permits to perform the Services and that its performance of the Services will conform to the standards of practice of a professional having experience and expertise in performing services of like nature and complexity of the Services working on similar, successfully completed projects.
- 6.4 The granting of any progress payment by MWPA, or the receipt thereof by Consultant, or any inspection, review, approval or oral statement by any representative of MWPA or any other governmental entity, shall in no way waive or limit the obligations in this Paragraph 6 or lessen the liability of Consultant for unsatisfactory Services, including but not limited to cases where the defective or below standard Services may not have been apparent or detected at the time of such payment, inspection, review or approval.

7. Indemnification and General Liability

- 7.1 To the fullest extent allowed by law (including without limitation California Civil Code Sections 2782 and 2782.8), Consultant shall defend, indemnify, and hold harmless MWPA, its officers, MWPA's Board, directors, officials, agents, employees, and volunteers (collectively "**Indemnitees**") from and against any and all claims, suit, action, loss, cost, damage, injury (including, without limitation, economic harm, injury to or death of an employee of Consultant or its Subconsultants) expense and liability of every kind, nature, and description, at law or equity, that arises out of, pertain to, or relate to (including without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) any negligence, recklessness, or willful misconduct of Consultant, any Subconsultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "**Liabilities**"). Such obligations to defend, hold harmless and indemnify and Indemnitee shall not apply to the extent that such Liabilities are caused in whole or in part by the sole negligence active negligence, or willful misconduct of such Indemnitee but shall apply to all other Liabilities.

8. Liability of MWPA

- 8.1 Except as specifically provided in the Task Order(s), MWPA's obligations under this Agreement shall be limited to the payment of the compensation provided for in Paragraphs 3 and 4 of this Agreement.
- 8.2 Notwithstanding any other provision of this Agreement, in no event shall MWPA be liable, regardless of whether any claim is based on contract, tort or otherwise, for any special, consequential, indirect or incidental damages, lost profits or revenue, arising out of or in connection with this Agreement, the Services, or the Project assigned under the Task Order(s).
- 8.3 MWPA shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Consultant, or by any of its employees, even though such equipment be furnished, rented or loaned to Consultant by MWPA. The acceptance or use of such equipment by Consultant or any of its employees shall be construed to mean that Consultant accepts full responsibility for and shall exonerate, indemnify, defend and save harmless MWPA from and against any and all claims for any damage or injury of any type, including attorneys' fees, arising from the use, misuse or failure of such equipment, whether such damage be to the Consultant, its employees, MWPA employees or third parties, or to property belonging to any of the above.
- 8.4 Nothing in this Agreement shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which MWPA or Consultant may have under this Agreement or any applicable law. All rights and remedies of MWPA or Consultant, whether under this Agreement or other applicable law, shall be cumulative.

9. Independent Contractor; Payment of Taxes and Other Expenses

- 9.1 Consultant shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which Consultant performs the Services required by the terms of this Agreement and the Task Order(s). Consultant shall be fully liable for the acts and omissions of itself, their Subconsultants, employees and agents.
- 9.2 Nothing contained herein shall be construed as creating an employment, agency or joint venture relationship between MWPA and Consultant. Consultant acknowledges that neither they nor any of their employees or agents shall, for any purpose whatsoever, be deemed to be MWPA employees, and shall not be entitled to receive any benefits conferred on MWPA employees, including without limitation workers' compensation, pension, health, insurance or other benefits.
- 9.3 Consultant shall be solely responsible for payment of any required taxes, including California sales and use taxes, business taxes and United States income tax withholding and social security taxes,

levied upon this Agreement, the Task Order(s), the transaction, or the Services delivered pursuant hereto.

- 9.4 Consultant shall make its designated representative available as much as reasonably possible to MWPA staff during the MWPA's normal working hours or as otherwise requested by MWPA. Terms in this Agreement referring to direction from MWPA shall be construed as providing for direction as to policy and the result of Consultant's Services only and not as to the means by which such a result is obtained.

10. Insurance

- 10.1 Prior to execution of this Agreement, Consultant shall furnish to MWPA Certificates of Insurance showing satisfactory proof that it maintains the insurance required by this Agreement as set forth in Appendix C, Insurance, which is attached and made a part of this Agreement. Consultant shall maintain all required insurance throughout the term of this Agreement and as otherwise provided in Appendix C.

11. Suspension of Services

- 11.1 MWPA may, without cause, order Consultant to suspend, delay or interrupt Services pursuant to this Agreement and the Task Order(s), in whole or in part, for such periods of time as MWPA may determine in its sole discretion. MWPA shall deliver to Consultant written notice of the extent of the suspension at least seven (7) calendar days before the commencement thereof. Suspension shall be treated as an Excusable Delay and Consultant shall be compensated for such delay to the extent provided under this Agreement.
- 11.2 Notwithstanding anything to the contrary contained in this Paragraph 11, no compensation shall be made to the extent that performance is, was or would have been so suspended, delayed or interrupted by a cause for which Consultant is responsible.

