REQUEST FOR PROPOSALS

GEOGRAPHIC INFORMATION SERVICES

FOR THE

MARIN WILDFIRE PREVENTION AUTHORITY

Marin Wildfire Prevention Authority (MWPA) seeks proposals from qualified consultants to perform a broad suite of services related to Geographic Information Services (GIS).

Release date: January 19, 2023

Proposals are due to the MWPA no later than 5:00 pm on February 10, 2023. Submit a complete proposal as a single PDF document via email to acrealock@marinwildfire.org.

A. OVERVIEW

The MWPA consists of 17 member agencies covering nearly all of Marin County and was established by a voter-approved parcel tax (2020 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. The organization is funded by a parcel tax, Measure C, which took effect in the 2020/21 fiscal year and unless renewed, will expire in 2029/30. These funds, estimated to raise approximately $20 million annually, are managed and distributed by MWPA to local member agencies working in fire prevention and protection in Marin County based on 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:
B. CURRENT, PLANNED, AND FUTURE GIS-RELATED PROJECTS AND PROGRAMS

*Project Scoping and Environmental Compliance*
Spatial data is currently incorporated into MWPA project planning and implementation. During project scoping and environmental compliance, MWPA staff works closely with environmental compliance consulting firms to compile studies, project maps, and documents related to planning and environmental compliance. Panorama staff also create static maps for inclusion in MWPA’s annual work plan.

For large shaded fuel breaks, such as the Greater Ross Valley Shaded Fuel Break (GRVSFB) and Greater Novato Shaded Fuel Break (GNSFB), Panorama subcontracts with Vibrant Planet, to review existing fire risk, potential vegetation treatments, cost associated with vegetation treatment activities, and fire risk benefits of treatments, as well as how best to prioritize and sequence project activities.

*Project Implementation, Field Support, and Metrics*
MWPA will create a system for tracking vegetation management activities, sensitive resources to avoid/protect, biomass generated, before and after photos, contractor invoices associated with specific project locations, and other data related to project implementation. CalTopo is currently in use for one large project. Other potential tools include a tool in development by the Golden Gate National Parks Conservancy staff for OneTam, which also integrated with the CAL FIRE Management Activity Project Planning and Event Reporter (CalMAPPER). Field data collection will also support measuring a suite of metrics related to project implementation, biomass generated, and progress toward achieving goals outlined by the MWPA Board of Directors. Communicating project information to the public is a top priority. MWPA plans to display a public-facing interactive map featuring project boundaries and before and after photos.

*Risk Reduction Assessment*
MWPA supports the inspection of over 33,000 homes per year for factors that contribute to the home’s vulnerability to wildfire. Staff is working with contractors on a methodology to calculate risk reduction resulting from (1) home hardening and defensible space improvements made by residents at their homes and (2) shaded fuel break projects adjacent to communities. Home hardening / defensible space inspection data are recorded through an application developed by FireAside. Comparing initial inspections to follow-up inspections allows the measurement of risk reduction over time. Modeling that compares risk before and after treatments for shaded fuel breaks will be used to estimate fire risk reduction for vegetation management activities. These efforts combined will support MWPA’s efforts to measure success in reducing wildfire risk in Marin County.
Grants program
MWPA offers several grants to assist residents with the mitigation of fire risk on private parcels following an inspection. The analysis of grant funds allocation compared to hazard severity zones and other geo-attributes is of interest in the design of future grant programs.

Evacuation/Ingress/Egress Study
MWPA is working with contractors (including Sonoma Technology, UC Berkeley, Fehr & Peers, Spatial Informatics Group, and Reax Engineering) to identify evacuation route vulnerability (relative risk), understand factors that contribute to risk, and use this information to plan projects to reduce risks related to evacuation. This modeling effort will result in an ESRI Geo-Planner GIS application to help various agencies plan projects to address risk factors identified in this study.

Public Surveying efforts
MWPA is designing a large community survey to assess the need for public education regarding fire prevention. Survey responses will need to be analyzed through a geo-database to account for factors that may affect responses, such as proximity to the wildland-urban interface, roll-out of the private parcel inspection program, etc. In turn, the results of this analysis should allow MWPA to target programs and intervention to the needs of each community.

Diversity, Equity and Inclusion
MWPA is committed to designing programs and activities that are inclusive to all and account for the geo-specific needs of individuals with Access and Functional needs. Several MWPA programs and data require GIS analysis of fire risk combined with other layers containing socio-economic indicators to ensure equity of access.

