FOREST MANAGEMENT SERVICES AGREEMENT

BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE

THIS AGREEMENT made and entered into by and between the Board of Water and Sewer Commissioners of the City of Mobile (hereinafter called the "Board") and_____, of _____ (hereinafter called Consultant) to-wit:

WHEREAS, the Board desires Forest Management Services for the land owned by the Board proximate to Big Creek Lake (hereinafter sometimes called The Land);

WHEREAS, the Board desires engaging the services of a Consultant that can provide a broad range of forest management services and expertise to properly care for The Land to ensure its health, water quality, wildlife preservation, beauty and timber stand improvement and other related services identified herein.

WHEREAS, _____has an established reputation for its knowledge, skill and experience in providing Forest Management Services; and

WHEREAS, Consultant represents to the Board that Consultant possess the knowledge, skill and experience to properly perform the work contemplated by this Agreement; and

WHEREAS, at a regular Board Meeting held _____, the Board voted to retain Consultant to perform Forest Management Services as set forth herein; and,

WITNESSETH, that in consideration of the mutual covenants and agreements herein contained, including but not limited to Consultant's representations set forth in the foregoing

recitals, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto do mutually agree as follows:

ARTICLE ONE: PROJECT UNDERSTANDING

Big Creek Lake is a 3600 Acre Lake that provides raw water to MAWSS for the production of potable water for MAWSS' customers throughout the City of Mobile and some surrounding areas. Big Creek was impounded in 1952 to form Converse Reservoir (a/k/a Big Creek Lake). Since that time, MAWSS purchased property around the lake to act as a buffer for protecting the lake from development, sediment, nutrients, and other forms of pollution. Nearly 8000 acres of forested property is owned by MAWSS. Managing the forested areas in a manner consistent with best practices to improve and protect the forest plus protect the watershed is the Board's goal. Further, developing a continuous revenue source by selling timber for the purpose of purchasing more land to protect the lake is also desired. This Agreement is intended to furnish the Board with the expertise needed to achieve the aforementioned goals. See Attachment 1 for a map of Big Creek Lake and the property owned by MAWSS near the lake.

ARTICLE TWO: DEFINITIONS

1. **AFR.** Annual Forestry Report

2. **Agreement.** For purposes of this Agreement, all references herein to "Agreement" shall refer to this contract for Forest Management Services, along with all exhibits and attachments hereto, and any amendments hereto made by written agreement of these parties.

3. **Board.** Board of Water and Sewer Commissioners of the City of Mobile d/b/a MAWSS.

4. **Breast Height.** The average stem diameter, outside of the bark, at a point 4.5 ft above the ground as measured from the uphill side of the stem

5. **Clear-Cut Harvest.** A harvesting and regeneration method that removes all trees within a given area.

6. **Consultant.** The company set forth in the first paragraph of this Agreement as a party hereto, and its employees, officers, agents, and representatives, as may be appropriate for the context of the provision of this Agreement where the term appears.

7. **Control Burn/Prescribed Burn** – The use of fire under specific environmental conditions to achieve forest management objectives. Used to reduce unwanted vegetation, favor desired vegetation, and improve visibility and wildlife habitat.

8. **Cruise.** A survey of forestland to locate timber and estimate its quantity by species, products, size, quality and other characteristics.

9. **Hardwood.** Deciduous trees with broad flat leaves as opposed to coniferous or needled trees.

10. **Executive Director.** Bud McCrory, Jr.

11. **Marking.** Selecting trees to be cut or left behind.

12. **MAWSS.** Mobile Area Water and Sewer System

13. **MAWSS Project Manager (MPM).** The MAWSS employee assigned to managing this Agreement.

14. **Poles or Pole Timber.** Trees from 10 to 24 inches in diameter as measured 6 feet from ground level.

15. **Project.** All work to be performed pursuant to contract documents and described by a Task Order.

16. **Pulpwood.** Wood used in the manufacture of paper, fiberboard or other wood fiber products.

17. **Reforestation.** Reestablishing a forest by planting or seeding an area which forest vegetation has been removed.

18. **Regeneration Cut.** A cutting strategy in which old trees are removed while favorable environmental conditions are maintained for the establishment of a new stand of seedlings.

19. **Salvage Cut.** The harvesting of dead or damaged trees or of trees in danger of being killed by insects, disease, flooding or other factors to save their economic value.

20. **Sapling.** A small tree usually between 2 and 4 inches diameter at breast height.

21. **Saw timber.** Trees with a DBH of 11 inches or larger with at least 16 feet of length.

22. **Seed Tree Cut.** A harvesting method in which a few scattered trees are left in the area to provide seed for a new forest stand.

23. **Selective Cutting.** The period removal of individual trees or groups of trees to improve or regenerate a stand.

24. **Softwood.** Usually evergreen trees that bear cones and needles or scale like leaves. They include pine, spruces, firs and cedars.

25. **Stand.** A defined area of the forest that is relatively uniform in species composition or age and can be managed as a single unit. There are 50 stands managed in this Agreement ranging in size from approx. 82 acres to 319 acres.

26. **Subcontractor.** A contractor hired by the Consultant to perform services under this Agreement.

27. **Task Order**. A form that authorizes Consultant to perform work and invoice for services. A completed Task Order has attached to it a Scope of Work, schedule, identified deliverables and itemized cost that are approved by both Consultant and MAWSS.

28. **Revised Task Order**. A Task Order that is marked as "Revised" to reflect a change to an original Task Order or preceding revised Task Order.

ARTICLE THREE: SCOPE OF ENGAGEMENT

A. Project Kick-Off Meeting

Once Consultant is selected, an initial meeting will be held between Consultant and MAWSS Project Manager to discuss upcoming projects, communications, invoicing and other aspects of Agreement implementation.

B. Authorization to Provide Services

When MAWSS needs services performed by the Consultant, authorization for such work only occurs when a Task Order Form completed by the Consultant is executed by both the Consultant and MAWSS. After MAWSS discusses a needed scope of services with the Consultant, the Consultant must draft a Scope of Work (SOW) to achieve the intended MAWSS objectives and an itemized cost estimate for same. The SOW, cost estimate and schedule must be attached to a Task Order Form that is also completed by the Consultant. The Task Order is then submitted to the MPM who reviews the scope for adequacy and

completeness and checks budget for the task. If acceptable to MAWSS, the MPM will sign the Task Order and process it internally. If not acceptable to MAWSS, the Task Order will be revised until it is acceptable to both parties or be rejected outright by MAWSS and no further action taken on it.

An executed Task Order will be emailed to the Consultant who is then authorized to coordinate the approved work with MAWSS and perform the services defined within the SOW.

Only the Consultant knows at any given time how much money has been expended on a Task Order. Therefore, it is the Consultant's responsibility to ensure the Task Order expense authorization is not exceeded. Additional funds for an executed Task Order can only be furnished if a revised Task Order is approved by MAWSS.

Work performed by the Consultant that is not authorized by Task Order will be at the Consultant's expense.

Over-expending Task Order authorized expenditures may result in termination of this Agreement.

The Consultant may have multiple Task Orders authorized at any given time. Task Order authorizations stand alone. Funds approved for one Task Order cannot be used for another without proper Task Order revisions.

General Services Type Task Orders may include multiple subtasks that are not interrelated. Consultant shall be prepared to provide cost estimates of subtasks when requested by MAWSS. When a subtask is completed, the contractor shall provide the total cost of the subtask within 5 days of request to MAWSS if requested by MAWSS. In any event, subtasks costs shall be shown in the Consultant's monthly invoices.

