

**AMENDMENT NO. 9
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
DENISE DUFFY & ASSOCIATES, INC.**

THIS AMENDMENT NO. 9 to Professional Services Agreement No. A-12775 between the County of Monterey, a political subdivision of the State of California ("County") and Denise Duffy & Associates, Inc. ("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 the County on August 1, 2014 ("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 (CRFREE) Project ("Project") beginning July 29, 2014 through June 30, 2016 for an amount not to exceed \$256,769;

WHEREAS, the Agreement was amended by the Parties on September 11, 2015 ("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 which resulted in a not to exceed amount of \$321,769;

WHEREAS, the Agreement was amended by the Parties on May 6, 2016 ("Amendment No. 2," including Exhibit A-2 - Scope of Services/Payment Provisions) to reallocate funding within the Agreement in the amount of \$33,500 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 which resulted in a not to exceed amount of \$327,864 with no extension to the term;

WHEREAS, the Agreement was amended by the Parties on February 9, 2017 ("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 which resulted in a not to exceed amount of \$375,239;

WHEREAS, the Agreement was amended by the Parties on March 2, 2018 ("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;

WHEREAS, the Agreement was amended by the Parties on December 11, 2019 ("Amendment No. 5," including Exhibit B-1 - Amendment No. 1 to SAP Contract No. 4600010665," effective June 18, 2018) 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;

WHEREAS, the Agreement was amended by the Parties on February 14, 2022 (“Amendment No. 6,” including Exhibit A-5 – Scope of Services/Payment Provisions) to expand the Scope of Services and extend the Agreement to December 31, 2023.

WHEREAS, the Agreement was amended by the Parties on July 29, 2022 (“Amendment No. 7,” including Exhibit A-6 – Scope of Services/Payment Provisions) to expand the Scope of Services and increase funds by \$100,000 for a new not to exceed amount of \$776,448;

WHEREAS, the Agreement was amended by the Parties on August 4, 2023 (“Amendment No. 8”) to extend the term one (1) year to December 31, 2024, expand Section 6., “Meetings,” and increase the Agreement amount by \$25,860 for a new not to exceed amount of \$802,308.25;

WHEREAS, additional time is necessary to allow CONTRACTOR to continue to provide services associated with the Project;

WHEREAS, the Agreement provisions require updating;

WHEREAS, the Parties wish to increase time and funding for Task 6.1, “County Staff and Consultants Meetings,” in the amount of 140 hours and \$27,356, respectively;

WHEREAS, the Parties wish to further amend the Agreement to increase the Agreement amount of \$802,308.25 by \$27,356 for a new not to exceed amount of \$829,664.25 and extend the term one (1) year to December 31, 2025, to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 9.

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

1. Amend Paragraph 2, “Payments by County,” to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A through A-7, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this agreement shall not exceed the sum of **\$829,664.25**.

2. 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, 2025, unless sooner terminated pursuant to the terms of this Agreement.

3. Amend Exhibit A, Scope of Work/Payment Provisions to include the following budget table.

Denise Duffy & Associates, Inc. Estimated Budget for						
CRFREE Add-On Request #9						
Task Description	Denise Duffy, Principal	Josh Harwayne, Senior Compliance Manager	Senior Planner/Scientist	Admin	Task Total ETR/EIS	
	Rates	\$265	\$225	\$176	\$98	
6.0 Meetings	-	-	-	-		
6.1 County Staff and Consultants Meetings	8	60	60	12		
	Total Hours	8	60	60	12	
	Total Cost	\$2,120	\$13,500	\$10,560	\$1,176	\$27,356

- Amend Paragraph 8.02, “Indemnification for Design Professional Services Claims,” of Section 8., “Indemnification,” to read as follows:

CONTRACTOR shall indemnify, defend and hold harmless the 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 the 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 the County, or defect in a design furnished by the County, but in no event shall the amount of such CONTRACTOR’s liability exceed such CONTRACTOR’s proportionate percentage of fault as determined by 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 the 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.

