

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

THIS AMENDMENT NO. 5 to the Professional Services Agreement 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 a Professional Services Agreement with County on May 1, 2013 (hereinafter, "Agreement") to provide a Programmatic Biological Assessment (BA) and Initial Study (IS) for projects located in the Carmel River Lagoon Area and Carmel River Lagoon Restoration and Management Plan for Phases 1 and 2 (hereinafter, "Project") through April 23, 2014 for an amount not to exceed \$353,100; and

WHEREAS, Agreement was amended by the Parties on April 10, 2014 (hereinafter, "Amendment No. 1") to extend the term for one (1) additional year through April 23, 2015 with no increase in the Agreement's not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on June 13, 2014 (hereinafter, "Amendment No. 2", including Exhibit A-1 – Scope of Services/Payment Provisions) to increase the Agreement amount by \$193,571 which resulted in a total not to exceed amount of \$546,671 to revise the original scope of the Agreement to provide for a Focused Environmental Impact Report (EIR) (hereinafter, "services") for completion of Phase 2 of the Project with no extension to the Agreement's term; and

WHEREAS, Agreement was amended by the Parties on April 23, 2015 (hereinafter, "Amendment No. 3") to extend the term for approximately fourteen (14) additional months through June 30, 2016 with no increase in the Agreement's not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on October 19, 2015 (hereinafter, "Amendment No. 4", including Exhibit A-2 – Scope of Services/Payment Provisions) to extend the term for six (6) additional months through December 31, 2016 and to increase the Agreement amount by \$277,883 which resulted in a total not to exceed amount of \$824,554; and

WHEREAS, services for the Project have not been completed due to delays in the cultural consultation, additional technical analysis and coordination with adjacent landowners; and

WHEREAS, additional time is necessary to allow CONTRACTOR to complete current services for the Project and further negotiate a scope to allow for completion of programmatic permitting requirements for the selected projects within the Project area; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for eighteen (18) additional months to June 30, 2018 with no associated dollar amount increase to allow CONTRACTOR to continue to provide tasks identified in the Agreement 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 April 23, 2013 to June 30, 2018, unless sooner terminated pursuant to the terms of this Agreement.

2. 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 Project name, Multi-Year Agreement (MYA) number 3000*844, and associated Delivery Order (DO) number, and an original hardcopy shall be sent to the following:

County of Monterey
Resource Management Agency (RMA) – Finance Division
168 West Alisal Street, 2nd Floor
Salinas, California 93901

Any questions pertaining to invoices under this Agreement shall be directed to the RMA Finance Division at (831) 755-4800.

3. All other terms and conditions of the Agreement remain unchanged and in full force.
4. 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.
5. 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]
Contracts/Purchasing Officer

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

Date: 12-9-16

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

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

Date: 10/27/16

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

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

By: [Signature]
Mary Grace Perry
Deputy County Counsel

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

Date: 11-2-2016

Date: 10/27/16

Approved as to Fiscal Provisions

By: [Signature]
Auditor/Controller

Date: 11-2-16

Approved as to Indemnity, Insurance Provisions

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/19/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER SelectSolutions Insurance Services 1350 Carlback Avenue Suite 100 Walnut Creek CA 94596	CONTACT NAME: Diana Chau PHONE (A/C, No, Ext): (866) 500-6359 E-MAIL ADDRESS: dianac@ppibselect.com	FAX (A/C, No): (925) 951-0077
	INSURER(S) AFFORDING COVERAGE	
INSURED Denise Duffy & Associates 947 Cass Street Suite 5 Monterey CA 93940	INSURER A: Citizens Insurance Company of	NAIC # 31534
	INSURER B: The Hanover American Insurance	36064
	INSURER C: Continental Casualty Company	20443
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** 16/17GL, BA, WC, UB, 15/16E0 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDITIONAL SUBRS (RSD, WVD)	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	X	OB3916991205	9/1/2016	9/1/2017	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/>		OB3916991205	9/1/2016	9/1/2017	COMBINED SINGLE LIMIT (Ea accident) \$ INCL IN GL BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0		OB3916991205	9/1/2016	9/1/2017	EACH OCCURRENCE \$ 3,000,000 AGGREGATE \$ 3,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N Y	N/A	9/1/2016	9/1/2017	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	PROFESSIONAL LIABILITY		EBB276198480	11/5/2015	11/5/2016	PER CLAIM \$2,000,000 AGGREGATE \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Re: Carmel Lagoon Project. The County of Monterey, Its Officers, Agents and Employees are named as additional insured (primary) on General Liability policy if required by written contract per attached endorsement.

