

Attachment D

This page intentionally left blank.

**AMENDMENT NO. 5
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
DENISE DUFFY & ASSOCIATES, INC.**

THIS AMENDMENT NO. 5 to Professional Services Agreement No. A-12775 between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Denise Duffy & Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into Professional Services Agreement No. A-12775 with County on August 1, 2014 (hereinafter, "Agreement") to provide environmental documentation, California Environmental Quality Act (CEQA)/National Environmental Quality Act (NEPA), and regulatory permitting for the Carmel River Floodplain Restoration and Environmental Enhancement Project (hereinafter, "Project") beginning July 29, 2014 through June 30, 2016 for an amount not to exceed \$256,769.25; and

WHEREAS, Agreement was amended by the Parties on September 11, 2015 (hereinafter, "Amendment No. 1", including Exhibit A-1- Scope of Services/Payment Provisions, Exhibit B - SAP Contract No. 4600010665, and Exhibit C - Monterey County Drug-Free Workplace Policy) to extend the term for approximately thirteen (13) additional months through July 29, 2017 and to increase the amount by \$65,000.00 which resulted in a not to exceed amount of \$321,769.25; and

WHEREAS, Agreement was amended by the Parties on May 6, 2016 (hereinafter, "Amendment No. 2", including Exhibit A-2 - Scope of Services/Payment Provisions) to reallocate funding within the Agreement in the amount of \$33,500.00 from existing tasks to expand tasks required by the United States Fish and Wildlife Service (USFWS) and the California Department of Transportation (Caltrans) and to increase the amount by \$6,095.00 which resulted in a not to exceed amount of \$327,864.25 with no extension to the term; and

WHEREAS, Agreement was amended by the Parties on February 9, 2017 (hereinafter, "Amendment No. 3", including Exhibit A-3 - Scope of Services/Payment Provisions) to extend the term for approximately eleven (11) additional months through June 30, 2018, to expand the scope of services, and to increase the amount by \$47,375.00 which resulted in a not to exceed amount of \$375,239.25; and

WHEREAS, Agreement was amended by the Parties on March 2, 2018 (hereinafter, "Amendment No. 4", including Exhibit A-4 - Scope of Services/Payment Provisions) to extend the term for approximately eighteen (18) additional months through December 31, 2019 and to increase the amount by \$187,488 which resulted in a total not to exceed amount of \$562,727.25; and

WHEREAS, the term of Exhibit B, SAP Contract No. 4600010665, of Agreement has been extended to December 31, 2022; and

WHEREAS, Exhibit D, State Coastal Conservancy Agreement No. 17-024, of Agreement is hereby removed from the Agreement in its entirety; and

Page 1 of 4

Amendment No. 5 to Professional Services Agreement No. A-12775
Denise Duffy & Associates, Inc.
Carmel River Floodplain Restoration and Environmental Enhancement Project
RMA - Planning
Term: July 29, 2014 - December 31, 2022
Not to Exceed: \$562,727.25

WHEREAS, Task 2.1, Natural Environmental Study, Task 3.1, California Environmental Quality Act (CEQA)/National Environmental Protection Act (NEPA) Project and Alternative Descriptions, Task 3.2, Prepare 1st Administrative Draft CEQA/NEPA Document, Task 3.3, Prepare 2nd Administrative Draft Initial Study (IS)/Mitigated Negative Declaration (MND)/Environmental Assessment (EA)/Finding of No Significant Impact (FONSI), Task 3.5, Respond to Public Comments and Prepare 1st Administrative Draft Final Document, Task 3.6, Prepare 2nd Administrative Draft Final Document and Draft Mitigation Monitoring and Reporting Program (MMRP), Task 3.7, Prepare Screencheck Draft Final, Task 4.1, Permitting, and Task 6.1, County Staff/Consultants Permitting Meetings, of the Project have been completed; and

WHEREAS, due to delays in the environmental review process and technical analysis for the Project as a result of on-going coordination with adjacent landowners and regulatory agencies, services for the Project have not been completed; and

WHEREAS, additional time is necessary; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for three (3) additional years to December 31, 2022 with no associated dollar amount increase to allow CONTRACTOR to continue to provide tasks identified in the Agreement as previously amended and as amended by this Amendment No. 5.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from July 29, 2014 to December 31, 2022, unless sooner terminated pursuant to the terms of this Agreement.
2. Amend Paragraph 4, "Additional Provisions/Exhibits", to add "Exhibit B-1 – Amendment No. 1 to SAP Contract No. 4600010665", effective June 18, 2018.
3. Amend Paragraph 4, "Additional Provisions/Exhibits", to delete "Exhibit D, State Coastal Conservancy Agreement No. 17-024", effective January 1, 2020.
4. Amend Section 8.02, "Indemnification for Design Professional Services Claims", of Paragraph 8, "Indemnification", to read as follows:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by

Page 2 of 4

a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one (1) or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

5. Amend the Business Automobile Liability Insurance paragraph of Section 9.03, Insurance Coverage Requirements, under Paragraph 9.0, "Insurance", to read as follow:

Business Automobile Liability Insurance, covering all motor vehicles, including leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

6. Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number #3000*1375, Project name and associated Delivery Order number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP-GP@co.monterey.ca.us:

County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP-GP@co.monterey.ca.us.