12. Termination of Agreement for Cause

- 12.1 If at any time MWPA believes Consultant may not be adequately performing their obligations under this Agreement and the Task Order(s), that Consultant may fail to complete the Services as required by this Agreement and the Task Order(s), or that MWPA has provided written notice of observed deficiencies in Consultant's performance, MWPA may request from Consultant prompt written assurances of performance and a written plan, acceptable to MWPA, to correct the observed deficiencies in Consultant's performance ("**Cure Plan**"). The Cure Plan must include, as applicable, evidence of necessary resources, correction plans, Subconsultant commitments, schedules and recovery schedules, and affirmative commitments to correct the asserted deficiencies, must meet all applicable requirements and show a realistic and achievable plan to cure the breach. Consultant shall provide such written assurances and Cure Plan within ten (10) calendar days of the date of notice of written request. Consultant acknowledges and agrees that any failure to provide written assurances and Cure Plan to correct observed deficiencies, in the required time, is a material breach under this Agreement.
- 12.2 Consultant shall be in default of this Agreement and MWPA may, in addition to any other legal or equitable remedies available to MWPA, terminate Consultant's right to proceed under the Agreement, in whole or in part, for cause:
- a. Should Consultant make an assignment for the benefit of creditors, admit in writing its inability to pay its debts as they become due, file a voluntary petition in bankruptcy, be adjudged bankrupt or insolvent, file a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any present or future statute, law, or regulation, file any answer admitting or not contesting the material allegations of

a petition filed against Consultant in any such proceeding, or seek, consent to, or acquiesce in, the appointment of any trustee, receiver, custodian or liquidator of Consultant or of all or any substantial part of the properties of Consultant, or if Consultant, its directors or shareholders, take action to dissolve or liquidate Consultant; or

- b. Should Consultant commit a material breach of this Agreement and not cure such breach within ten (10) calendar days of the date of notice from MWPA to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide MWPA within the ten (10) calendar day period a written Cure Plan acceptable to MWPA to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan); or
- c. Should Consultant violate or allow a violation of any valid law, statute, regulation, rule, ordinance, permit, license or order of any governmental agency in effect at the time of performance of the Services and applicable to the Project or Services associated with the Task Order(s) and does not cure such violation within ten (10) calendar days of the date of the notice from MWPA to Consultant demanding such cure; or, if such failure is curable but not curable within such ten (10) calendar day period, within such period of time as is reasonably necessary to accomplish such cure. (In order for Consultant to avail themselves of this time period in excess of ten (10) calendar days, Consultant must provide MWPA within the ten (10) calendar day period a written Cure Plan acceptable to MWPA to cure said breach, and then Consultant must diligently commence and continue such cure according to the written Cure Plan.)

12.3 In the event of termination by MWPA as provided herein for cause:

- a. MWPA shall compensate Consultant for the value of the Services delivered to MWPA upon termination as determined in accordance with the Agreement, subject to all rights of offset and back charges, but MWPA shall not compensate Consultant for its costs in terminating the Services or any cancellation charges owed to third parties.
- b. Consultant shall deliver to MWPA possession of all tangible aspects of the Services in their then condition including, but not limited to, all copies (electronic, CAD, and PDF format, and hard copy) of designs, engineering, Project records, cost data of all types, drawings and specifications and contracts with vendors and Subconsultants, and all other documentation associated with a Project and the Task Order(s), and all supplies and aids dedicated solely to performing Services which, in the normal course of the Services, would be consumed or only have salvage value at the end of the Services period.
- c. Consultant shall remain fully liable for the failure of any Services completed and drawings and specifications provided through the date of such termination to comply with the provisions of the Agreement. The provisions of this Paragraph shall not be interpreted to diminish any right that MWPA may have to claim and recover damages for any breach of this Agreement, but rather, Consultant shall compensate MWPA for all loss, cost, damage, expense, and/or liability suffered by MWPA as a result of such termination and failure to comply with the Agreement, including without limitation MWPA's costs incurred in connection with finding a replacement.

12.4 In the event a termination for cause is determined to have been made wrongfully or without cause, then the termination shall be treated as a termination for convenience pursuant to Paragraph 13 below, and Consultant shall have no greater rights than they would have had if a termination for convenience had been effected in the first instance. No other loss, cost, damage, expense or liability may be claimed, requested or recovered by Consultant.

