

Attachment D

**AMENDMENT NO. 2
TO AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
WALD, RUHNKE & DOST ARCHITECTS, LLP**

THIS AMENDMENT NO. 2 to the Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Wald Ruhnke & Dost Architects, LLP (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 an Agreement with County on March 7, 2014 (hereinafter, "Agreement") to provide on-call services under \$100,000 for architectural and engineering design services for various projects located in Monterey County (hereinafter, "services") through March 7, 2017 for an amount not to exceed \$100,000; and

WHEREAS, Agreement was amended by the Parties on March 6, 2017 (hereinafter, "Amendment No. 1") to extend the term for one (1) additional year through March 7, 2018 with no increase in the not to exceed amount; and

WHEREAS, provisions of the Agreement require an update; and

WHEREAS, County has a continued need for services; and

WHEREAS, additional time and funding are necessary; and

WHEREAS, the Parties wish to further amend the Agreement to update the provisions of the Agreement, to extend the term for one (1) additional year to March 7, 2019 and increase the amount by \$100,000 for a total amount not to exceed \$200,000 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 2.

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

1. Amend Paragraph 3.1 of Section 3.0, "Term of Agreement", to read as follows:

The term shall commence with the signing of the AGREEMENT on March 7, 2014 through and including March 7, 2019.

2. Amend the last sentence of Paragraph 4.1 of Section 4.0, "Compensation and Payments", to read as follows:

The total aggregate amount payable to the CONTRACTOR under this AGREEMENT shall not exceed the sum of \$200,000.

3. Amend Paragraph 7.3.2 of Section 7.0, "Insurance Requirements", to read as follows:

Business automobile liability insurance, covering all motor vehicles, including owned, 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.

4. Amend Paragraph 8.3 of Section 8.0, "Records and Confidentiality", to add the following:

CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

5. Amend Section 8.0, "Records and Confidentiality", to add the following:

8.6 Royalties and Inventions: County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

6. Replace Paragraph 10.3 and Paragraph 10.4 of Section 10.0, "Overriding Contractor Performance Requirements", with the following:

10.3 Assignment and Subcontracting: The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

7. Amend County information under Paragraph 21.2 of Section 21.0, "Notices", to read as follows:

TO COUNTY:

Donald D. Searle
Deputy Director of Public Works and Facilities
County of Monterey, Resource Management Agency
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
Phone: (831) 755-4800
Fax: (831) 755-4958
Email: searledd@co.monterey.ca.us

8. Add Section, 23.0, "Miscellaneous Provisions", to read as follows:

23.01 Amendment: This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

23.02 Waiver: Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

23.03 Contractor: The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

23.04 Successors and Assigns: This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

23.05 Headings: The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

23.06 Non-exclusive Agreement: This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

23.07 Construction of Agreement: The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

23.08 Counterparts: This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

23.09 Authority: Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

23.10 Integration: This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

23.11 Interpretation of Conflicting Provisions: In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

9. 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.
10. All other terms and conditions of the Agreement remain unchanged and in full force.
11. This Amendment No. 2 and the previous amendment shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
12. The recitals to this Amendment No. 2 are incorporated into the Agreement and this Amendment No. 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: _____
Contracts/Purchasing Officer

Date: _____

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

By: _____
Mary Grace Perry
Deputy County Counsel

Date: 2-5-2018

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: 2/6/18

Approved as to Indemnity and Insurance Provisions

By: _____
Risk Management

Date: _____

CONTRACTOR*

Wald, Ruhnke & Dost Architects, LLP
Contractor's Business Name

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

Its: Henry Ruhnke, General Partner
(Print Name and Title)

Date: 1/30/18

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

Its: Christopher Barlow, General Partner
(Print Name and Title)

Date: 1/30/18

*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.