7. In all places within the Agreement, any reference to the County's address at 168 West Alisal Street, 2nd Floor, Salinas, California 93901 is hereby replaced with 1441 Schilling Place, South 2nd Floor, Salinas, California 93901-4527
8. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
9. This Amendment No. 5 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
10. The recitals to this Amendment No. 5 are incorporated into the Agreement and this Amendment No. 5.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 5 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: [Signature]
12/1/19
Carl P. Holm, AICP
RMA Director

Denise Duffy & Associates, Inc.
Contractor's Business Name

Date: 11 Dec 2019

By: [Signature]
(Signature of Chair, President or Vice President)

Approved as to Form and Legality
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

Its: Denise Duffy, President
(Print Name and Title)

By: [Signature]
Brian P. Briggs
Deputy County Counsel

Date: 11/25/19

Date: 11-27-19

By: [Signature]
(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Its: Denise Duffy, Secretary
(Print Name and Title)

Approved as to Fiscal Provisions

By: [Signature]
Auditor/Controller

Date: 11/25/19

Date: 12/5/2019

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

By: _____

Name: _____

Title: _____

Date: _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES

Amendment No. 1

To

FUNDING AGREEMENT

BETWEEN

THE STATE OF CALIFORNIA DEPARTMENT OF WATER RESOURCES

AND

MONTEREY COUNTY

FOR THE

**CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL
ENHANCEMENT PROJECT**

**FUNDED UNDER THE
FLOOD CORRIDOR PROGRAM GRANT (CONTRACT NO. 4600010665)**

EXHIBIT B-1 – AMENDMENT NO. 1 TO SAP CONTRACT NO. 4600010665

SAP Contract No. 4600010665

THIS AMENDMENT NO. 1 to the AGREEMENT, entered into by and between the State of California, acting by and through the Department of Water Resources (hereinafter referred to as the "State") and Monterey County (hereinafter referred to as the "Grantee"), duly organized, existing and acting pursuant to the laws thereof, which parties do hereby agree as follows:

The original Agreement dated June 18, 2014, remains binding with the following modifications:

1. SECTION 2 TERM OF AGREEMENT is amended as follows:

Replace the first two sentences with "This Agreement shall remain in effect until December 31, 2022."

2. SECTION 7 METHOD OF PAYMENT

Replace "State of California, Department of Water Resources, 3463 El Camino Avenue, Room 200, Sacramento, CA 95821, to the attention of David Wright, Project Manager for the State." with "State of California, Department of Water Resources, 3310 El Camino Avenue, Suite 145, Sacramento, CA 95821, to the attention of Andrew Isner, c/o Cheryl Bates, Flood Corridor Program."

3. SECTION 13 PROJECT OFFICIALS AND NOTICES is amended as follows:

Replace "David Wright" as the State Project Manager with "Andrew Isner."
Replace "Benny Young" as the Grantee's Program Manager with "Carl Holm"
Replace "John Ford" as the Grantee Project Manager with "Melanie Beretti."

The sixth paragraph providing the addresses for notice shall be amended as follows:

Notices required to be given to the State in writing by the Grantee under this Agreement shall be sent to:

Andrew Isner, c/o Cheryl Bates
California Department of Water Resources
3310 El Camino Avenue, Suite 145
Sacramento, CA 95821

Notices required to be given to the Grantee in writing by the State under this Agreement shall be sent to:

Carl P. Holm, Director
Monterey County Resource Management Agency
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4627

4. EXHIBIT C, III, Task 4, Subtask 4.1 is amended as follows:

Subtask 4.1 Preparation and Review of CEQA/NEPA Document

An environmental review in accordance with CEQA and NEPA will be prepared. The County of Monterey will function as Lead agency for the CEQA document and the

EXHIBIT B-1 – AMENDMENT NO. 1 TO SAP CONTRACT NO. 4600010665

SAP Contract No. 4600010665

United State Fish and Wildlife Service, in cooperation with Caltrans will coordinate the NEPA document.

- Deliverable: Final EIR.

5. **EXHIBIT C, IV. SCHEDULE** is amended as follows:
Exhibit C, IV, Schedule is replaced in its entirety with the Exhibit C, IV, Schedule Attached. End date for the project has been changed to December 31, 2022.
6. **IN WITNESS HEREOF** is amended as follows:
Replace "Benny Young" with "Carl P. Holm"
Replace "Cynthia L. Hasson" with "Wendy S. Strimling"
Replace "Keith Swanson" with "Jon Ericson"

All other terms and conditions of the Agreement, as amended, remain unchanged.


EXHIBIT B-1 – AMENDMENT NO. 1 TO SAP CONTRACT NO. 4600010665


SAP Contract No. 4600010665

IN WITNESS HEREOF, the following authorized representatives have executed this Amendment as of the date of the final signature below.

GRANTEE
MONTEREY COUNTY

STATE OF CALIFORNIA, DEPARTMENT
OF WATER RESOURCES

By: 

By:  for.

Carl P. Holm, Director Resource Management Agency

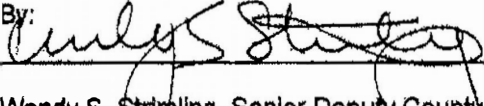
Jon Ericson, Chief, Division of Flood Management

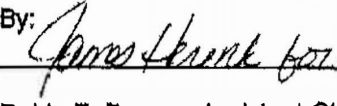
Date: 6/5/2018

Date: 06/18/2018

Approved as to Legal Form and Sufficiency

Approved as to Legal Form and Sufficiency

By: 
Wendy S. Strimling, Senior Deputy County Counsel

By: 
Robin E. Brewer, Assistant Chief Counsel

Date: 6/5/18

Date: 6-14-18