Invoices provided to MAWSS by the Consultant shall be subdivided according to Task Order number and title. Charges will be enumerated in detail under each Task Order number with both previous and current billing amounts. Subtasks will be broken out so that cost accrued to each subtask can be identified.

The Task Order Form must have attached to it a completed subcontracting plan as shown in Attachment 5. The subcontracting plan must be completed and signed even if no

subcontractors are used. The subcontracting plan is a part of the Supplier Diversity Program at MAWSS. See Attachment 4 for a copy of the DBE Policy 16-01. If no DBE's are being used for the task, provide documentation showing a good faith effort was made to hire DBEs. Such documents could include phone logs or emails showing that a significant effort was made to acquire DBE subcontractors.

See Attachment No. 1 for the Task Order form.

D. Access to MAWSS Facilities

Security of MAWSS facilities is of paramount importance. Consultant will be provided access to gates by means of MAWSS provided locks and keys. Consultant shall keep gates locked at all times and must not duplicate MAWSS keys.

If Consultant sees any activity on MAWSS property that is potentially trespassing, the Consultant shall contact MPM immediately.

The Consultant shall not enter the Gaillard Pump Station or any other MAWSS facility without being escorted by a MAWSS employee.

E. Forest Management Services To Be Performed

The Forest Management Services include, but are not limited to, the following tasks.

1. Annual Forestry Reports (AFRs)

   MAWSS Big Creek Lake property is subdivided into 50 stands. At the start of the contract and each year within 45 days after contract renewal, the consultant shall complete and submit to the MPM an AFR report on each stand that includes the following information per stand:

   - Identification of the stand.
   - Age and type of stand.
   - Date on which stand was last inspected.
   - Any work or actions taken on the stand during the past calendar year. Quantify such actions, if applicable, and dates on which actions taken.
   - Identify any invasive species found in the stand with quantification.
   - General condition of the Stand regarding its health, access road condition,

state of fencing if applicable, undergrowth condition, predicted growth potential, erosion, and fit of the timber for the soil conditions present.

- Photographs of the stand showing its general condition and any aspects of the stand that are prompting future actions.
- Recommended actions for the next year with estimated costs. Such actions may include, but are not limited to:
    - Controlled burning
    - Developing a cutting contract
    - Culling
    - Clear-cut harvest
    - Broadcast seeding
    - Replanting
    - Selective cutting
    - Thinning
    - Applying herbicide to invasive species
    - Eradicating disease
    - Access road maintenance
    - Facilitating timber sales

- Any additional information Consultant recommends and is agreeable to the MPM.

2. **Recommended Tasks**

MAWSS has no obligation to perform recommended tasks in the aforementioned AFRs.

3. **Emergency Tasks**

Emergency tasks may be required of the Consultant as a result of natural disasters, disease in the forest or other unknown events not contemplated in the annual reports. The Consultant must be prepared to act expeditiously if needed by MAWSS.

4. **Documentation**

All working papers, documentation, photos and reports must be retained by the Consultant for a minimum of three (3) years after termination of Agreement.

F. Deliverables

Each Task Order shall define the deliverables associated with the Task Order.

ARTICLE FOUR: OTHER PROVISIONS

A. Term of this Agreement

The initial term of this Agreement shall be for a period of February 1, 2027 to December 31, 2027. This Agreement may be extended for two one-year periods if both parties agree to the extension at the end of each one-year term. The provisions of the Agreement shall remain unchanged for any extension. Extensions must be accepted by both parties in writing. Work in progress at the date of termination will continue to completion as previously assigned unless the Board decides to terminate the work.

B. Assignment of Work to Other Consultants

Although it is the Board's intent to use Consultant as the primary consultant for providing the services described herein, the Board does not obligate itself to using only the Consultant for such services. The Board retains the right to use other consultants for providing the services described herein, if desired.

C. Start-Up and Prosecution of Work.

Consultant agrees to start work on services outlined herein within a reasonable time after notice from the MPM to proceed and will prosecute the work diligently to its completion. For all assignments, Consultant will endeavor to provide professional services free from defects that may cause property damage or injury, project delay, or additional expense to the Board.

D. Right to Termination

The Board reserves the right to terminate this agreement at any time without reason. Written notice of termination will be provided to the Consultant 30 days prior to effective date of termination unless termination is the result of provisions in Article Fifteen of this Agreement.

This Agreement will be terminated if both parties do not agree to renew the Agreement as described in Article 4, A. Term of this Agreement.

Work in progress at the date of termination will continue to completion as previously assigned unless the Board decides to terminate the work.

E. Consultant Forest Management Services Agreement Manager

The Consultant shall provide a single point of contact for MAWSS who is responsible for the overall performance of the Consultant under the Agreement and performs administrative duties for the Agreement like billing, conflict resolution, performance deficiencies, resource allocation, etc.

The following is the Consultant's Forestry Services Agreement Project Manager:

Name: _____

Title: _____

Phone No. (Office): _____

Phone No. (Cell): _____

Email Address: _____

Physical Address: _____

F. MAWSS Forest Management Services Agreement Project Manager (MPM)

MAWSS shall provide a single point of contact for Consultant who is responsible for the overall coordination of the Consultant with MAWSS' staff in developing and implementing Task Orders under this Agreement.

Only the MPM, Director of Plant Operations and Executive Director authority to sign Task Orders and subsequent revised Task Orders.

The following is the MAWSS Project Manager:

Name:	Markus Moore
Title:	Engineer III
Phone No. (Office):	251-378-3535
Phone No. (Cell):	251-721-0828
Email Address:	Mamoore@mawss.com
Physical Address:	4725 Moffett Road, Mobile, AL 36618

G. Studies, Reports, and Special Services

Consultant hereby agrees to provide professional services to develop and present special information required and authorized by the Board in operation or in executing Task Orders, such as, but not limited to, long range plans, reports, feasibility studies, economic comparisons of alternate courses, statistical information for public relations reports, presentations to the Board or to the public.

H. Quality of Work

All work pursuant to this Agreement shall be in accordance with standard of care consistent with forestry best practices.

ARTICLE FIVE: RECORD RETENTION

As to any service provided to Board by Consultant, Consultant shall allow Board and any auditor(s) or other person(s) designated by Board reasonable access to their billing records and invoices pertaining to said service and/or to Board, and such relevant financial records as are reasonably necessary to provide support and documentation to verify billings by Consultant to Board, payments by Board to Consultant and the existence and correctness of the charges and payments made pursuant to this Agreement, as well as all documents of whatever type the Board deems helpful in verifying the accuracy of billing amounts billed by Consultant to Board; provided,

however, that Consultant shall not be required to maintain said records for more than three (3) years following the rendering of the final bill for services when the Agreement terminates.

ARTICLE SEVEN: POST CONTRACT DUTIES

Any work assignments underway at the end of the Agreement period, or extension thereof, will be prosecuted by Consultant to its completion under terms of this Agreement if requested by the Board.