Coordination with MarinMap
MWPA is a member of MarinMap and would like to find opportunities to use this GIS resource to share data with partners to the extent feasible.

C. SCOPE OF WORK
The MWPA is seeking assistance with the development of a GIS program to track and integrate multiple current and future efforts, many of which are described in item B above. Specific tasks are listed below. Other tasks may be added as needed.

1. Conduct an initial needs and opportunities assessment to define MWPA’s GIS-related needs and most effective and efficient structure for GIS program that integrates various existing and future efforts.
2. Develop a GIS data management system to coordinate amongst multiple currently existing GIS application and data needs as well as anticipated additional GIS applications.
3. Work with MWPA staff and their consultants to develop MWPA’s GIS program and data management system to address multiple GIS application- and data-related needs.
4. Produce written documentation of methods for any GIS applications developed and analyses conducted as well as written and multi-media (e.g., slides, video) user guides for use by MWPA staff, consultants and partners for using the GIS applications.
5. Develop written policies and procedures to create consistency and standardization across multiple current and future data and mapping initiatives to ensure maximum data integration,
including between GIS platforms (e.g., Web, desktop, mobile/field data collection and navigation).

6. During Work Plan development each year, provide GIS technical support (data development and mapping) to member agencies as needed during project scoping.

7. Once the Work Plan is adopted annually, provide GIS technical support during environmental compliance activities (this will include coordination with MWPA environmental compliance consultants).

8. Provide GIS technical support during implementation of core projects. This will include:
   a. Assist in setting up and providing ongoing technical support for field navigation applications (e.g., CalTopo, Avenza, etc) used during project implementation
   b. Support for data collection applications (Golden Gate National Park Conservancy / OneTam’s tool)
   c. Support for grant reporting (e.g., CalMapper)
   d. Ensure integration of various tools/applications to the extent feasible

9. Provide GIS technical support related to tracking agency metrics (such as acres treated in various fire hazard severity zones, projects completed, dollars spent per subregion or per acre) and reporting of metrics through a dashboard or similar tool.

10. Provide technical support related to MWPA’s participation with and use of MarinMap for public and nonpublic geospatial data sharing.

11. Work with land management and fire agencies to collect and share data as needed to support project planning and implementation.

12. Provide technical training to MWPA staff as needed, particularly related to information research and gathering, map/graphic production, and field data collection.

13. Provide custom geospatial analysis as needed to answer ad hoc questions with accurate information.

14. Produce high-quality maps for public and nonpublic meetings, presentations, documents, and website.

15. Support MWPA’s coordination with funding/grant organizations and agencies through timely preparing and providing maps, data, and custom analyses.

16. On behalf of MWPA, maintain software licenses, credits, and subscriptions to ensure consistent and dependable use of GIS, including coordinating with Marin County GIS entities on enterprise solutions.

D. PROPOSAL SUBMISSION

1. Content

Respondents should propose an overall program structure and potential solutions to challenges regarding integrating the various projects and programs described above. The Proposal should include:

1 A core project is an MWPA-funded project that receives support from MWPA staff and consultants through project planning, environmental compliance, and implementation. A local project, on the other hand, is an MWPA-funded project planned and implemented independently by a Member Agency.
• Signed Proposal Cover Page (Certificate of Authority)
• Consultant Statement of Qualifications
  o Description of company, team, and/or individual contractor
  o Description of relevant expertise and experience
• Proposal for Program Development
  o Demonstrated understanding of the MWPA
  o Approach to integrating and supporting various GIS-related projects and programs described above
  o Strategy to ensure a cost-effective approach
  o Other information regarding innovative strategies that may support MWPA’s efforts

Proposals are due to the MWPA no later than 5:00 pm on February 10, 2023. Submit as single PDF document via email to acrealock@marinwildfire.org.

INQUIRIES: No phone calls will be accepted. Written questions may be submitted by 5:00 on Friday, February 3. Responses to all written questions will be posted to the MWPA website on Tuesday, February 7.

2. Proposal Withdrawal

Any Respondent to this RFP may withdraw a Proposal by written notice delivered to the Anne Crealock prior to the due date and time specified above. The Respondent must, in person, retrieve the entire submission package. Another Proposal may be submitted prior to the deadline. A Proposal may not be changed after the designated deadline for submission of Proposals.

3. Irregular Proposals

A Proposal may be rejected if it shows any alteration of form, additions not called for, conditional Proposals, incomplete Proposals, erasures, or irregularities of any kind. If the Proposal amount is changed after the amount is originally inserted, the change must be initialed.