13. Termination of Agreement for Convenience

- 13.1 MWPA may terminate performance of the Services under the Agreement in accordance with this Paragraph 13 in whole, or from time to time in part, whenever MWPA shall determine that termination is in the MWPA's best interests. Termination shall be effected by MWPA delivering to Consultant, at least seven (7) calendar days prior to the effective date of the termination, a Notice of Termination ("Notice of Termination") specifying the extent to which performance of the Services under the Agreement is terminated.
- 13.2 After receipt of a Notice of Termination, and except as otherwise directed by MWPA, Consultant shall:
- a. Stop Services under the Agreement and the Task Order(s) on the date and to the extent specified in the Notice of Termination;
 - b. Place no further orders or subcontracts for materials, Services, or facilities except as necessary to complete the portion of the Services under the Agreement or Task Order(s) which is not terminated;
 - c. Terminate all orders and subcontracts to the extent that they relate to performance of Services terminated by the Notice of Termination;
 - d. Assign to MWPA in the manner, at times, and to the extent directed by MWPA, all right, title, and interest of Consultant under orders and subcontracts so terminated. MWPA shall have the right, in its discretion, to settle or pay any or all claims arising out of termination of orders and subcontracts;
 - e. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with approval or ratification of MWPA to the extent MWPA may require. MWPA's approval or ratification shall be final for purposes of this clause;
 - f. Transfer title and possession of Consultant's and their Subconsultants' work product to MWPA, and execute all required documents and take all required actions to deliver in the manner, at times, and to the extent, if any, directed by MWPA, completed and uncompleted designs and specifications, Services in process, completed Services, supplies, and other material produced or fabricated as part of, or acquired in connection with performance of, Services terminated by the Notice of Termination; MWPA acknowledges that said documents were prepared for the purpose of the Project.
 - g. Complete performance of any part of the Services that were not terminated by the Notice of Termination; and
 - h. Take such action as may be necessary, or as MWPA may direct, for the protection and preservation of property related to this Agreement which is in Consultant's possession and in which MWPA has or may acquire an interest.
- 13.3 After receiving a Notice of Termination, Consultant shall submit to MWPA a termination claim, in the form and with the certification MWPA prescribes. The claim shall be submitted promptly, but in no event later than three months from the effective date of the termination, unless one or more extensions in writing are granted by MWPA upon Consultant's written request made within such three month period or authorized extension. However, if MWPA determines that facts justify such action, it may receive and act upon any such termination claim at any time after such three-month period or extension. If Consultant fails to submit the termination claim within the time allowed, MWPA may determine, on basis of information available to it, the amount, if any, due to Consultant because of the termination. MWPA shall then pay to Consultant the amount so determined.

- 13.4 Subject to provisions of Paragraph 13.3 above, Consultant and MWPA may agree upon the whole or part of the amount or amounts to be paid to Consultant because of any termination of Services under this Paragraph. The amount or amounts may include a reasonable allowance for profit on Services done. However, such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total Task Order price as reduced by the amount of payments otherwise made and as further reduced by the Task Order price of Services terminated. The Task Order may be amended accordingly, and Consultant shall be paid the agreed amount.
- 13.5 If Consultant and MWPA fail, under Paragraph 13.4 above, to agree on the whole amount to be paid to Consultant because of termination of Services under this Paragraph 13.5, then Consultant's entitlement to compensation for Services specified in the Agreement which are performed before the effective date of Notice of Termination, shall be the total (without duplication of any items) of:
- a. Reasonable value of Consultant's Services performed prior to Notice of Termination, based on Consultant's entitlement to compensation under the Task Order(s). Such amount or amounts shall not exceed the total Task Order price as reduced by the amount of payments otherwise made and as further reduced by the Agreement value of Services terminated. Deductions against such amount or amounts shall be made for deficiently performed Services, rework caused by deficiently performed Services, cost of materials to be retained by Consultant, amounts realized by sale of materials, and for other appropriate credits against cost of Services. Such amount or amounts may include profit, but not in excess of ten (10) percent of Consultant's total costs of performing the Services.
 - b. When, in opinion of MWPA, the cost of any item of Services is excessively high due to costs incurred to remedy or replace defective or rejected Services (including having to re-perform Services), reasonable value of Consultant's Services will be the estimated reasonable cost of performing Services in compliance with the requirements of the Agreement, and any excessive actual cost shall be disallowed.
 - c. Reasonable cost to Consultant of handling material returned to vendors, delivered to MWPA or otherwise disposed of as directed by MWPA.
- 13.6 Except as provided in this Agreement, in no event shall MWPA be liable for costs incurred by Consultant (or Subconsultants) after receipt of a Notice of Termination. Such non-recoverable costs include, but are not limited to, anticipated profits on the Agreement or subcontracts, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, costs of preparing and submitting claims or proposals, attorney's fees or other costs relating to prosecution of the claim or a lawsuit, pre-judgment interest, or any other expense that is not reasonable or authorized under Paragraph 13.5 above.
- 13.7 This Paragraph shall not prohibit Consultant from recovering costs necessary to discontinue further Services under the Agreement as provided for in Paragraph 13.2 above or costs authorized by MWPA to settle claims from Subconsultants.
- 13.8 In arriving at amounts due Consultant under this Paragraph 13, there shall be deducted:
- a. All unliquidated advance or other payments on account theretofore made to Consultant, applicable to the terminated portion of the Task Order(s),
 - b. Any substantiated claim that MWPA may have against Consultant in connection with this Agreement, and
 - c. The agreed price for, or proceeds of sale of, any materials, supplies, or other things kept by Consultant or sold under the provisions of this Paragraph 13, and not otherwise recovered by or credited to MWPA.

- 13.9 If the termination for convenience hereunder is partial, before settlement of the terminated portion of this Agreement, Consultant may file with MWPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this Agreement that is not terminated. MWPA may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of MWPA and Consultant to agree upon amount or amounts to be paid to Consultant for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit MWPA's rights and remedies pursuant to this Agreement or at law.

