

ATTACHMENT A

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
HARRIS & ASSOCIATES, INC.**

THIS AMENDMENT NO. 1 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Harris & 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, due to the exigent need to complete repair work on Palo Colorado Road at the Rocky Creek Crossing caused by the January and February 2017 Winter Storm Events and to avert any further catastrophic damage that may ensue during the 2017/2018 Winter Storm Season on the roadway and at the direction of Federal Emergency Management Agency (hereinafter, "FEMA") personnel, CONTRACTOR was selected using a three (3) bid process to provide professional engineering services (hereinafter, "services") for Phase 2 of the Palo Colorado Road Emergency Repair at the Rocky Creek Crossing (hereinafter, "Project"); and

WHEREAS, CONTRACTOR entered into a Professional Services Agreement with County on July 26, 2017 (hereinafter, "Agreement") to provide services for the Project through June 13, 2020 for an amount not to exceed \$418,428.00; and

WHEREAS, the Agreement term is June 13, 2017 to June 13, 2020; and

WHEREAS, due to an inadvertent clerical error published in the Monterey County Board of Supervisors (BOS) July 11, 2017 Agenda, Board Report and resulting Board Order Resolution No. 17-236 associated with the Agreement, the BOS approved the Agreement term as July 11, 2017 to July 10, 2020; and

WHEREAS, the Parties wish to further amend the Agreement to include Exhibit D, FEMA Federal Provisions, to comply with FEMA requirements; and

WHEREAS, while the intended term was in the Agreement and in the exercise of caution, the Parties wish to correct Board Order Resolution No. 17-236 to ratify the retroactive effective Agreement term of June 13, 2017 to June 13, 2020 and include Exhibit D, FEMA Federal Provisions, to the Agreement with no associated dollar amount increase to allow payment to CONTRACTOR for any services rendered during the term of the Agreement, comply with FEMA requirements, and to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 1.

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

1. Amend Paragraph 4, "Additional Provisions/Exhibits", to add "Exhibit D, Federal Emergency Management Agency Federal Provisions".
2. All terms and conditions of the Agreement remain unchanged and in full force.
3. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
4. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: _____
Michael R. Derr
Contracts/Purchasing Officer

Date: _____

**Approved as to Form and Legality
Office of the County Counsel**

By: _____
Mary Grace Perry
Deputy County Counsel

Date: 10-5-17

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: 10-5-17

Approved as to Indemnity, Insurance Provisions

By: _____
Risk Management

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) managing members. 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.

CONTRACTOR*

Harris & Associates, Inc.
Contractor's Business Name

By: _____
(Signature of Chair, President or Vice President)

Its: Steven D. Winchester, Sr. VP
(Printed Name and Title)

Date: September 27, 2017

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

Its: Steven D. Winchester, CFO
(Printed Name and Title)

Date: September 27, 2017

**EXHIBIT D – FEDERAL EMERGENCY MANAGEMENT AGENCY
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The Agreement may be funded in part by Federal grant funding received by County from the Federal Emergency Management Agency ("FEMA"), which is part of the United States Department of Homeland Security ("DHS"). Therefore, CONTRACTOR must comply with all Federal laws and regulations applicable to the receipt of FEMA grants, including, but not limited to, the contractual provision set forth in Title 2 of the Code of Federal Regulations, Part 200, in connection with CONTRACTOR's performance of the work or services covered by the Agreement (the "Project"). All such Federal laws and regulations shall be deemed to be inserted in the Agreement and the Agreement shall be read and enforced as though such Federal laws and regulations were included therein.

Anything to the contrary herein notwithstanding, all FEMA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in the Agreement. CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any County request that would cause County to be in violation of these FEMA terms and conditions or any other Federal law or regulation applicable to the receipt of FEMA grants. If any provision of the Agreement shall be such as to effect noncompliance with any FEMA requirement, such provision shall not be deemed to form a part thereof, but the balance of the Agreement shall remain in full force and effect.

In addition, CONTRACTOR agrees to the following specific provisions:

1.1. No Obligation by Federal Government

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity.

1.2. Acknowledgement of FEMA Funding

This is an acknowledgement that FEMA financial assistance will be used to fund the Agreement only. CONTRACTOR shall comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.

1.3. Program Fraud and False or Fraudulent Statements or Related Acts

CONTRACTOR acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the CONTRACTOR's actions pertaining to this Agreement.

1.4. DHS Seal, Logo and Flags

CONTRACTOR shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA preapproval.

1.5. EPA – Compliant Purchasing

- (1) In the performance of this Agreement, CONTRACTOR shall make maximum use of products containing recovered materials that are Environmental Protection Agency (EPA) designated items unless the product cannot be acquired:

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- (i) Competitively within a timeframe providing for compliance with the Agreement performance schedule;
 - (ii) Meeting Agreement performance requirements; or
 - (iii) At a reasonable price.
- (2) Information about this requirement is available at EPA's Comprehensive Procurement Guidelines website, <http://www.epa.gov/cpg/>. The list of EPA-designate items is available at <https://www.epa.gov/smm/regulatory-background-comprehensive-procurement-guideline-program-cpg>.