4. 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 Professional Services Agreement.

E. PROPOSAL EVALUATION

1. Evaluation Criteria

Proposals will be evaluated based on the following criteria:
a) Demonstrated successful outcomes and work products for technical projects and approaches similar in nature to the technical proposal submitted;
b) Demonstrated experience with and knowledge of issues related to wildfire, vegetation management, environmental compliance, land use planning, natural resources planning, and/or other related topics;
c) Demonstrated ability to work in a collaborative, integrated way, with a team comprised of multiple disciplines;
d) Demonstrated ability to perform work in a cost-effective and efficient manner – proven ability to be creative in leveraging limited financial resources;
e) Local preference will be given to proposers located within the region, particularly from Marin County, the North Bay, or the San Francisco Bay Area.

2. Interviews

MWPA, in its sole discretion, may prepare a short list of Respondents for interviews. Respondents who are invited to attend an interview will be notified in writing. Only the actual personnel who will be responsible for the work should come to the interview.

If requested by MWPA, qualified Respondents may be required to present their Proposals to the Selection Committee and submit to oral questions.

MWPA’s Management Analyst or other MWPA staff will schedule the interviews in the month of February and/or March 2023 at MWPA’s offices, or at such other time and/or location indicated by MWPA. Each Respondent should prepare a presentation not to exceed 45 minutes. Each Respondent is responsible for any special equipment required for the presentation. Projection equipment will be available in MWPA’s conference room upon advance request by Respondent.

The interviews shall be solely for the benefit of MWPA and shall not be open to the public or to other Respondents.

3. Additional Evaluation Information

MWPA may interview any or all of the client references provided by Respondent. Submittal of a Proposal constitutes Respondent’s consent for MWPA to conduct reference checks and reasonable investigation of all information provided by Respondent.

All Proposals and accompanying documentation submitted by Respondents become the property of MWPA and, except as otherwise provided in this RFP, will not be returned.

The MWPA reserves the right to disqualify submissions based on insufficient response to this Request for Proposals. The MWPA also reserves the right to negotiate specific requirements and costs.

F. PROFESSIONAL SERVICES AGREEMENT
A professional services agreement is included as Exhibit A and includes the Insurance Requirements for this work.

1. Selected Respondent

MWPA will expect the Selected Respondent to execute the attached form of Professional Services Agreement for work, with only such changes as MWPA may approve in its sole discretion.

2. MWPA’s Right to Amend

MWPA reserves the right to make such modifications or additions to the form of Professional Services Agreement attached as Exhibit A to this RFP, as MWPA may elect in its sole discretion prior to the execution thereof, and thereafter as otherwise permitted by the Professional Services Agreement. Otherwise, MWPA reserves the right to make modifications or additions with the mutual consent of the Selected Respondent.

3. Selected Respondent’s Refusal to Execute

If the Selected Respondent refuses to execute the form of Professional Services Agreement in substantially the form attached as Exhibit A to this RFP, as modified by its Proposal, MWPA may begin negotiations with the Respondent whose Proposal is determined to be the best alternative Proposal, determine that no such alternative exists, or exercise any other available right.

G. ADDENDUM/ADDENDA TO THIS RFP

1. Addenda to RFP

MWPA reserves the right to interpret or change any provisions of this RFP at any time. Such amendments, if any, shall be issued as written Addendum/Addenda to this RFP.

Additionally, MWPA may prepare answers, in the form of an Addendum to this RFP, to questions addressed by MWPA and as MWPA otherwise deems appropriate. Written responses, in the form of an Addendum and amendments, if any, to this RFP will be posted on MWPA’s RFP website. Any Addendum issued by MWPA may also be obtained in person from the MWPA office. It is sole responsibility of Respondent to ensure that it obtains all Addenda and acknowledges receipt of all Addenda in its Proposal.

2. Acknowledgment of Receipt of Addendum

Each Respondent is responsible to inquire as to the Addendum/Addenda issued by MWPA. All Addenda shall become part of this RFP, and all Respondents shall be bound by such Addenda, whether or not received by Respondent. Each Respondent must sign the Acknowledgment of Addendum Form (“Acknowledgment”), which will be attached to the Addenda, and return the
Acknowledgment Form with their Proposal Form. Failure to return the Acknowledgment Form shall constitute a presumption of withdrawal from the qualification process.

H. RIGHT TO PROTEST

1. Protesting Party

Only bidders or proposers who have submitted timely proposals can initiate a protest action or appeal.