14. Conflicts of Interest/Other Agreements

- 14.1 Consultant represents that it is familiar with Section 1090 and Section 87100, et seq., of the Government Code of the State of California and that it does not know of any facts that constitute a violation of those sections.
- 14.2 Consultant represents that it has completely disclosed to MWPA all facts bearing upon any possible interests, direct or indirect, which Consultant believes any member of MWPA, or other officer, agent or employee of MWPA or any department presently has, or will have, in this Agreement, or in the performance thereof, or in any portion of the profits thereunder. Willful failure to make such disclosure, if any, shall constitute grounds for termination of this Agreement by MWPA for cause. Consultant shall comply with the MWPA's conflict of interest codes and their reporting requirements.
- 14.3 Consultant covenants that it presently has no interest, and during the term of this Agreement shall not have any interest, direct or indirect, that would conflict in any manner with the performance of Services required under this Agreement. Without limitation, Consultant represents to and agrees with the MWPA that Consultant has no present, and in the future during the term of this Agreement will not have any, conflict of interest between providing the MWPA the Services hereunder and any interest Consultant may presently have, or will have in the future, with respect to any other person or entity (including, but not limited to, any federal or state wildlife, environmental or regulatory agency) that has any interest adverse or potentially adverse to the MWPA, as determined in the reasonable judgment of the MWPA.

15. Proprietary or Confidential Information of MWPA; Publicity

- 15.1 Consultant acknowledges and agrees that, in the performance of the Services under this Agreement or in the contemplation thereof, Consultant may have access to private or confidential information that may be owned or controlled by MWPA and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to MWPA. Consultant agree that all private, confidential, or proprietary information disclosed by MWPA to or discovered by Consultant in the performance of the Services shall be held in strict confidence and used only in performance of the Agreement. Consultant shall exercise the same standard of care to protect such information as a reasonably prudent Consultant would use to protect its own proprietary data, and shall not accept employment adverse to the MWPA's interests where such confidential information could be used adversely to the MWPA's interests. Consultant shall notify the MWPA immediately in writing if it is requested to disclose any information made known to or discovered by Consultant during the performance of or in connection with the Services pursuant to this Agreement.
- 15.2 Any publicity or press releases with respect to the Project or Services shall be under the MWPA's sole discretion and control. Consultant shall not discuss the Services, the Project, or matters pertaining thereto, with the public press, representatives of the public media, public bodies or representatives of public bodies, without MWPA's prior written consent. Consultant shall have the right, however, without MWPA's further consent, to include representations of Services among Consultant's promotional and professional material, and to communicate with persons or public bodies where necessary to perform under this Agreement.

15.3 The provisions of this Paragraph 15 shall remain fully effective indefinitely after termination of Services to the MWPA hereunder.

16. Notices to the Parties

16.1 All notices (including requests, demands, approvals or other communications other than ordinary course Project communications) under this Agreement shall be in writing and shall include the word "NOTICE" in the subject line.

16.2 Notice shall be sufficiently given for all purposes as follows:

- a. When personally delivered to the recipient, notice is effective on delivery.
- b. When mailed by certified mail with return receipt requested, notice is effective on receipt if delivery is confirmed by a return receipt.
- c. When delivered by reputable delivery service, with charges prepaid or charged to the sender's account, notice is effective on delivery if delivery is confirmed by the delivery service.
- d. Notice by facsimile or electronic mail shall not be allowed or constitute "Notice" under this Paragraph 16.

16.3 Any correctly-addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be considered to be effective as of the first date that the notice was refused, unclaimed, or considered undeliverable by the postal authorities, messenger, or overnight delivery service,

16.4 Addresses for the purpose of giving notice are set forth in Paragraph 5.1 above. Either party may, by written notice given at any time or from time to time require subsequent notices to be given to another individual person, whether a party or an officer or a representative, or to a different address or fax number, or both, by giving the other party notice of the change in any manner permitted by this Paragraph 16.

17. Record Keeping and Audit Requirements

17.1 Consultant shall keep such full and detailed accounting records as are necessary for proper financial management of the Project. Consultant shall maintain a complete and current set of all books and records relating to the performance of the Project. MWPA shall be entitled, upon forty-eight (48) hour written notice, to inspect all books, records, and accounts kept by Consultant relating to the work contemplated by this Agreement. Within 90 calendar days after Final Completion, Consultant shall deliver to MWPA those records necessary for MWPA to perform a financial audit of the Project ("Final Audit").

17.2 Invoice and progress/final reports and all required audit reports shall be submitted to MWPA in a timely manner.

17.3 Maintain adequate fiscal and Project books, records, documents, and other evidence pertinent to Consultant's work on the Project in accordance with generally accepted accounting principles. Adequate supporting documentation shall be maintained in such detail so as to permit tracing transactions from the invoices, to the financial statement, to the accounting records, and to the supporting documentation. These records shall be maintained for a period of three years after Final Completion of the Project, and shall be subject to examination and/or audit by MWPA or designees, state government auditors or designees.