ARTICLE EIGHT: INDEMNITY

Each party (an "Indemnifying Party") shall indemnify, hold harmless, and defend the other party, its affiliates and their respective owners, officers, directors, employees, agents, successors and permitted assigns (collectively, "Indemnified Party") from and against any and all claims, losses, deficiencies, judgments, settlements, interest, awards, fines, causes of action, damages, liabilities, costs, penalties, taxes, assessments, charges, punitive damages and expenses of whatever kind, including reasonable attorneys' fees, that are incurred by Indemnified Party (collectively, "losses") as a result of any (i) breach or non-fulfillment of any representation, warranty or covenant under the Agreement by Indemnifying Party; (ii) negligent or more culpable act or omission of Indemnifying Party including, but not limited to, any reckless or willful misconduct in performing its obligations under the Agreement;

Consultant agrees to indemnify, defend, and hold harmless the Board and each individual Board member and employee from and against all loss, damage, claims, suits, actions, liability, judgments, orders, decrees, fines, penalties, interest, attorneys' fees, costs, and expenses, of any nature whatsoever, filed or brought by anyone, or by any entity arising in any way from this Agreement, including but not limited to personal injury, bodily injury, wrongful death, and property damage, which said claim, liability, suit, etc. may be made against or incurred by the Board or any individual Board member or employee as a result of any negligent and/or other legally culpable

act or omission of Consultant, its agent(s), employee(s), servant(s), subcontractor(s), successor(s), assign(s), or anyone for whose acts or omissions Consultant may be legally liable. This responsibility shall include, but not be limited to injuries or death or property damage or other loss caused in whole or in part by any machinery, materials or equipment belonging to Board used by Consultant in the performance of work pursuant to this Agreement. In the event that legal action is brought against the Board based upon any claim or upon any asserted violation of law or regulation arising out of the services performed by Consultant, the Consultant shall reimburse the Board for the Board's reasonable attorneys' fees, costs and expenses incurred in defending against same and for all appeals thereof (including but not limited to cost of bonds and interest in the event of an appeal), whether such appeal is taken by the Board or by another party. Further, in any such litigation, the Consultant shall use its professional efforts to protect the interests of the Board and its reputation in the community, shall participate in good faith and cooperate fully in mediation efforts and direct its insurance carrier to do likewise, shall assist as necessary in trial preparation, and shall cooperate fully in all related matters. In addition, the parties hereto agree that the Board has the right to file suit in a court of law, or to obtain restraining order, injunctions, and any other equitable remedy to prevent or terminate any breach of this Agreement or to otherwise enforce its rights hereunder. Consultant shall reimburse the Board for all reasonable attorneys' fees, costs, and expenses of every nature associated with any legal efforts of the Board to enforce its rights under this Agreement, at law or in equity, but only if the Board is the prevailing party. Nothing in this Article shall limit any otherwise available right or remedy of the Board at law or in equity.

ARTICLE NINE: INSURANCE

Consultant shall secure and maintain in full force and effect insurance that will adequately and effectively protect itself and the Board from claims brought by any person or entity in connection

with or arising in any way from this Agreement, including but not limited to claims for workers' compensation, claims for property damage, including loss of use, and claims for damages for personal injury and for bodily injury, including sickness or disease, or death. Consultant shall also secure and maintain in full force and effect Professional Liability Insurance (Errors and Omissions) providing coverage against claims which result from or relate to negligent performance of professional services provided pursuant to this Agreement. The insurance obtained by Consultant shall contain a provision that said insurance shall not be canceled or limited in any way without the Board and each individual Board member having received in advance thirty (30) days' written notice of said cancellation or modification and further providing that such notification shall be made in the manner provided for notices to a party as set out herein. Consultant shall at all times during this Agreement maintain the following minimum amounts of liability insurance, or greater amounts as reasonably necessary to provide adequate protection and coverage for very large, complex, and/or expensive projects, from an insurer having a rating of "A" or better:

1. **Professional Liability Insurance (Errors and Omissions)** providing coverage against claims for professional services errors and omissions, said policy to be maintained through the term of this Agreement and for a period of two (2) years thereafter.

    a. Combined single limit of $1,000,000 per each claim, $1,000,000 aggregate.

2. **Commercial Automobile Liability Insurance** providing coverage against claims for bodily injury, including death, and property damage, including owned, non-owned, and hired vehicles.

    a. Combined single limit of $1,000,000 per each occurrence, with an aggregate total of $2,000,000.

3. **Commercial General Liability Insurance** providing coverage against claims for personal injury, bodily injury, including death, advertising injury, blanket contractual liability, products/completed operations, and property damage.

    a. Combined single limit of $1,000,000 per each occurrence, with an aggregate total of $2,000,000.

4. **Worker's Compensation and Employers Liability Insurance (If Applicable)** providing coverage as required by law of the state in which work is performed.

    a. Worker's Compensation – Statutory Amount of State.

b. Employer's Liability – single limit of at least $1,000,000 per each occurrence.

The Commercial General Liability Policy obtained and/or maintained by Consultant shall be endorsed to include the Board, its Commissioners, members, officers, and employees as additional Insureds.

Consultant shall provide proof of the above listed insurance policies to the Board by furnishing:

- **Certificates of insurance**;
- **Declaration sheets;** and
- **All endorsements**, including but not limited to an additional insured endorsement for the Commercial General Liability (CGL] Policy naming the Board, its Commissioners, members, officers, and employees as additional insureds, and endorsements stating that the policies will not be cancelled, limited, or changed without thirty (30) calendar days' prior written notice to the Board.

All of these documents shall be provided to the Board or the Board's designee prior to beginning any work under this Agreement by Consultant, and thereafter at any time requested by the Board, any individual Board member, or the Board's designee. **In addition, Consultant shall provide copies of the actual policies** upon request of the Board or its designee. Consultant shall provide the policies within fifteen (30) business days of the request. In the event that the policies are requested, Consultant may redact the following:

- The dollar amount of the premiums charged by the insurance provider;
- Any information pertaining solely to other clients of Consultant, if the policy affords coverage relative to work of Consultant for other clients;
- The application and supporting materials provided by Consultant to its insurance provider in order to obtain the policy, which are made a part of the policy.

Consultant shall not redact any information pertaining in any way to coverages required by this Agreement and/or to descriptions of or limitations on any such coverages.

It shall be a material breach of this Agreement by Consultant if the certificates of insurance, declarations sheets, and all endorsements are not provided to the Board prior to Consultant's performance of any work under this Agreement, or if Consultant fails to provide copies of the actual insurance policies upon request, within the above time limit. If Consultant does perform any work under this Agreement without providing the above required insurance coverage documentation, or if Consultant fails to provide copies of the actual policies upon request within the time specified, this Agreement shall be subject to immediate termination by the Board. Further, if Consultant fails to provide a complete copy of each requested policy upon request, within the time limit set forth above, and the Board enlists the services of legal counsel in an effort to obtain them, Consultant shall reimburse the Board all reasonable attorneys' fees, costs, and expenses incurred by the Board for these legal services.

ARTICLE TEN: INDEPENDENT CONTRACTOR

Notwithstanding any conflicting provisions in the Board's Standard Specifications, policies, procedures, construction contract documents, or elsewhere, Consultant, in the performance of its duties and obligations hereunder, shall not be deemed to be the agent or employee or joint venture of Board, but shall be deemed to be an independent contractor in every aspect and shall take all steps at its own expense, as the Board may from time to time request, to indicate that it is an independent contractor. The Board does not and will not assume any responsibility for the means by which, or manner in which the Consultant's services provided herein are performed, but, on the contrary, Consultant shall be wholly responsible therefor.

All subcontractors shall be contracted with the Consultant. MAWSS will have no Agreements with subcontractors. Therefore, Consultant is responsible for acquisition, contracting, all work, liability and performance of subcontractors hired by the Consultant. Subcontractor's shall comply with

all applicable provisions of this Agreement. Communications between MAWSS and the Consultant's subcontractor shall only be through the Consultant.