CERTIFICATE HOLDER County of Monterey Resource Management Agency 168 W. Alisal St., 3rd Fl. Salinas, CA 93901	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE L Trevino/CHADII <i>Lizeta Trevino</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies Insurance provided under the following:
BUSINESSOWNERS COVERAGE FORM

I. Additional Insured by Contract, Agreement or Permit

Under **SECTION II - LIABILITY, C. Who is An Insured, Paragraph 4.** is added as follows:

a. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract, agreement or permit that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf,

but only with respect to:

- (3) "Your work" for the additional insured(s) at the location designated in the contract, agreement or permit; or
- (4) Premises you own, rent, lease, control or occupy.

This insurance applies on a primary basis if that is required by the written contract, agreement or permit.

b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage" or "personal and advertising injury";
- (2) To any person or organization included as an insured by an endorsement issued by us and made part of this Policy;
- (3) To any lessor of equipment:
 - (a) After the equipment lease expires; or
 - (b) If the "bodily injury", "property damage" or "personal and advertising injury" arises out of the sole negligence of the lessor;
- (4) To any:
 - (a) Owners or other interests from whom land has been leased which takes place after the lease for that land expires; or
 - (b) Managers or lessors of premises if:
 - (i) The occurrence takes place after you cease to be a tenant in that premises; or
 - (ii) The "bodily injury", "property damage" or "personal and advertising injury" arises out of structural alterations, new

construction or demolition operations performed by or on behalf of the manager or lessor; or

- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services. This includes but is not limited to any professional services as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the plan, conception, design, build, construct, assembly, development, safety, erection, formation, reconstruct, rehabilitation, repair, or any improvement made to real property. Construction also includes the hiring, supervision or management of any of these activities. However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the above paragraph.

- c. Additional insured coverage provided by this provision will not be broader than coverage provided to any other insured.
- d. All other insuring agreements, exclusions, and conditions of the policy apply.

II. Additional Insured by Contract, Agreement or Permit - Primary and Non-contributory

The following is added to **SECTION III - COMMON POLICY CONDITIONS:**

M. Other Insurance

1. Additional Insureds

If you agree in a written contract, written agreement or permit that the insurance provided to any person or organization included as an Additional Insured under **SECTION II - LIABILITY, Part C - Who is An Insured**, is primary and non-contributory, the following applies:

If other valid and collectible insurance is available to the Additional Insured for a loss we cover under **SECTION II - LIABILITY, Part A. Coverages, Paragraph 1., Business Liability** our obligations are limited as follows:

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured.

We will not seek contribution from any other insurance available to the Additional Insured except:

- (1) For the sole negligence of the Additional Insured;
- (2) When the Additional Insured is an Additional Insured under another primary liability policy; or
- (3) When b.(2) below applies.

If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in b.(3) below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire Insurance for premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner;
 - (c) That is insurance purchased by the Additional Insured to cover the Additional Insured's liability as a tenant for "property damage" to premises rented to the Additional Insured or temporarily occupied by the Additional Insured with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of SECTION II - LIABILITY, Part A. Coverages, 1. Business Liability.

When this insurance is excess, we will have no duty under SECTION II - LIABILITY, Part A. Coverages, 1. Business Liability to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

III. Aggregate Limit of Insurance (Per Project)

- a. For purposes of the coverage provided by this endorsement, **D. Liability and Medical Expenses Limits of Insurance** under Section II - Liability is amended by adding the following:

The General Aggregate Limit under **D. Liability and Medical Expenses Limits of Insurance** applies separately to each of "your projects" or each location listed in the Declarations.

- b. For purposes of the coverage provided by this endorsement **F. Liability And Medical Expenses Definitions** under Section II - Liability is amended by adding the following:

a. "Your project" means:

- I. Any premises, site or location at, on, or in which "your work" is not yet completed; and
- II. Does not include any location listed in the Declarations.

IV. Blanket Waiver of Subrogation

Paragraph **K. Transfer Of Rights Of Recovery Against Others To Us** in Section III - Common Policy Conditions is amended by the addition of the following:

We will waive any right of recovery we may have against any person or organization when you have agreed in a written contract, permit or agreement to waive any rights of recovery against such person or organization because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard".