



251 E MAIN STREET, MOUNTAIN HOUSE, CA 95391
(209) 831-2300 • (209) 831-5610 FAX

CONSULTANT AGREEMENT
CONTRACT ID # A-2223-17

DATE: 7/2/2022

PARTIES:	MHCS D:	Mountain House Community Services District 251 E. Main Street Mountain House, CA 95391
	CONSULTANT:	ProCure Consulting LLC Donald S. Smail Jr. 3155 Bow Drive Copperopolis, CA 95228

The Parties agree as follows:

1. Priority of Documents:

Each of the items listed below is hereby incorporated into this Agreement by this reference. In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

A. Applicable Federal and State of California statutes and regulations, this Agreement and its exhibits.

2. Terms of Services:

2.1 Scope of Services. Subject to the terms and conditions set forth in this Agreement, Consultant agrees to provide Community Development and Parks and Recreation Capital Program Support.

2.2 Term of Agreement. This Agreement shall commence on **the date of execution by the MHCS D General Manager**, and continue until **June 30, 2023** unless said Work is completed on a date prior thereto or unless terminated earlier as provided herein. Consultant shall complete the Work described in Exhibit A on or before that date, unless

the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect MHCS D's right to terminate the Agreement, as referenced in Section 8.

- 2.3 **Standard of Performance.** Consultant shall perform all Work in a first-class manner in conformance with the standards observed by a competent practitioner of the profession in which Consultant is engaged.
- 2.4 **Inspection.** All Work performed and materials (if any) provided by Consultant shall be subject to inspection and approval by MHCS D.
- 2.5 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that MHCS D, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from MHCS D of such desire of MHCS D, reassign such person or persons.
- 2.6 **Time is of the Essence.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 2.3 above and to satisfy Consultant's obligations hereunder.

3. **Terms of Payment.**

- 3.1 **Compensation.** MHCS D hereby agrees to pay Consultant a sum not to exceed ninety five thousand dollars, (\$95,000) notwithstanding any contrary indications that may be contained in Consultant's proposal for services to be performed and reimbursable costs incurred under this Agreement. MHCS D shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from MHCS D to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to MHCS D in the manner specified herein. Except as specifically authorized by MHCS D in writing, Consultant shall not bill MHCS D for duplicate services performed by more than one person.

Consultant and MHCS D acknowledge and agree that compensation paid by MHCS D to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. MHCS D therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 3.2 **Invoices.** Consultant shall submit invoices not more often than once a month during the term of this Agreement based on the cost for services performed and reimbursable costs incurred prior to the invoice date via e-mail to **mhcldbilling@sjgov.org**. Invoices delivered to any other e-mail address will be deemed undelivered and not paid.

Invoices shall contain the following information:

- a. Contract ID number;
- b. Federal Tax Payer Identification Number;
- c. Contract expiration date;
- d. The beginning and ending dates of the billing period;
- e. A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- f. At MHCS D's option, for each Work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the Work, the hours spent by each person, a brief description of the Work, and each reimbursable expense;
- g. The total number of hours of Work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder; and
- h. The Consultant's signature.

3.3 Monthly Payment. MHCS D shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. MHCS D shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

3.4 Final Payment. MHCS D shall pay the last 10% of the total sum due pursuant to this Agreement within sixty (60) days after completion of the services and submittal to MHCS D of a final invoice, if all services required have been satisfactorily performed.

3.5 Total Payment.

- a. MHCS D shall pay for the services to be rendered by Consultant pursuant to this Agreement. MHCS D shall make no payment for any extra, further, or additional service pursuant to this Agreement.
- b. In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.
- c. MHCS D shall not pay any invoice or otherwise provide compensation to Consultant in excess of the maximum amount of compensation provided herein unless the Agreement is modified prior to the performance of such Work or services.

d. MHCS D shall not pay any invoice or otherwise provide compensation to Consultant for Work or services performed after the expiration or termination of this Agreement unless the Agreement is modified prior to the performance of such Work or services.

3.6 Hourly Rate/Fees. Unless the services provided are for a lump sum or flat fee, fees for Work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B and incorporated herein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

3.7 Reimbursable Expenses. Reimbursable expenses are specified in Exhibit B. Reimbursable expenses not listed in Exhibit B are not chargeable to MHCS D. Reimbursable expenses shall not include a mark-up shall be billed as a direct costs. In no event shall expenses be advanced by MHCS D to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

3.8 Payment of Taxes. Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

3.9 Payment upon Termination. In the event that MHCS D or Consultant terminates this Agreement pursuant to Section 8, MHCS D shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for Work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

3.10 Authorization to Perform Services. The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

4. Consultant's Status.

4.1 Independent Contractor. In the performance of the Work, duties and other obligations imposed by this Agreement, the Consultant is at all times acting as an Independent Contractor practicing his or her profession and not as an employee of MHCS D. Consultant shall perform the Work in accordance with currently approved methods and standards of practice in the Consultant's professional specialty. A copy of Consultant's current business license shall be provided to MHCS D. The Consultant shall not have any claim under this Agreement or otherwise against MHCS D for vacation, sick leave, retirement benefits, social security or worker's compensation benefits. The Consultant shall be responsible for federal and state payroll taxes such as social security and unemployment. San Joaquin County will issue a form 1099 on behalf of MHCS D at year-end for fees earned.

4.2 Consultant Not an Agent. Except as MHCS D may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of MHCS D in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind MHCS D to any obligation whatsoever.

4.3 Non-Exclusive Rights. This Agreement does not grant to Consultant any exclusive privileges or rights to provide services to MHCS D. Consultant may contract with other agencies, private companies or individuals for similar services.

5. Legal Requirements.

5.1 Compliance. Consultant shall comply with all Federal, State and local laws, regulations and requirements necessary for the performance of the Work. Consultant shall comply with all laws applicable to wages and hours of employment, occupational safety, and to fire safety, health and sanitation.

5.2 Licenses and Permits. Consultant represents and warrants to MHCS D that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to MHCS D that Consultant and its employees, agents, and any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions.

5.3 Conflict of Interest Statement. Consultant covenants that Consultant, its officers or employees or their immediate family, presently has no interest, including, but not limited to, other projects or independent contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with the performance of the Work. Consultant further covenants that in the performance of this Agreement no person having any such interest shall be employed or retained by Consultant under this Agreement. Consultant shall not hire MHCS D's employees to perform any portion of the Work, including secretarial, clerical and similar incidental services except upon the written approval of MHCS D. Performance of the Work by associates or employees of Consultant shall not relieve Consultant from any responsibility under this Agreement.

5.4 Nondiscrimination and Equal Opportunity. Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, gender identity, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant pursuant to this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

5.5 Drug Free Workplace. Consultant shall comply with the provisions of Government Code Section 8350 et seq., otherwise known as the Drug-Free Workplace Act.

5.6 Form Law. The Laws of the State of California shall govern this Agreement. Venue is San Joaquin County. The provision of this paragraph shall survive expiration or other termination of this Agreement regardless of the cause of such termination.

5.7 Subcontracts. Consultant shall include the provisions of this Section 5 in any subcontract approved by the Contract Administrator or this Agreement.

6. Indemnification, Hold Harmless and Defense.

To the fullest extent permitted by law, Consultant shall indemnify, hold harmless and defend MHCS D, its directors, officers, employees, agents and authorized volunteers, and each of them, from and against any and all claims, demands, causes of action, damages, penalties, judgments, awards, decrees, costs, expenses, attorneys' fees, losses or liabilities, in law or in equity, of every kind or nature, including but not limited to personal injury, bodily injury, wrongful death, and property damage including any damage to MHCS D's property, arising out of Consultant's alleged negligence, or wrongful acts related to or in connection with Consultant's performance of duties under the terms and conditions of this Agreement.

To the fullest extent permitted by law, MHCS D shall indemnify, hold harmless and defend the Consultant, its directors, officers, employees, agents and each of them (collectively referred to as "Consultant Indemnified Parties") from and against any and all claims, demands, causes of action, damages, penalties, judgments, awards, decrees, costs, expenses, attorneys' fees, losses or liabilities, in law or in equity, of every kind or nature, including but not limited to personal injury, bodily injury, wrongful death, and property damage including any damage to the Consultant's property, arising out of MHCS D's alleged negligence, or wrongful acts related to or in connection with MHCS D's performance of duties under the terms and conditions of this Agreement.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

7. Insurance.

Before beginning any Work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance described in Exhibit C, incorporated herein, against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the Work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to MHCS D of such insurance that meets the requirements of Exhibit C and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning Work to MHCS D. Consultant shall maintain the insurance policies required by Exhibit C throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's proposal. Consultant shall not allow any subcontractor to commence Work on any subcontract until Consultant has obtained all insurance required by Exhibit C for the subcontractor(s) and provided evidence that such insurance is in effect to MHCS D. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

8. Termination and Modification.

8.1 Termination. MHCS D may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon sixty (60) days' written notice to MHCS D and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; MHCS D, however, may condition payment of such compensation upon Consultant delivering to MHCS D any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or MHCS D in connection with this Agreement.