- 17.4 Make such books, records, supporting documentations, and other evidence available to MWPA or designees, their designated representatives, during the course of the Project and for a period of three years after Final Completion of the Project, and provide suitable facilities for access, monitoring, inspection, and copying thereof. Further, Consultant agrees to include a similar right of MWPA to audit records and interview staff in any subcontract related to the performance of this Contract.

18. Subcontracting/Assignment/MWPA Employees

- 18.1 Consultant and MWPA agree that Consultant's unique talents, knowledge and experience form a basis for this Agreement and that the Services to be performed by Consultant under this Agreement and the Task Order(s) are personal in character. Therefore, Consultant shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder unless approved by MWPA in a written instrument executed and approved by the MWPA in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Paragraph 18.1 shall confer no rights on any party and shall be null and void.
- 18.2 Consultant shall not employ or engage, or attempt to employ or engage, any person who is or was employed by MWPA or any department thereof at any time that this Agreement is in effect, and for a period of two years after the termination of this Agreement or the completion of the Services, without the written consent of MWPA.
- 18.3 Nothing contained in this Agreement, any Task Order(s), or otherwise, shall create any contractual relationship between MWPA and any subconsultant, and no subcontract shall relieve Consultant of its responsibilities and obligations hereunder.

19. Other Obligations

- 19.1 Discrimination, Equal Employment Opportunity and Business Practices. Consultant shall not discriminate against any employee or applicant for employment, nor against any Subconsultant or applicant for a subcontract, because of race, color, religious creed, age, gender, actual or perceived sexual orientation, national origin, disability as defined by the ADA (as defined below) or veteran's status. To the extent applicable, Consultant shall comply with all federal, state and local laws (including, without limitation, city ordinances, rules and regulations) regarding non-discrimination, equal employment opportunity, affirmative action and occupational-safety-health concerns, shall comply with all applicable rules and regulations thereunder, and shall comply with same as each may be amended from time to time.
- 19.2 Drug-Free Workplace Policy. Consultant acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on MWPA premises. Consultant agrees that any violation of this prohibition by Consultant, its employees, agents or assigns shall be deemed a material breach of this Agreement.
- 19.3 Compliance with Americans with Disabilities Act and Rehabilitation Act. Consultant acknowledges that, pursuant to the Americans with Disabilities Act ("ADA"), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Consultant shall provide the Services specified in this Agreement in a manner that complies with the standard of care established under this Agreement regarding the ADA and any and all other applicable federal, state and local disability rights legislation. Consultant agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Consultant, its employees, agents or assigns shall constitute a material breach of this Agreement. Consultant shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

- 19.4 Violation of Non-Discrimination Provisions. Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Consultant to penalties, including but not limited to: (a) termination of this Agreement; (b) disqualification of the Consultant from bidding on or being awarded a MWPA contract for a period of up to 3 years; (c) liquidated damages of \$2,500 per violation; and/or (d) imposition of other appropriate contractual and civil remedies and sanctions. To effectuate the provisions of this section, the MWPA shall have the authority to examine Consultant's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Consultant under this Agreement or any other agreement between Consultant and MWPA. Consultant shall report to the MWPA the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 calendar days of such filing, provided that within such 30 days such entity has not notified Consultant that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Consultant shall provide MWPA with a copy of their response to the complaint when filed.

20. Disputes

- 20.1 Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Project Manager and a principal of the Consultant who shall attempt, in good faith, to resolve the dispute. Such referral shall be initiated by written request from either party and a meeting between the Project Manager and principal of the Consultant shall then take place within five (5) calendar days of the date of the request.
- 20.2 Provided that MWPA continues to compensate Consultant in accordance with this Agreement, Consultant shall continue its Services throughout the course of any and all disputes. Nothing in this Agreement shall allow Consultant to discontinue Services during the course of any dispute. Consultant's failure to continue Services during any and all disputes shall be considered a material breach of this Agreement. Consultant agrees that the existence or continued existence of a dispute does not excuse performance under any provision of this Agreement including, but not limited to, the time to complete the Services. Consultant also agrees that should Consultant discontinue Services due to a dispute or disputes, MWPA may terminate this Agreement for cause as provided herein.

21. Agreement Made in California; Venue

- 21.1 This Agreement shall be deemed to have been executed in San Rafael, California, County of Marin. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, excluding its conflict of laws rules. The exclusive venue for all disputes or litigation arising out of this Agreement shall be in the Superior Court of the County of Marin unless the parties agree otherwise in a written amendment to this Agreement.
- 21.2 The parties shall execute three (3) copies of this Agreement, each of which shall be deemed originals.

22. Compliance with Laws

- 22.1 Consultant shall comply with the Standard of Care in the interpretation and application of all applicable laws in the performance of the Services, regardless of whether such laws are specifically stated in this Agreement and regardless of whether such laws are in effect on the date hereof. Consultant shall comply with all security requirements imposed by authorities with jurisdiction over any Project, and will provide all information, work histories and/or verifications as requested by such authorities for security clearances or compliance.