ARTICLE ELEVEN: CONFIDENTIALITY

All matters pertaining to work performed under this Agreement are privileged and confidential between Consultant and the Board. Consultant expressly agrees to keep all data, findings, progress of work, conclusions or any other matter privileged and confidential and not to divulge any material information to anyone outside the Board unless (1) the Board consents in writing; (2) applicable law, regulation, court order or an agency of competent jurisdiction requires its disclosure; or (3) failure to disclose the information would pose an imminent and substantial threat to human health or the environment. Consultant further acknowledges that all such documents reflecting these confidential matters are the exclusive properties of the Board.

ARTICLE TWELVE: SECURITY

The Consultant acknowledges and agrees that security of the Board's facilities, personnel, equipment and information is of critical concern to the Board and its customers, particularly in light of heightened threats of terrorist attacks against utilities. The Consultant understands and agrees to preserve the security and confidentiality of the Board's data. The Consultant therefore shall limit the personnel who are given access to the data to those who must have the data to complete work for the Board. All persons who are given access to the Board's data shall have a written agreement with Consultant to maintain security of the Board's data as required herein.

ARTICLE THIRTEEN: CONFLICT OF INTEREST

After execution of this Agreement and for its duration, the Consultant is representing the Board's interests and shall not work in a manner that is not in the Board's interest. Regardless of circumstances, when Consultant is performing services for the Board, Consultant shall act only in the best interest of the Board.

The Consultant shall inform the Board of any circumstance that may be in anyway perceived to be a conflict of interest.

ARTICLE FOURTEEN: COMPLIANCE WITH LAWS AND PROGRAMS

Consultant shall comply with all applicable Federal, State, Municipal, and local laws, and executive orders, and all applicable rules, orders, regulations, and requirements of all governmental agencies, departments, and bureaus. Consultant agrees that it will comply with Title VII of the Civil Rights Act of 1964 assuring that no person will be subjected to discrimination on the grounds of race, sex, color, national origin, or disability.

The Consultant agrees to comply with MAWSS DBE Policy 16-01. See Attachment 4.

ARTICLE FIFTEEN: FAILURE OF PERFORMANCE BY CONSULTANT

During the progress of the work on any project or work assignment, if Consultant should become bankrupt, refuse or neglect to supply necessary services, or cause any unreasonable neglect or suspension of work or fail/refuse to comply with any part of this Agreement, or if the Board receives information raising concerns as to lack of proficiency or errors or omissions on the part of Consultant, in work for the Board or work for any other entity**,** or if Consultant fails to maintain in full force and effect all insurance coverage required by this Agreement, the Board shall have the right to immediately terminate this Agreement and make settlement with the Consultant on an

equitable basis for the amount of work satisfactorily completed. All claims of Consultant for work beyond this time shall cease.

ARTICLE SIXTEEN: CONTROLLING LAW

The law of the State of Alabama shall be controlling and determinative concerning any legal or equitable dispute that arises between the parties, and it is expressly agreed and stipulated that this Agreement shall be deemed to have been executed and performable by all parties in Mobile County, Alabama. Venue and jurisdiction for any actions arising under this Agreement shall be proper only in the Federal and State courts located in Mobile County, Alabama.

ARTICLE SEVENTEEN: MISCELLANEOUS PROVISIONS

A. **Entire Agreement.** This Agreement is a complete integration of and supersedes all previous understandings, writings, proposals, representations, contracts or agreements, whether written or oral, between the parties with respect to the same subject matter and does constitute the entire Agreement between the parties hereto.

B. **Waiver of Breach.** The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, waiver of any subsequent breach thereof.

C. **Severability.** In the event that any provision hereof or part thereof is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms.

D. **Amendments.** This Agreement may be amended only by an instrument in writing signed by the authorized representatives of the parties hereto.

E. **Force Majeure.** Neither party shall be liable or be deemed in default of this Agreement for any delay or failure to perform caused by Acts of God, war, disasters, strikes, or any similar cause beyond the control of either party.

F. **Headings.** Headings of the sections of this Agreement have been inserted for convenience only, and they shall be of no effect in the construction of the Agreement, with the exception of those headings set forth under Article Two.

G. **Successors & Assigns.** The Board and Consultant each are hereby bound, and the successors and assigns of the Board and Consultant are hereby bound, to the other party to this Agreement in respect to all covenants, agreements and obligations of this Agreement. Neither the Board nor Consultant shall assign or transfer any right under or interest in this Agreement (including but not limited to monies that may become due or monies that are due) without consent of the other, except to the extent that any assignment or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor of any duty or responsibility under this Agreement.

H. **Third Parties**. Nothing in this Agreement shall be construed to create in any third party any rights, licenses, powers, privileges or remedies. Nothing in this Agreement shall be construed to create, impose or give rise to any duty of a party hereto to a non-party to this Agreement.

I. **Rule of Construction; Review by Legal Counsel.** The parties acknowledge that the normal rule of construction to the effect that any ambiguities in this Agreement are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. The parties affirm that they have had the opportunity to review this Agreement thoroughly and to discuss it with legal counsel, and that they enter into this Agreement freely and with full knowledge of its provisions.

J. **Continuing Obligations.** The parties acknowledge and agree that all obligations set forth in this Agreement which by their nature are continuing, including but not limited to indemnifications, insurance, and confidentiality, shall survive the expiration or termination of this Agreement for any reason, and the performance of services contemplated by this Agreement, for the maximum period allowed by law.

K. **Authority**. In order to induce the Board to execute this Agreement, Consultant represents and warrants to the Board that: 1) it is a corporation or other legal entity duly organized, validly existing and in good standing under the laws of the State of _____ _____; 2) the person executing this Agreement on behalf of Consultant has full

power and authority to execute and deliver this Agreement to the Board; and 3) this Agreement constitutes the valid and legally binding obligation of Consultant, enforceable in accordance with its terms and conditions.

L. **No Limitation on Immunity or Other Defenses.** Notwithstanding any of the foregoing or following provisions, nothing in this Agreement shall be construed to limit in any way any immunity or limitations on damages afforded to the Board, its Board Members, officers, employees and agents, pursuant to federal or state constitutional, statutory or common law, and nothing in this Agreement may be construed to limit any defense available to the Board, its Board Members, officers, employees and agents at law or in equity.

M. **Time of the Essence.** Time is of the essence in the performance of all of the terms and conditions of this Agreement.

N. **Limitation on Damages.** In no event shall the Board or any of its Board Members, officers, employees or agents be liable to Consultant for any indirect, consequential or incidental damages, or lost profits or punitive damages, arising out of or related to this Agreement, or to the performance of or breach of any provision hereof. Any damages, if otherwise recoverable, shall be limited to the amount then due pursuant to the provisions of this Agreement.

O. **Rights to Work Product.** Consultant understands that this Agreement will terminate in the future. Consultant also understands that the work described herein may be performed by another consultant or by MAWSS personnel. As this work is being performed for a public utility that must continue operations in perpetuity, Consultant agrees that all work products produced by Consultant pursuant to this Agreement are the property of MAWSS. Said work products shall be provided to MAWSS upon request. Documents, programming, software, etc., shall be provided to MAWSS in a format that is open and editable so that it can be readily used by others as desired by MAWSS.

P. **Sale and Purchase of Property.** The Consultant is expected to immediately notify the Board when Consultant has learned that property is for sale near Big Creek Lake. The Consultant is not a real estate agent for the Board and is not entitled to compensation from the Board or property owners for recommendations regarding the sale or purchase

of property. Any recommendations made by the Consultant to purchase or sell property should be based on only professional judgement. Should the Board choose to purchase property near the lake, it will be pursued through a real estate agent chosen by the Board.