2. Protest Procedures

The following steps must be followed to consider a protest:

   a. The protest must be in writing and delivered in person or by registered mail. Once received, it will be date stamped by MWPA staff.
   b. The protest must be filed within three (3) business days after the MWPA announces its selection, but before the contract is awarded.
   c. Copies of the protest and all supporting documentation must be concurrently transmitted to all other parties with a direct financial interest that may be adversely impacted by the outcome of the protest. Such parties shall include all bidders who appear to have a reasonable prospect of receiving an award depending upon the outcome of the protest.
   d. The protested bidder may submit a written response to the protest, provided the response is received within two (2) business days of receiving the bid protest.
   e. The protesting party must bear all of its own costs and fees in conjunction with the protest and appeal processes.

3. Protest Filing

The written protest shall:

   a. Include the name, street address, business phone number and email address of the protestor.
   b. Identify this RFP by name.
   c. Contain a complete statement of the grounds for protest.
   d. Refer to the specific portion or portions of the RFP upon which the protest is based.
   e. Include all supporting documentation.

4. Protest Review Prior to Award

The Executive Officer or his designee will withhold contract award pending disposition of the protest unless it is determined that an emergency exists. Upon review with the MWPA Legal Counsel, the Executive Officer or his designee will issue a determination and respond in writing to the material issues raised in the protest no later than ten (10) business days after receipt of the protest.
5. Right of Appeal

Following issuance of the response to the protest, the protestor may appeal the initial determination to the Executive Officer in writing within three (3) business days after notification of the decision. The Board will review the submitted information and render a final decision.

I. CONDITIONS GOVERNING THIS RFP

1. Confidentiality

MWPA has made a determination in accordance with Government Code Section 6255 that all Proposals submitted in response to this RFP shall not be made public by MWPA until after MWPA has executed a Professional Services Agreement with the Selected Respondent. In the event a Respondent wishes to claim portions of its Proposal exempt from disclosure under the Public Records Act, it is incumbent upon Respondent to clearly identify those portions with the word “confidential” printed on the lower right-hand corner of the page, along with a written justification as to why such information should be exempt from disclosure. However, MWPA will make a decision based upon applicable laws.

MWPA shall notify Respondent of any materials or information that MWPA does not believe are entitled to exemption from the Public Records Act, and Respondent shall have five (5) business days from such notice to:

- withdraw its Proposal;
- withdraw such information from its Proposal; or
- withdraw such information and replace it with substituted information for which Respondent does not claim an exemption.

Proprietary or confidential data must be readily separable from the Proposal in order to facilitate eventual public inspection of the non-confidential portion of the Proposal. Confidential data is normally restricted to confidential financial information. The cost of Services shall not be designated as proprietary or confidential information.

2. Applicable Laws/Miscellaneous

By submitting a response to this RFP, Respondents affirm their agreement to comply with the following terms and conditions of this RFP:

a. The Selected Respondent shall maintain professional licenses required by the laws of the State of California at all times while performing Services for the Project.

b. The Selected Respondent shall comply with the laws of the State of California requiring employers to insure against liability for Worker’s Compensation while performing Services for this Project.
c. All Services shall comply with all statutes, ordinances, regulations, codes, and requirements of all governmental entities, including federal, state, and municipal entities, relating to the Project.

d. 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.

e. 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 Respondent shall defend, indemnify and hold harmless MWPA from any and all liability, claims, or expenses whatsoever, incurred by, or on behalf of, the Respondent’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.
Exhibit A. Professional Services Agreement
AGREEMENT FOR PROFESSIONAL SERVICES
FOR GIS CONSULTING AND COORDINATION SERVICES

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, MWPA and its member agencies utilize a variety of services and functions involving and pertinent to GIS information and requires CONSULTANT to support, manage, and coordinate amongst these member agencies, services, and functions, and develop appropriate tools to assist in that effort;

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 as 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.

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. In no event shall compensation for the Services exceed $____:

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.

Revised 10/5/2020
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 Indemnites”), 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 Indemnites. However, to the extent that liability is caused by the active negligence or willful misconduct of the MWPA Indemnites, the CONSULTANT’s indemnification obligation shall be reduced in proportion to the MWPA Indemnites’ 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 Indemnites 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 Indemnites or at MWPA’S option reimburse the MWPA Indemnites 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**

   __________________________________________
   Mark Brown, Executive Officer

   Name: _____________________________________
   Title: _____________________________________

   **CONSULTANT**

   By: ______________________________

   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

Revised 10/5/2020