- 22.2 Consultant represents that all plans, drawings, specifications, designs and any other product of the Services will comply with all applicable laws, codes and regulations and be consistent with the Standard of Care.
- 22.3 Labor Code Compliance. Consultant shall comply with all applicable requirements of Chapter 1 of Part 7 of Division 2 of the California Labor Code, beginning with section 1720, and related regulations. These requirements include, but are not limited to, prevailing wages, working hours and workers' compensation insurance.
- a. Each worker performing Services under this Agreement that is covered by Labor Code section 1720 must be paid at a rate not less than the prevailing wage as defined in sections 1771 and 1774 of the Labor Code. The prevailing wage rates are on file with the MWPA Management Analyst and are available online at <http://www.dir.ca.gov/DLSR>.
 - b. Consultant shall comply with the 8-hours per day/40 hours per week/overtime/working hours restrictions for all employees, pursuant to the California Labor Code. Consultant and all subcontractors shall keep and maintain accurate employee payroll records for Services performed under the Agreement. The payroll records shall be certified and submitted as required by law, including Labor Code Sections 1771.4 (if applicable) and 1776. Consultant shall comply fully with Labor Code Section 1777.5 in the hiring of apprentices for work relating to the Agreement.
- 22.4 Under Labor Code section 1861, by signing this Agreement, Consultant certifies as follows: "I am aware of the provisions of Labor Code 3700, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the Services in this Agreement."

23. Miscellaneous

- 23.1 All section and paragraph captions are for reference only and shall not be considered in construing this Agreement.
- 23.2 As between the parties to this Agreement: as to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run on the date of issuance by MWPA of the final Certificate for Payment, or termination of this Agreement, whichever is earlier. This Paragraph 23.2 shall not apply to latent defects as defined by California law or negligence claims, as to which the statute of limitations shall commence to run on discovery of the defect and its cause. However, the applicable statutes of repose, California Code of Civil Procedure, Sections 337.1 and 337.15, shall continue to apply.
- 23.3 Any provisions or portion thereof of this Agreement that is prohibited by, unlawful or unenforceable under any applicable law of any jurisdiction, shall as to such jurisdiction be ineffective without affecting other provisions of this Agreement. If the provisions of such applicable law may be waived, they are hereby waived to the end that this Agreement may be deemed to be a valid and binding agreement enforceable in accordance with its terms. If any provisions or portion thereof of this Agreement are prohibited by, unlawful, or unenforceable under any applicable law and are therefore stricken or deemed waived, the remainder of such provisions and this Agreement shall be interpreted to achieve the goals or intent of the stricken or waived provisions or portions thereof to the extent such interpretation is consistent with applicable law. In dispute resolution arising from this Agreement, the fact finder shall receive detailed instructions on the meaning and requirements of this Agreement.

- 23.4 Either party's waiver of any breach, or the omission or failure of either party, at any time, to enforce any right reserved to it, or to require performance of any of the terms, covenants, conditions or other provisions of this Agreement, including the timing of any such performance, shall not be a waiver of any other right to which any party is entitled, and shall not in any way affect, limit, modify or waive that party's right thereafter to in force or compel strict compliance with every term, covenant, condition or other provision hereof, any course of dealing or custom of the trade or oral representations notwithstanding.
- 23.5 Except as expressly provided in this Agreement, nothing in this Agreement shall operate to confer rights or benefits on persons or entities not party to this Agreement. Time is of the essence in the performance of this Agreement.
- 23.6 Consultant acknowledges that Consultant, and all Subconsultants hired by Consultant to perform services under this Agreement, are aware of and understand the Immigration Reform and Control Act ("IRCA"). Consultant is and shall remain in compliance with the IRCA and shall ensure that any Subconsultants hired by Consultant to perform services under this Agreement are in compliance with the IRCA. In addition, Consultant agrees to indemnify, defend and hold harmless the MWPA, its agents, officers and employees, from any liability, damages or causes of action arising out of or relating to any claims that Consultant's employees, or the employees of any Subconsultant hired by Consultant, are not authorized to work in the United States for Consultant or its Subconsultant and/or any other claims based upon alleged IRCA violations committed by Consultant or Consultant's Subconsultant(s).

24. Entire Agreement; Modifications

- 24.1 The Agreement, and any written modification to the Agreement, and the Task Order(s) with Consultant shall represent the entire and integrated Agreement between the parties hereto regarding the subject matter of this Agreement and shall constitute the exclusive statement of the terms of the parties' Agreement. The Agreement, and any written modification to the Agreement, shall supersede any and all prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement or written modification, and the parties represent and agree that they are entering into this Agreement and any subsequent written modification and the Task Order(s) in sole reliance upon the information set forth in the Agreement or written modification and the parties are not and will not rely on any other information. All prior negotiations, representations or agreements, either written or oral, express or implied, that relate in any way to the subject matter of this Agreement, shall not be admissible or referred to hereafter in the interpretation or enforcement of this Agreement.
- 24.2 To the extent this Agreement conflicts with the terms of any proposal, invoice, or other document submitted to or by either party, the terms of this Agreement shall control.
- 24.3 This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved by a fully authorized representative of MWPA, Consultant expressing such an intention in the case of a modification or by the party waiving in the case of a waiver.
- 24.4 Consultant, in any price proposals for changes in the Services that increase the Agreement amount, or for any additional Services, shall break out and list its costs and use percentage markups. Consultant shall require their Subconsultants (if any) to do the same, and the Subconsultants' price proposals shall accompany Consultant's price proposals.
- 24.5 Consultant and its Subconsultants shall, upon request by MWPA, permit inspection of all original unaltered Agreement bid estimates, subcontract Agreements, purchase orders relating to any change, and documents substantiating all costs associated with all cost proposals.