ARTICLE EIGHTEEN: Compensation for Services

Compensation for providing the services identified herein shall be in accordance with a schedule of rates provided by the Consultant in the Consultant's fee proposal (See Attachment 3 Consultant Fee Schedule) and approved by the Board. The schedule shall identify personnel names, titles, unburdened hourly rates or base rates, and fully burdened hourly rates with multiplier applied to base rates. When called upon and authorized by the Board to provide service, Consultant will be paid for such services when performed in a satisfactory manner and in accordance with the provisions herein.

In addition to compensation computed above, reimbursement will be paid for actual costs of identified and preapproved extraordinary expenses specifically required by the Task Order and approved by the Board prior to extraordinary expense being incurred.

The MAWSS Forest Management Services Schedule of Fees (Attachment 3) is further described and shall be applied as follows:

1. Total Cost to Prepare Annual Forestry Report (AFR)

This is a lump sum price for producing and delivering the Annual Forestry Report.

The lump sum is inclusive of all expenses, whatsoever, associated with developing and delivering a complete and final report to the Board.

2. Total Cost to Add Timber Cruise to AFR

This is an estimated lump sum price, inclusive of all expenses, whatsoever, associated with performing a timber cruise for all stands of MAWSS properties with marketable timber

and adding the results of said cruise to the AFR. The estimated acreage of marketable timber is to be based off of the previous AFR. The estimated cost shall be based upon the timber cruise method of using a five percent (5%) line plot cruise using one-tenth acre circular plots for all products (sawtimber, pole quality timber and pulpwood).

3. Timber Cruise Cost per Acre

This is a price per acre, inclusive of all expenses, whatsoever, associated with performing a timber cruise on an isolated tract of land. The per acre price will be the basis for cruises done on an as-needed basis such as for property purchases and for stands

4. % of Gross Proceeds for Harvest Cuts, Pole Thinning and Pine Sawtimber Sales

This percentage shall include all costs, whatsoever, incurred by the consultant for advertising, arranging, contracting, field inspecting and managing the sale of softwood harvest cuts, pole thinning, pine sawtimber sales and other harvested sales not covered in 5. below.

5. % of Gross Proceeds for Hardwood Harvest Cuts and Pulpwood Thinning Sales

This percentage shall include all costs, whatsoever, incurred by the consultant for advertising, bidding, contracting, field inspecting and managing the sale of hardwood and pulpwood.

6. % of Subcontractor Expense for Forestry Service Subcontractors

From time to time, the Consultant may need to hire subcontractors to perform forestry related tasks like site preparations, planting, road maintenance, controlled burning, landline maintenance, herbicide application, pesticide application, regeneration and other forestry related tasks. When such services are to be performed by subcontractors, the subcontractor shall comply with all licensing requirements and other local, state and federal regulations regarding performance of the work.

When Consultant pursues subcontractors to perform forestry work, competitive pricing must be pursued and presented to MAWSS for review. The consultant shall provide three

prices or documentation to show that a good faith effort was made to get three prices but three subcontractors are not available to do the work.

The Consultant will include in its invoicing the invoice of the subcontractor and the added percentage of the subcontractor's invoice that will be compensation to the Consultant. The added percentage is the cost paid to consultant by MAWSS to cover all of consultant's costs, whatsoever, for the labor, equipment, material, mileage and incidentals necessary to acquire, administer, inspect and ensure quality of subcontractor's work.

7. Hourly Rates

The billable hourly rate is the fully burdened cost per hour for services provided by Consultant. The fully burdened rate shall equal base hourly rate plus percentage of base hourly rate for profit, overhead, mileage and customary office housing and supplies like computers, cell phones, paper, etc. Customary office supplies shall not be a direct expense but included in fully burdened hourly rate.

ARTICLE NINETEEN: NOTICE

Any notice given hereunder shall be conclusively deemed given when actually received if sent by overnight carrier or hand delivery, or as indicated by certified mail return receipt when posted in the United States mail, addressed as set forth below, or to such other address as may be designated in writing by a party hereto.

Notice to the Board should be addressed as follows:

Director of Treatment Plant Operations
Board of Water & Sewer Commissioners
of the City of Mobile
P.O. Box 180249
Mobile, Alabama 36618-0249

Notice to Consultants shall be addressed as follows:

_____

_____

_____

_____

ARTICLE TWENTY: EXECUTION OF AGREEMENT

The parties hereto for themselves, their successors and their assigns, do hereby agree to the full performance of all covenants and provisions of the Agreement, and execute this Agreement by signatures of their duly authorized representatives, who sign below as the act of each party. This Agreement may be executed in multiple counterpart, with each counterpart taken together to constitute a single document.

IN WITNESS WHEREOF, this instrument is executed in duplicate, one copy being held by each party, on the _____ day of _____, 20_____.

BOARD OF WATER AND SEWER COMMISSIONERS
OF THE CITY OF MOBILE

BY:_____

_____`_____, AS ITS CHAIR

ATTEST:

_____

_____ AS ITS SECRETARY/TREASURER

CONSULTANT:_____

_____

BY: _____

Print Name:_____

AS ITS:_____

ATTEST:

BY:_____

Print Name:_____

AS ITS:_____

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as Chair of the BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE, is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Board on the day the same bears date.

Given under my hand and official seal of office on this the _____ day of _____, 20____.

_____
NOTARY PUBLIC
My Commission Expires: _____

STATE OF ALABAMA
COUNTY OF MOBILE

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as Secretary/Treasurer of the BOARD OF WATER AND SEWER COMMISSIONERS OF THE CITY OF MOBILE, is signed to the above and foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said Board on the day the same bears date.

Given under my hand and official seal of office on this the _____ day of _____, 20____.

_____
NOTARY PUBLIC
My Commission Expires: _____

STATE OF _____

COUNTY OF _____

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____ whose name as _____ of _____, is signed to the above and
(Consultant)
foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said _____
(Consultant)
_____ on the day the same bears date.

Given under my hand and official seal of office on this the _____ day of _____, 20____.