1.6. Equal Employment Opportunity Clause – All “Federally assisted Agreements” as defined in 41 CFR 60-1.3

During the performance of this Agreement, CONTRACTOR agrees as follows:

- (1) CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) CONTRACTOR shall, in all solicitations or advertisements for employees placed by or on behalf of CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) CONTRACTOR shall not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with CONTRACTOR's legal duty to furnish information.

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- (4) CONTRACTOR shall send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of CONTRACTOR's commitments under this Section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) CONTRACTOR shall comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) CONTRACTOR shall furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and shall permit access to CONTRACTOR's books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of CONTRACTOR's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations, or orders, this Agreement may be canceled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further Government contracts or Federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) CONTRACTOR shall include the portion of the sentence immediately preceding Paragraph (1) and the provisions of Paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR shall take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, CONTRACTOR may request the United States to enter into such litigation to protect the interests of the United States.

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1.7. Compliance with Copeland "Anti-Kickback" Act – Prime construction in excess of \$2,000

- (1) CONTRACTOR. CONTRACTOR shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this Agreement.
- (2) Subcontracts. CONTRACTOR or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may, by appropriate instructions, require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. CONTRACTOR shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these Agreement clauses.
- (3) Breach. A breach of the Agreement clauses above may be grounds for termination of the Agreement, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12."

1.8. Davis-Bacon Act Clause – Construction in excess of \$2,000. (Not Applicable to Public Assistance and Hazard Mitigation Grant Program (HMGP) contracts)

CONTRACTOR must comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) This Project is a public work in the State of California, funded in whole or in part with Public funds. Therefore, the higher of the two (2) applicable prevailing wage rates, Federal or State, shall be enforced.

1.9. Work Hours Clause - \$100,000, Contracts that involve the employment of mechanics or laborers

- (1) *Overtime requirements.* CONTRACTOR or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall not require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty (40) hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half (1 ½) times the basic rate of pay for all hours worked in excess of forty (40) hours in such workweek.
- (2) *Violation; liability for unpaid wages; liquidated damages.* In the event of any violation of the clause set forth in Paragraph (1) of this Section, CONTRACTOR and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such CONTRACTOR and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards,

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employed in violation of the clause set forth in Paragraph (1) of this Section, in the sum of \$25 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty (40) hours without payment of the overtime wages required by the clause set forth in Paragraph (1) of this Section.

- (3) *Withholding for unpaid wages and liquidated damages.* County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by CONTRACTOR or subcontractor under any such Agreement or any other Federal contract with the same prime CONTRACTOR, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime CONTRACTOR, such sums as may be determined to be necessary to satisfy any liabilities of such CONTRACTOR or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Paragraph (2) of this Section.
- (4) *Subcontracts.* CONTRACTOR or subcontractor shall insert in any subcontracts the clauses set forth in Paragraph (1) through (4) of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime CONTRACTOR shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Paragraphs (1) through (4) of this Section.

1.10. Clean Air Clause – All Contracts over \$150,000

CONTRACTOR agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387), and shall report violations to FEMA and the Regional Office of the EPA.

1.11. Suspension & Disbarment – Contracts and sub-contracts over \$25,000

Suspension and Debarment

- (1) This Agreement is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, CONTRACTOR is required to verify that neither CONTRACTOR, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) CONTRACTOR must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by County. If it is later determined that CONTRACTOR did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to State of California and

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County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any agreement/contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

1.12. Anti-lobbying Clause – Contracts over \$100,000, Filed with County by CONTRACTOR (Complete Attachment 1)

“Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352 (as amended)”

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. (Attachment 1). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.”

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ATTACHMENT 1

**ANTI-LOBBYING CLAUSE CERTIFICATION FOR SOLICITATION
CONTRACTS OVER \$100,000**

(Filed with County by CONTRACTOR)

Anti-Lobbying Clause Certification for Solicitation:

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements - (To be submitted with each bid or offer exceeding \$100,000)

The undersigned, Harris and Associates, Inc. (hereinafter, "CONTRACTOR") certifies, to the best of his or her knowledge, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities" in accordance with its instructions. (Standard Form-LLL can be accessed by utilizing the following link:
<https://www.hudexchange.info/resources/documents/HUD-Form-Sfill.pdf>)
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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CONTRACTOR, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, CONTRACTOR understands and agrees that the provisions of 31 U.S.C. § 3801 *et seq.*, apply to this certification and disclosure, if any.

Signature of CONTRACTOR's Authorized Official

Printed Name and Title of CONTRACTOR's Authorized Official

(Date)

Standard Form LLL: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>