- 24.6 Changes in the Services made pursuant to this Paragraph 24 and extensions of the Agreement time necessary by reason thereof shall not in any way release Consultant's representations and agreements pursuant to this Agreement.
- 24.7 Whenever the words "**as directed**", "**as required**", "**as permitted**", or words of like effect are used, it shall be understood as the direction, requirement, or permission of MWPA. The words "**approval**", "**acceptable**", "**satisfactory**", or words of like import, shall mean approved by, or acceptable to, or satisfactory to MWPA, unless otherwise indicated by the context.

[SIGNATURE LINES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day first mentioned above.

“Consultant”

By: _____

Its: _____

“MWPA”

MARIN WILDFIRE PREVENTION AUTHORITY

By: _____

Its: MWPA Executive Officer

TASK ORDERS WILL BE NEGOTIATED ON A CASE-BY-CASE BASIS

**APPENDIX A
SCOPE OF SERVICES**

END OF APPENDIX A

**APPENDIX B
TASK ORDER TEMPLATE**

This Task Order No. _____ is issued pursuant to the Master Services Agreement _____ dated XXX, X, 20XX ("Agreement") by and between Marin Wildfire Prevention Authority ("MWPA") and _____ ("Consultant"). Any term not otherwise defined herein, shall have the meaning ascribed to it in the Agreement.

1. Purpose

This Task Order describes the services (as defined below under "Scope of Work") to be provided by Consultant for MWPA for _____ <title of services or brief description of services> services ("Services" as set forth in the Agreement).

2. Location of Services

The services described in this Task Order shall be provided at _____ <address>, Marin County, CA.

3. Scope of Work

<Insert Scope of Work>

4. Term

Services will begin on _____ (the "Commencement Date") and end on _____ (the "Completion Date"). Notwithstanding the duration of the time between the Commencement Date and the Completion Date shown herein, MWPA may terminate this Task Order at any time.

5. Payment and Fees

The total authorized price under this Task Order will not exceed \$_____ (Exhibit B-1, "Fee Schedule").

Consultant shall submit original invoices to MWPA's Accounts Payable department at 1600 Las Gomas, Suite 345, San Rafael, CA 94903.

Payment may be withheld until the Certified Payroll Records are received by MWPA.

IN WITNESS WHEREOF, the Parties hereto, each acting under due and proper authority have executed this Task Order as of the day, month and year written below.

"Consultant"

By: _____

Its: _____

Date: _____

"MWPA"

MARIN WILDFIRE PREVENTION AUTHORITY

By: _____

Its: MWPA Executive Officer

Date: _____

EXHIBIT B-1
to Task Order No. _____

<Enter detailed costs or attach price sheet>

Labor Rate per hour (include all levels of labor such as Journeyman, etc):

Materials Cost:

APPENDIX C INSURANCE REQUIREMENTS

This is an Appendix to, and made a part of and incorporated by reference to the Master Services Agreement dated [Date of Agreement](#), by and between [Consultant Name](#), hereinafter referred to as "**Consultant**", and the Marin Wildfire Prevention Authority, hereinafter referred to as "**MWPA**".

1. **Consultant's Duty to Show Proof of Insurance.** Consultant, in order to protect MWPA and its MWPA's Board members, officials, agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Consultant's acts, errors, or omissions in connection with the performance of Consultant's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Consultant shall not perform any work under this Agreement until Consultant has obtained all insurance required under this section and the required certificates of insurance and all required endorsements have been filed with the MWPA. Receipt of evidence of insurance that does not comply with all applicable insurance requirements shall not constitute a waiver of the insurance requirements set forth herein. The required documents must be signed by the authorized representative of the insurance company shown on the certificate. Upon request, Consultant shall supply proof that such person is an authorized representative thereof, and is authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, Consultant shall promptly deliver to MWPA a certificate of insurance, and all required endorsements, with respect to each renewal policy, as necessary to demonstrate the maintenance of the required insurance coverage for the term specified herein. Such certificates and endorsements shall be delivered to MWPA prior to the expiration date of any policy and bear a notation evidencing payment of the premium thereof if so requested. Consultant shall immediately pay any deductibles and self-insured retentions under all required insurance policies upon the submission of any claim by Consultant or MWPA as an additional insured.