- Amend Paragraph 9.02, “Qualifying Insurers,” of Section 9.0, “Insurance,” to read as follows:

Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A VII, according to the current A.M. Best’s Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Agent.

- Amend Paragraph 9.03, “Insurance Coverage Requirements,” of Section 9.0, “Insurance,” to read as follows:

Insurance Coverage Requirements: Without limiting CONTRACTOR’s duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: Including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

(Note: Any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Auto Liability Coverage: Must include all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: Any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: Any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the CONTRACTOR is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional contractors, such as a computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR.

7. Amend Paragraph 9.04, "Other Insurance Requirements," of Section 9.0, "Insurance Requirements," to read as follows:

Other Requirements: All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's Contract Administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

8. Amend Section 11.0 "Non-Discrimination" to read as follows:

NON-DISCRIMINATION. During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

9. Amend Section 15., "Miscellaneous Provisions," to remove Paragraph 15.08, "Compliance with Applicable Law," and renumber the paragraphs that follow.
10. Amend Section 15., "Miscellaneous Provisions," to remove Paragraph 15.14, "Counterparts," and renumber the paragraphs that follow.
11. Amend Agreement to add Paragraph 15.16, "Independent Contractor Compliance with Government Code Section 1097.6(c)," under Section 15, "Miscellaneous Provisions," as follows:

This section applies to those situations when a CONTRACTOR is awarded an Agreement for a preliminary phase of a project, with future phases to be bid separately. This section does not apply to those situations when an Agreement is awarded for multiple phases of a

project under a single Agreement/proposal. When applicable, and as described below, CONTRACTOR's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this project. CONTRACTOR's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONTRACTOR shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONTRACTOR pursuant to this Agreement.

12. Amend the Agreement to add Section 16., "Compliance with Applicable Laws" to read as follows:

- 16.01 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this Agreement as well as any privacy laws including, if applicable, Health Insurance Portability and Accountability Act (HIPAA). CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices require by law in the performance of the Services.

- 16.02 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

- 16.03 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

13. Amend Agreement to add Section 17.0 "Consent to Use of Electronic Signatures" to read as follows:

- 17.01 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 USC Section 7001 *et seq.*; California Government Code Section 16.5; and, California Civil Code Section 1633.1 *et seq.* Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

- 17.02 Counterparts. The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in PDF via email transmittal.
- 17.03 Form: Delivery by E-Mail or Facsimile. Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in PDF by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.
14. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
15. This Amendment No. 9 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

****THIS SECTION INTENTIONALLY LEFT BLANK****

IN WITNESS WHEREOF, the County and CONTRACTOR have executed this Amendment No. 9 as of the day and year written below.

COUNTY OF MONTEREY

DENISE DUFFY & ASSOCIATES, INC.

By: DocuSigned by: Debra Wilson
Contract/Purchasing Officer

By: Signed by: Denise Duffy
(Signature of Chair, President or Vice President)*

Date: 11/19/2024

Denise Duffy, President
Name and Title

By: Signed by: craig spencer N/A
9A435825BB244EC...
Craig W. Spencer, Director

Date: 11/11/2024

Date: 11/13/2024

By: Signed by: Denise Duffy
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

**Approved as to Form
County Council
Susan K. Blitch, County Counsel**

Denise Duffy, Secretary
Name and Title

By: Signed by: Mary Grace Perry
Mary Grace Perry, Deputy County Counsel

Date: 11/11/2024

Date: 11/12/2024

Approved as to Fiscal Provisions²

By: DocuSigned by: Patricia Ruiz
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Auditor/Controller

Date: 11/13/2024

**Approved as to Liability Provisions
Office of the County Counsel-Risk Management**

By: N/A
David Bolton, Risk Manager

Date: _____

County Board of Supervisors' Agreement Number: A-12775

*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.