8.2 Extension. MHCS D may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Section 2.2. Any such extension shall require a written amendment to this Agreement, as provided for herein. The MHCS D General Manager is hereby authorized to negotiate and execute such extension.

8.3 Amendments. The parties may amend this Agreement only by a writing signed by all the parties.

8.4 Assignment and Subcontracting. MHCS D and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to MHCS D for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator. Any such assignment, transfer, delegation or subcontract without the prior written consent shall be considered null and void.

8.5 Survival. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between MHCS D and Consultant shall survive the termination of this Agreement.

8.6 Options upon Breach by Consultant. If Consultant materially breaches any of the terms of this Agreement, MHCS D's remedies shall include, but not be limited to, the following:

- a. Immediately terminate the Agreement;
- b. Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;
- c. Retain a different consultant to complete the Work described in Exhibit A not finished by Consultant; or

- d. Charge Consultant the difference between the cost to complete the Work that is unfinished at the time of breach and the amount that MHCS D would have paid Consultant pursuant to Section 3 if Consultant had completed the Work.

9. **Miscellaneous.**

- 9.1 **Contract Administrator.** The Contractor Administrator shall be designated, and may be changed, by the MHCS D General Manager in writing.
- 9.2 **Notices.** Any notice required to be given pursuant to the terms and provisions hereof shall be in writing and shall be effected by personal delivery or by first class mail, registered or certified, postage prepaid, return receipt requested. Unless otherwise designated by either party in writing, such notices shall be mailed as shown on the first page of this Agreement.
- 9.3 **Non-Liability of Officials, Employees and Agents.** No officer, official, employee or agent of District shall be personally liable to Consultant in the event of any default or breach by District or for any amount that may become due to Consultant pursuant to this Agreement.
- 9.4 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which such party may be entitled.
- 9.5 **Documents.** All drawings, specifications, documents and other memoranda or writings relating to the Work hereunder, shall remain or become the property of MHCS D upon termination of this Agreement, whether executed by or for the Consultant for MHCS D, or otherwise, by or for the Consultant, or by or for a subcontractor operating under the Consultant's supervision, or direction, and all such documents and copies thereof shall be returned or transmitted to MHCS D forthwith upon termination or completion of the Work under this Agreement. Prior to termination Contractor shall deliver to MHCS D any such records upon request.
- 9.6 **Force Majeure.** It is agreed that neither party shall be responsible for delays in delivery or acceptance of delivery or failure to perform when such delay or failure is attributable to Acts of God, war, strikes, riots, lockouts, accidents, rules or regulations of any governmental agencies or other matters or conditions beyond the control of either the seller/contractor or the purchaser.
- 9.7 **Waiver.** No waiver of any breach of any covenant or provision of this Agreement shall be deemed a waiver of any other covenant or provision hereof, and no waiver shall be valid unless in writing and executed by the waiving party. An extension of time for performance of any obligation or act shall not be deemed an extension of the time for performance of any other obligation or act, and no extension shall be valid unless in writing and executed by the waiving party.

- 9.8 **No Third Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall be deemed to confer upon any person, other than the parties, any rights or remedies hereunder.
- 9.9 **Headings.** The headings of the sections and exhibits of this Agreement are inserted for convenience only. They do not constitute part of this Agreement and are not to be used in its construction.
- 9.10 **Entire Agreement and Modification.** This Agreement supersedes all previous Agreements either oral or in writing and constitutes the entire understanding of the parties hereto. No changes, amendments or alterations shall be effective unless in writing and signed by both parties.
- 9.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, MHCS D and Consultant have executed this Agreement on the day and year first written above.

Procure Consulting, LLC

Mountain House Community Services
District, a political subdivision of the
State of California

By: DocuSigned by:
Donald S. Smail
502D90F909F44A9...
Donald S. Smail Jr.

By: DocuSigned by:
Steven J. Pinkerton
4DAD8C075E124D8...
Steven J. Pinkerton
General Manager

Date: 7/1/2022

Date: 7/2/2022

EXHIBIT A
SCOPE OF SERVICES

[NOT APPLICABLE]

EXHIBIT B
COMPENSATION SCHEDULE & REIMBURSABLE EXPENSES

1) **Compensation Schedule.**

Consultant's fee for services will be \$125 per hour.

2) **Reimbursable Expenses.**

Reimbursable expenses for Consultants working for MHCSD shall follow the guidelines outlined below. An invoice and receipts, outlining travel expenses, shall be submitted to NHCS D after the travel has occurred.

Expense Type	Reimbursement Policies	Receipt Required
Airfare	Actual cost of the least expensive class available. Business class and first class are not reimbursable.	Yes
Airline Baggage Fees	Actual expense.	Yes
Rental Car	Reimbursement for rental cars will be for a standard size car or smaller and will be reimbursed for the actual expense.	Yes
Airport Shuttle	Actual expense, including gratuity.	Yes
Taxi	Actual expense, including gratuity.	Yes
Meals & Incidentals	Actual expense, including gratuity. Itemized receipts must be included for reimbursement. No alcohol. Other incidentals per itemized receipt.	Yes
Hotel	Lodging obtained will be reasonable and in line with the moderate priced hotels for the area. Reimbursement will be only for room charge, taxes, and parking (if applicable). Itemized receipts must be included for reimbursement.	Yes
Privately Owned Vehicle Mileage Rate	IRS allowable rate for the current year.	No
Office Incidentals	Actual expense. Copies/printing, courier/express delivery fees, phone calls.	Yes

EXHIBIT C
INSURANCE REQUIREMENTS

- 1) **Required Coverage.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
<p>Commercial General Liability Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability</p>	<p>\$1,000,000 per occurrence; Bodily Injury and Property Damage \$2,000,00 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an “occurrence” basis</p>
<p>Commercial or Business Automobile Liability All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities</p>	<p>\$1,000,000 per occurrence; Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.</p>
<p>Workers’ Compensation (WC) and Employers Liability (EL) Required for all contractors with employees</p>	<p>WC: Statutory Limits EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against MHCSD and its officers, officials, employees, and volunteers for loss arising from Work performed under this Agreement</p>
<p>Professional Liability/Errors & Omissions Includes endorsements of contractual liability</p>	<p>\$1,000,000 per occurrence \$2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed \$150,000 per claim</p>

- 2) **Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a) **Term.** All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a

claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all Work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement.

- b) Additional Insured. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: Mountain House Community Services District, its Board of Directors, and all MHCS D officers, agents, employees, volunteers and representatives.
- c) Primary Insurance. For any claims related to this Agreement or the Work hereunder, the Consultant's insurance covered shall be primary insurance as respects MHCS D, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by MHCS D, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- d) Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to MHCS D.
- e) Certificates of Insurance. Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to MHCS D, evidencing that all required insurance coverage is in effect. MHCS D reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.
- f) Subcontractors. Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- g) Claims-made limitations. The following provisions shall apply if the professional liability coverage is written on a claims-made form:
 - i) The retroactive date of the policy must be shown and must be before the date of the Agreement.
 - ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the Work, so long as commercially available at reasonable rates.
 - iii) If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of Work under this Agreement.
 - iv) A copy of the claim reporting requirements must be submitted to MHCS D for review prior to the commencement of any Work under this Agreement.

3) **All Policies Requirements.**

- a) **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to MHCS D. Acceptance of Consultant's insurance by MHCS D shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.
- b) **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of MHCS D for the self-insured retentions and deductibles before beginning any of Work called for by any term of this Agreement. At the option of MHCS D, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects MHCS D, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to MHCS D guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- c) **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- d) **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all Work performed by the consultant, its employees, agents, and subcontractors.

4) **Remedies.** In addition to any other remedies MHCS D may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, MHCS D may, at its sole option exercise any of the following remedies, which are alternatives to other remedies MHCS D may have and are not the exclusive remedy for Consultant's breach:

- a) Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- b) Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- c) Terminate this Agreement.