_____
NOTARY PUBLIC
My Commission Expires: _____

STATE OF _____

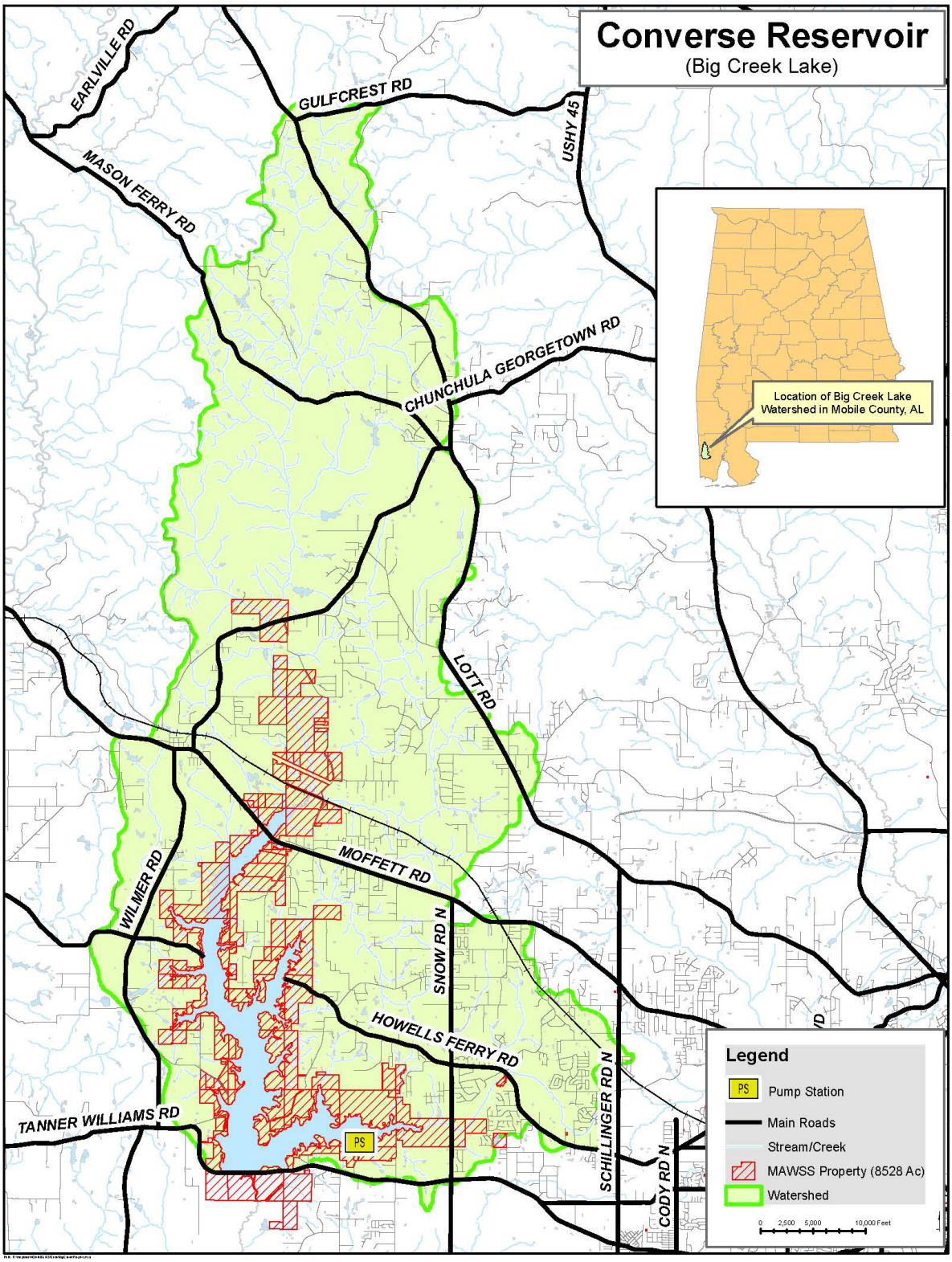
COUNTY OF _____

I, the undersigned Notary Public in and for said County and in said State, hereby certify that _____, whose name as _____ of _____, is signed to the above and
(Consultant)
foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of this instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said _____
(Consultant)
_____ on the day the same bears date.

Given under my hand and official seal of office on this the _____ day of _____, 20____.

_____
NOTARY PUBLIC
My Commission Expires: _____

Attachment 1
Map of Big Creek Lake
and
Land Owned by MAWSS


Converse Reservoir
(Big Creek Lake)
EARLVILLE RD
GULFCREST RD
USHY 45
MASON FERRY RD
CHUNCHULA GEORGETOWN RD
Location of Big Creek Lake Watershed in Mobile County, AL
LOTT RD
WILMER RD
MOFFETT RD
SNOW RD N
HOWELLS FERRY RD
TANNER WILLIAMS RD
SCHILLINGER RD N
CODY RD N
PS
Legend
PS Pump Station
Main Roads
Stream/Creek
MAWSS Property (8528 Ac)
Watershed
0 2,500 5,000 10,000 Feet

Attachment 2
Task Order Form

MAWSS FORESTRY MANAGEMENT SERVICES TASK ORDER

Task Order No. _____ Date: _____ ☐ REVISED

TO BE COMPLETED BY CONSULTANT

Consultant Name: _____ **Project Name:** _____

Consultant Project Manager: _____ **Project Number:** _____

Consultant Project Manager Contact Info: _____

Email Subject Description (use for all emails related to project): _____

"Consultant"

hereby agrees to perform for the Board the Services as described below for the above-named project. The Services shall be performed in accordance with the provisions of the Forestry Management Services Agreement dated _____, between the Consultant and the Board.

Project Scope: Provide brief summary – attach detailed scope if required for larger projects.

_____

_____

_____

Project Estimated Cost
Total Project Budget Required:$_____
Attach itemized cost breakdown to this form.

Project Schedule (all blanks must be completed)
Anticipated Task Start Date: _____
Anticipated Task Completion Date: _____

Will Consultant use DBE to perform project? ☐ Yes ☐ No If yes, state business name, contact name, and in what capacity?

_____/_____

_____

List of any Sub-Consultant(s) or Third-Party service providers:

_____

_____

_____

ACCEPTED:

_____
(Consultant Name)

By: _____

Title: _____

Date: _____

TO BE COMPLETED BY MAWSS

Funding Source: _____

_____

_____

Budget Line Item: _____

_____

☐**Unbudgeted**

MAWSS Project Manager Approval

By: _____

Title: _____

Date: _____

Budget Allocation Approval

By: _____

Title: _____

Date: _____

If any of the above information changes, resubmit a revised Task Order as soon as the change is known.

Version 9 14 23

Attachment 3
Consultant Fee Schedule

MAWSS Forest Management Services
Schedule of Fees

1. Total Cost to Prepare Annual Forestry Report (AFR): $_____

2. Total Cost to Add Timber Cruise to AFR: $_____

3. Timber Cruise Cost per Acre: $_____

4. Percent of Gross Proceeds for harvest cuts, pole thinnings and pine saw timber sales: _____%

5. Percent of Gross Proceeds for hardwood and pulpwood thinnings sales: _____%

6. Percent of Subcontractor Expense for forestry service subcontractors: _____%

7. List names, positions and hourly rates below:

Name	Job Title	Base Hourly Rate	% for OH&P	Billable Hourly Rate
_____	_____	$_____	____%	$_____
_____	_____	$_____	____%	$_____
_____	_____	$_____	____%	$_____
_____	_____	$_____	____%	$_____

Consultant Signature: _____ Date: _____

Attachment 4
MAWSS DBE Policy 16-01

Board of Water and Sewer Commissioners
Policy No.: Supplier Diversity 16-01
Approved: December 5, 2016
Amended: October 2017
Amended: February 1, 2021

SUPPLIER DIVERSITY POLICY FOR PUBLIC WORKS ACT CONTRACTS

PURPOSE:

The purpose of this policy is to increase meaningful participation of Diverse Contractors/Suppliers in MAWSS contracts, which are subject to the bidding requirements of the Public Works Act, to establish MAWSS's goals for Supplier Diversity participation, and to set forth requirements for the MAWSS Supplier Diversity Program.

SCOPE:

This policy will apply to all MAWSS publicly bid contracts for public works and the consultants who manage these contracts. If a contract is to be paid all or in part with non-MAWSS funds, and a funding entity has Supplier Diversity program requirements that exceed or are more stringent than those of this Policy, then the additional Supplier Diversity policy provisions of the funding entity or entities will also apply as contract requirements. Contracts for public works, which do not meet the dollar threshold for public advertisement for bids, will be subject to MAWSS's Supplier Diversity Policy for Contracts for Goods, Services, and Small Public Works Projects.

In the event that MAWSS must enter into a contract for a public works project on an emergency basis, MAWSS will still seek competitive bids for the work and will declare the nature of the emergency in writing, in accordance with the Public Works Act. MAWSS reserves the right to waive or modify the requirements of this policy if the emergency is adversely affecting or presents and immediate threat to public health, safety, or the environment.