1.1 Insurance Requirements

Commercial General Liability Insurance

☒ Commercial General Liability Insurance including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement with the MWPA), Products-Completed Operations Hazard, liability for slander, false arrest and invasion of privacy arising out of professional services rendered hereunder, Personal Injury (including bodily injury and death), and Property Damage for liability arising out of Consultant's performance of services under this Agreement. The Commercial General Liability insurance shall contain no exclusions or limitation for independent contractors working on the behalf of the named insured. Consultant shall maintain the Products-Completed Operations Hazard coverage for the longest period allowed by law following termination of this Agreement. The amount of said insurance coverage required by this Agreement shall be the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate.

☒ Business Automobile Liability Insurance

Automobile Liability Insurance against claims of Personal Injury (including bodily injury and death) and Property Damage covering any vehicle and/or all owned, leased, hired and non-owned vehicles used in the performance of Services pursuant to this Agreement with coverage equal to the policy limits, which shall be at least one million dollars (\$1,000,000) each occurrence.

☒ Workers' Compensation Insurance

Consultant shall submit written proof that Consultant is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the California Labor Code.

Consultant shall require any Subconsultants to provide workers' compensation for all of the Subconsultants' employees, unless the Subconsultants' employees are covered by the insurance afforded by Consultant. If any class of employees engaged in work or services performed under this Agreement is not covered by California Labor Code section 3700, Consultant shall provide and/or require each Subconsultant to provide adequate insurance for the coverage of employees not otherwise covered. Consultant shall also maintain employer's liability insurance with limits of one million dollars (\$1,000,000) for bodily injury or disease.

☒ Professional Liability Insurance

Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, all negligent acts, errors or omissions in connection with services to be provided under this Agreement, with no exclusion for claims of one insured against another insured, with coverage equal to the policy limits, which shall not be less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

1.2 Self-Insured Retention

Any self-insured retentions in excess of \$100,000 must be declared on the Certificate of insurance or other documentation provided to MWPA and must be approved by the MWPA Risk Manager.

1.3 Claims-Made Basis Coverage

If any of the insurance coverages required under this Agreement is written on a claims-made basis, Consultant, at Consultant's option, shall either (i) maintain said coverage for at least five (5) years following the termination of this Agreement with coverage extending back to the effective date of this Agreement; (ii) purchase an extended reporting period of not less than five (5) years following the termination of this Agreement; or (iii) acquire a full prior acts provision on any renewal or replacement policy.

2. **MWPA as Additional Insured**

On Consultant's Commercial General Liability and Automobile policies, MWPA, MWPA's Board members, officers, directors, agents, employees, and consultants, shall be named as additional insured's, but only with respect to liability arising out of the activities of the named insured. Any endorsement shall be provided using one of the following three options: (i) on ISO form CG 20 10 1 1 85; or (ii) on ISO form CG 20 37 10 01 plus either ISO form CG 20 10 10 01 or CG 20 33 10 01; or (iii) on such other forms which provide coverage at least equal to or better than form CG 20 10 1 1 85.

3. **Insurance terms and conditions:**

3.1 Cancellation of Insurance

The above stated insurance coverages required to be maintained by Consultant shall be maintained until the completion of all of Consultant's obligations under this Agreement except as otherwise indicated herein. Each insurance policy supplied by Consultant shall not be suspended, voided, cancelled or reduced in coverage or in limits except after ten (10) days written notice by Consultant in the case of non-payment of premiums, or thirty (30) days written notice in all other cases. This notice requirement does not waive the insurance requirements stated herein. Consultant shall immediately obtain replacement coverage for any insurance policy that is terminated, canceled, non-renewed, or whose policy limits have been exhausted or upon insolvency of the insurer that issued the policy.

3.2 All insurance shall be issued by a company or companies admitted to do business in California and listed in the current "Best's Key Rating Guide" publication with a minimum rating of A-; VII Any exception to these requirements must be approved by the MWPA Risk Manager.

3.3 If Consultant is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Consultant shall provide coverage equivalent to the insurance coverages and endorsements required above. The MWPA will not accept such coverage unless the MWPA determines, in its sole discretion and by written acceptance, that the coverage proposed to be provided by Consultant is equivalent to the above-required coverages.

3.4 For any claims related to the Agreement, the Consultant's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects the MWPA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the MWPA, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

3.5 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Consultant for any liability, whether within, outside, or in excess of such coverage, and regardless of solvency or insolvency of the insurer that issues the coverage; nor shall it preclude the MWPA from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

3.6 Failure by Consultant to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Consultant. MWPA, at its sole option, may terminate this Agreement and obtain damages from Consultant resulting from said breach. Alternatively, MWPA may purchase such required insurance coverage, and without further notice to Consultant, MWPA shall deduct from sums due to Consultant any premiums and associated costs advanced or paid by MWPA for such insurance. If the balance of monies obligated to Consultant pursuant to this Agreement are insufficient to reimburse MWPA for the premiums and any associated costs, Consultant agrees to reimburse MWPA for the premiums and pay for all costs associated with the purchase of said insurance. Any failure by MWPA to take this alternative action shall not relieve Consultant of its obligation to obtain and maintain the insurance coverages required by this Agreement.

3.7 Should any of the required insurance (other than errors and omissions insurance) be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defenses costs be included in such general aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limit specified above.

END OF APPENDIX C