DEFINITIONS:

Contractor - An individual or business entity seeking to contract with MAWSS for a public works project and which will function in the role of general contractor for the project.

Diverse Contractor/Supplier - A for profit small business concern for which socially and economically disadvantaged individuals own at least a 51% interest and also control management and daily business operations, certified as such on one or more of the lists of Diverse/Contractors Suppliers referenced in this Policy.

MAWSS - Mobile Area Water and Sewer System.

Public Works Project - This will be as defined in §39-2-1, Code of Alabama, (1975), as amended.

Subcontractor - For purposes of this Policy, a subcontractor means an individual or business entity which subcontracts with the general contractor to perform work or services for a public works project.

Supplier - For purposes of this Policy, an individual or business entity who enters into a contract with a general contractor to provide materials, equipment, or other products or items for a project.

Supplies - For purposes of this Policy, this term may include materials, equipment, supplies, or other products or items for a project.

Commercial Useful Function –As used in this Policy, refers to the role of a for- profit business which is itself responsible for execution of the contract or a distinct element of the work; refers to a company or individual who actually performs, manages, or supervises the work involved, or who itself furnishes supplies, goods, or services. It is the intent of this Policy that contracts shall be awarded only to entities, which perform commercially useful functions, as opposed to entities that only serve a "pass-through" function.

POLICY:

It is MAWSS policy that Diverse Contractors/Suppliers be given ample and fair opportunities to do business with MAWSS, either directly or indirectly, by ensuring that contractors who enter into publicly bid public works contracts with MAWSS make earnest and diligent efforts to include Diverse Contractors/Suppliers as subcontractors and suppliers. Contractors who wish to bid on a MAWSS public works project shall take all necessary and reasonable steps in accordance with this Policy to ensure that Diverse Contractors/Suppliers have the maximum allowable opportunity to compete for subcontracts and supplier contracts for the project.

This Policy shall be race and gender-neutral. Contractors shall not discriminate in awarding subcontracts and supplier contracts on the basis of race, color, national origin, ethnicity, or sex, during the bid process as well as during performance of a MAWSS public works contract.

It is MAWSS's goal that in contracts for public works, contractors shall make a demonstrated good faith effort to award fifteen percent (15%) of the contract amount to certified Diverse Contractors/Suppliers as subcontractors and/or suppliers performing commercially useful functions which are consistent with contract requirements. This percentage shall be considered a target which is subject to modifications and may be waived or adjusted by MAWSS if the contractor, after demonstrating a good faith effort, is unable to comply with the 15% goal. However, the requirement that a contractor demonstrate a good faith effort shall not be considered informality subject to waiver, except in cases of emergency as noted above.

IMPLEMENTATION - THE MAWSS SUPPLIER DIVERSITY PROGRAM:

A. Lists of Certified Diverse Contractors/Suppliers:

All contractors submitting bids for MAWSS public works contracts are required to utilize MAWSS's most recent list of certified Diverse Contractors/Suppliers **in their efforts to meet their good faith**

Supplier Diversity requirements. Bidders may also use the other lists specified below. If a bidder plans to use a Diverse Contractor/Supplier from one of the other lists, the bidder must notify MAWSS's Supplier Diversity Office so that the Diverse Contractors/Supplier's certification can be verified.

MAWSS's list of certified Diverse Contractors/Suppliers includes a description of the areas for which each Diverse Contractor/Supplier can provide services or supplies. **Contractors are required to use Diverse Contractors/Suppliers only in the areas for which the Diverse Contractors/Suppliers are certified.**

Diverse Contractors/Suppliers may be selected from the following lists:

- MAWSS List of Certified Diverse Contractors/Suppliers - www.mawss.com (Reciprocity from the following)
- Alabama Department of Transportation Certified List - www.dot.state.al.us
- SRMSDC Certified List [Southern Region Minority Supplier Development Council] www.srmsdc.org
- ADECA Certified List [Alabama Department of Economic and Community Affairs] www.adeca.alabama.gov
- WBENC Women's Business Enterprise National Council - www.wbenc.org
- VOSBA Veteran's Office of Small Business Administration – www.VOSBA.org

A contractor may also contact MAWSS's Supplier Diversity Office if the contractor knows of a Diverse Contractor/Supplier who would like to be added to the MAWSS certified list in order to qualify as a subcontractor or a supplier. The MAWSS Supplier Diversity Office will work with the contractor and the Diverse Contractor/Supplier to determine if the Diverse Contractor/Supplier meets certification requirements.

The current listings of Diverse Contractors/Suppliers certified by MAWSS are available on MAWSS's website: www.mawss.com or by contacting MAWSS's Supplier Diversity Office at (251) 694-3194.

B. Supplier Diversity Requirements:

Contractors who wish to enter into a public works contract with MAWSS must make good faith efforts to comply with MAWSS's goals for Diverse Contractor/Supplier participation by learning about, contacting, and negotiating with potential Diverse Contractors/Suppliers who are able and available to provide work or supplies for the project.

In addition to obtaining lists of certified Diverse Contractors/Suppliers, Contractors will contact organizations, which provide assistance to Diverse Contractors/Suppliers and obtain contact information for Diverse Contractors/Suppliers available to provide services and materials. A list of such organizations is available from the MAWSS Supplier Diversity Office.

Contractors will then contact certified Diverse Contractors/Suppliers to obtain prices and other information necessary for the contractor to evaluate the possibility of participation by Diverse Contractors/Suppliers.

Contractors bidding on MAWSS public works projects must list all Diverse Contractor/Supplier subcontractors and suppliers on the **Subcontracting Plan form** submitted in the bid package and sign the form. When

preparing a bid, the bidding contractor must obtain firm prices from all Diverse Contractors/Suppliers. The bid package must include correspondence from each Diverse Contractor/Supplier subcontractor/supplier on the Diverse Contractors/Suppliers letterhead in which the Diverse Contractor/Supplier confirms negotiated terms for the subcontract or supply contract, including compensation and a brief description of the scope of work or the items to be supplied.

If a contractor bidding for a MAWSS contract is unable to meet the 15% goal for Supplier Diversity participation for the project, the contractor must note this on the Subcontracting Plan form, state what percentage of the goal was achieved, if any, and sign the form. The contractor must also submit an **Affidavit of Contractor's Good Faith Efforts to Meet Supplier Diversity Goals** with the bid package setting forth the reasons the goal could not be achieved for this project. The Affidavit must include names, addresses, and contact information for each Diverse Contractor/Supplier contacted, a description of information provided to each, and a statement regarding each as to why an agreement for a subcontract or supply contract was not reached. The Affidavit must include description of the good faith efforts made to obtain Supplier Diversity participation, referencing the factors listed below. Documentation supporting the statements in the Affidavit must be attached thereto.

C. Demonstrating good faith efforts to meet MAWSS's Supplier Diversity goals for a public works contract:

When bids are received for a public works contract, MAWSS's Supplier Diversity Office will review the submittals relative to Supplier Diversity Program requirements to determine if a bidder has demonstrated a good faith effort to reach MAWSS's Diverse Contractor/Supplier participation goal, the MAWSS Supplier Diversity Office will review and consider bidder's submitted documentation as to the following factors:

- Did the bidder obtain the MAWSS List of Certified Diverse Contractor/Supplier entities? What other lists of certified Diverse Contractors/Suppliers did the bidder use, if any?

- Did the bidder use the services of available community organizations, small and/or disadvantaged business groups, local, state, and federal small or disadvantaged business assistance offices, and other organizations which provide assistance in recruitment and placement of Diverse Contractors/Suppliers, to obtain information and contact information for Diverse Contractors/Suppliers who might be able to perform work or furnish supplies for the project?

- Did the bidder attend pre-bid meetings scheduled by MAWSS to which Diverse Contractors/Suppliers were also invited, to inform Diverse Contractors/Suppliers of opportunities to provide services or supplies for the project?

- Did the bidder advertise in general circulation media and trade association publications concerning Diverse Contractor/Supplier opportunities for the project and give potential subcontractors and suppliers reasonable time to respond and negotiate?

- Did the bidder provide written notice to a reasonable number of Diverse Contractor/Supplier firms and allow them sufficient time to respond and negotiate?

- Was the information provided by the bidder to potential Diverse Contractor/Supplier subcontractors and suppliers adequate to apprise them of the plans, specifications, and requirements for the project?

- If the bidder received initial solicitations from interested Diverse Contractors/Suppliers, did the bidder follow up by contacting the Diverse Suppliers again to determine if the Diverse Contractors/Suppliers were interested in subcontracting or furnishing supplies for the project?

- What efforts did the bidder make to determine whether the project specifications, drawings, and other documents presented opportunities for participation by Diverse Contractors/Suppliers? Did the bidder select certain portions of the work as suitable for performance by Diverse Contractor/Supplier subcontractors, or break down the work into smaller parts in order to allow participation by Diverse Contractors/Suppliers?

- For any Diverse Contractor/Supplier determined by the bidder to be unqualified or unable to participate, did the bidder offer a reasonable justification for the bidder's decision not to utilize that Diverse Contractor/Supplier?

- If the bidder contacted the MAWSS Supplier Diversity Office requesting that potential subcontractors or suppliers be considered for addition to the MAWSS certification list, this should also be documented and will be considered by MAWSS.

The foregoing list is not exclusive. Other efforts to comply may be documented by a bidder for consideration by MAWSS.

Bidders shall have until the close of business on the fourth day after the bid opening to submit complete information in compliance with the Supplier Diversity Program. Additional information, such as clarifying documentation, provided after the close of business on the fourth day after the bid opening shall only be provided and/or accepted upon request of the MAWSS' Supplier Diversity Office and such information shall be submitted as expeditiously as possible so MAWSS can determine if the bid is in compliance with this policy.

Contractors are hereby notified that bids which do not comply with MAWSS's Supplier Diversity Policy and Program requirements may be rejected as non-responsive.

D. Continuing compliance with the MAWSS Supplier Diversity Program during performance of contract:

MAWSS's Supplier Diversity Office will monitor continuing compliance with the Supplier Diversity Program requirements as contracts are performed.

If a subcontract or supply contract with a Diverse Contractor/Supplier is terminated prior to its termination date, the contractor must notify MAWSS's Supplier Diversity Office. This notification must include the reasons for the early termination as well as a description of efforts made by the contractor to engage another certified Diverse Contractors/Suppliers as a replacement subcontractor or supplier.

The contractor must file a written report with MAWSS's Supplier Diversity Office once a month documenting the contractor's continuing compliance with the Supplier Diversity Program. This report will list all Diverse Contractor/Supplier subcontractors and suppliers currently performing work or providing supplies for the project.

Information and data requested by the Supplier Diversity Office regarding compliance with the Supplier Diversity Program must be promptly provided by the contractor. Contractors shall make available to MAWSS's Supplier Diversity Office all records pertaining to use of Diverse Contractor/Supplier subcontractors and suppliers.

MAWSS reserves the right to make site visits to project locations to confirm compliance with Supplier Diversity Program requirements.

A contractor's failure to comply with this policy and MAWSS's Supplier Diversity program requirements during performance of a contract may be considered a breach of the contract and may result in its termination.

By entering into a contract with MAWSS, a contractor acknowledges and agrees that failure to comply with MAWSS's Supplier Diversity Program requirements relative to that contract shall be grounds for its termination by MAWSS.

Failure by a contractor performing a public works project for MAWSS to comply with the Supplier Diversity Program requirements may result in that contractor being determined "not a responsible bidder" in bids for future MAWSS contracts.

Contractors must maintain for three (3) years such records as are necessary to determine compliance with MAWSS's Supplier Diversity policy.

E. MAWSS tracking of Supplier Diversity Program Achievements:

MAWSS's Supplier Diversity Manager will report to the MAWSS Board semi-annually, in January and in July of each year, on Supplier Diversity utilization and on other efforts by MAWSS's Supplier Diversity Office to enhance Diverse Contractor/Supplier participation in MAWSS's public works contracts.

MAWSS may also contract for Disparity Studies as determined by the Board, to provide further information to enhance MAWSS's Supplier Diversity Program.

Attachment 5
Subcontracting Plan

SUBCONTRACTING PLAN

In order for your Task Order to be considered, Consultant must complete all blanks in this Subcontracting Plan and sign with a handwritten signature where indicated below.

Failure to fill in the blanks on this Subcontracting Plan and/or to include a handwritten signature will prevent approval of Task Order.

It is MAWSS's goal that in all contracts, contractors/consultants shall make a demonstrated good faith effort to award 15% of the Task Order amount to certified Disadvantaged Business Entities [DBE's] / Diverse Suppliers as subcontractors and/or supplier performing commercially useful functions which are consistent with contract requirements.

Copies of MAWSS DBE Policy 16-01 [for public works projects], DBE/Supplier Diversity Policy 17-01 [for contracts for other goods and services], MAWSS's list of certified Disadvantaged Business Enterprises [DBE's] / Diverse Suppliers, and lists of organizations that have information on DBE's / Diverse Suppliers are available from MAWSS's Supplier Diversity Office (251-694-3194) or from the MAWSS website, www.mawss.com.

PLEASE STATE WHAT PERCENTAGE OF THE WORK FOR THIS CONTRACT YOU PLAN TO AWARD TO DBE/DIVERSE SUPPLIER SUBCONTRACTORS AND/OR VENDORS:	**(Total %)** _____
ESTIMATED TOTAL DOLLAR AMOUNT TO BE AWARDED TO DBE/DIVERSE SUPPLIER:	**(Total $)** _____
AMOUNT BID FOR THIS CONTRACT:	**(Total $)** _____

If the above percentage is zero or is less than 15%, be sure to include your Affidavit of Contractor's Good Faith Efforts to Meet Subcontractor / Vendor Diversity Goals and all supporting documentation with your Task Order package.

Please list below *all subcontractors* and *suppliers* which you plan to use for this Task Order. Also indicate which of these are DBE's / Diverse Supplier by writing "yes" or "no" where indicated. Also list for each the percentage of the total contract amount to be performed by each and the certification group the DBE / Diverse Supplier certified with. Attach additional sheets if needed. [If you are not using any subcontractors or vendors, you will need to write "zero" below and sign the form.]

SUBCONTRACTOR/ VENDOR NAME	SERVICE TYPE	DBE/DIVERSE SUPPLIER? Yes or No	% OF CONTRACT AMT	CERTIFICATION GROUP (MAWSS, ALDOT, ADECA, SRMSDC, ADECA, WBENC, VOSBA)
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

I WILL EXERCISE GOOD FAITH TO COMPLY WITH THIS PLAN AND MAWSS' DBE REQUIREMENTS.

_____
Consultant

By: _____

For more information regarding the MAWSS Supplier Diversity Program, contact Ms. Felicia Thomas, Supplier Diversity Manager, at Phone 251-694-3194, Cell 251-422-1168 or fthomas@mawss.com.