

AGREEMENT BETWEEN COUNTY OF MONTEREY AND DENISE DUFFY & ASSOCIATES, INC.

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and **DENISE DUFFY & ASSOCIATES, INC.**, hereinafter referred to as “CONTRACTOR.”

RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # 10519) for Consulting Services for Interim Mitigation Monitoring for California Tiger Salamander Habitat on County-Owned Property on the Former Fort Ord, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

1.0 PERFORMANCE OF THE AGREEMENT

- 1.1 After consideration and evaluation of the CONTRACTOR’S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP #10519 and in this AGREEMENT on the terms and conditions contained herein and in RFP #10519. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:
 - This AGREEMENT with Attachment B – Fee Schedule
 - The following documents are on file with the Office of Contracts/Purchasing:
 - RFP #10519 plus all associated Addenda 1 & 2, including all its Attachments, Exhibits and Appendix,
 - CONTRACTOR’S Proposal dated May 28, 2015,
 - Certificate of Insurance and Additional Insured Endorsements
- 1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendix, RFP 10419, Certificate of Insurance, and Additional Insured Endorsements.
- 1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’S agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.

1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

1.4.1 CONTRACTOR shall maintain all licenses throughout the term of the AGREEMENT.

1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

2.0 SCOPE OF WORK

The detailed SCOPE OF WORK required under the AGREEMENT is provided below, and as described in the East Garrison CTS Interim Mitigation Monitoring Plan (hereinafter referred to as the “Interim MMP”). All work shall be performed at the direction of and under supervision of the County, and shall be consistent with the Memorandum of Agreement regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California dated February 2, 2015 (hereinafter referred to as the “MOA”), the Interim MMP, and the Conservation Easement Deed.

2.1 Conservation Goals and Objectives

The conservation goal for the 134-acre California Tiger Salamander (CTS) Preservation and Habitat Restoration Area (the “Property”) is to maintain suitable upland habitat for CTS through implementation of management specified in the “East Garrison CTS Mitigation Monitoring Plan,” dated December 19, 2013 updated September 2, 2014, including a monitoring program that informs how the site can be adaptively managed (e.g., modifications to management activities that are informed by findings from the monitoring component). The following tasks will be undertaken by Denise Duffy & Associates, Inc., (hereinafter referred to as DD&A) and Smith and Enright Landscaping Inc., sub-consultant to DD&A (hereinafter referred to as SEL, Inc.) to implement the Interim MMP and satisfy permit requirements over the next five years. Please note that the following tasks 1 through 5 will be completed in Year 1; subsequent Years 2-5 will not require Tasks 1 through 5.

2.2 Task 1. Project Initiation/Kick-Off Meeting

This task includes attendance at a kick-off meeting by DD&A Project Manager, Associate Scientist, and SEL, Inc. with the County and the California Department of Fish & Wildlife (CDFW) to collect all project and relevant site information (including, but not limited to, a property boundary map to be provided by the County), discuss any potential revisions to the scope of work and timing of surveys and reports, and determine appropriate paths of communication. The kick-off meeting will include a site visit with the County and CDFW to discuss and document existing site conditions. After the kick-off meeting, if determined necessary, DD&A will submit a revised final scope of work and survey schedule to the County and CDFW.

2.3 Task 2. Baseline Biological Field Surveys

Prior to implementation of any land management measures, DD&A will establish a biological baseline for the Property by conducting on-site surveys. These surveys will guide future monitoring of the

Property, including maintenance and monitoring activities and timing of activities. This task includes field visits during the summer and winter by DD&A staff and SEL, Inc., as outlined in the RFP and Interim MMP. As part of the baseline survey, DD&A will assess and map the following using GPS/GIS:

- 2.3.1 Conditions and locations of existing barriers and signage and identify locations for future installation to restrict access by off-road vehicles and pedestrians;
- 2.3.2 Conditions and locations of existing fuel-breaks and access roads;
- 2.3.3 Areas within the site exhibiting potential erosion control issues (along trails and fuel-breaks);
- 2.3.4 Areas with populations of invasive non-native plant species, focusing on jubata/pampas grass, iceplant, and French broom potentially in need of removal (along trails and fuel-breaks); and
- 2.3.5 Volunteer trails that should be signed and monitored for trespass and erosion issues.
- 2.3.6 In addition, the following baseline surveys will be conducted to monitor CTS habitat conservation value:

Vegetation/Habitat

- 2.3.6.1 Plant species diversity (compile a species list of dominant species)
- 2.3.6.2 Soil erosion noting the extent and location
- 2.3.6.3 Non-native invasive plant species noting extent and location
- 2.3.6.4 Natural disturbances such as fire or significant soil shifts

Wildlife

- 2.3.6.5 Wildlife species diversity (species noted during monitoring events)
- 2.3.6.6 Nighttime surveys of upland habitat for CTS during the rainy season
- 2.3.6.7 Distribution status (if any) of listed species
- 2.3.6.8 Approximate distribution of small mammal burrows

- 2.3.7 Per DD&A's discussions with CDFW regarding survey methodology for the small mammal burrow surveys and CTS nighttime surveys, the following methods are identified to keep costs low while meeting CDFW permit requirements:

2.3.7.1 Small mammal burrow surveys: DD&A will assess the distribution of small mammal burrows using a systematic sampling approach. During the first data collection event, DD&A will conduct a pilot study to determine the optimal length and number of transects, as well as sample plot size and spacing. Data collection will include documenting small mammal burrows that occur within the sample plot (quadrat) at each sampling point along the transects. The location of each transect will be mapped using a GPS unit. The number of transects placed will vary with distance from the known CTS breeding sites to the south. At least one transect will occur in each of the three habitat types (i.e., grasslands, oak woodlands, and maritime chaparral) present on the Property. Following the first data collection, DD&A will determine the optimal sampling design. The optimal design will be identified in the Draft Baseline Biological Letter Report and, with approval from the County and CDFW, the sampling design will be utilized during subsequent assessments.

2.3.7.1.1 DD&A will note any measurable change due to abnormal variation in small mammal populations (e.g., unexplained or unusual crash of the population) or changes in habitat composition and structure that may reduce the conservation value of the Property for the CTS, and will submit to the County any appropriate recommendations for modifying future management activities.

2.3.7.2 Nighttime surveys for CTS – Because the Property does not contain any aquatic habitat for CTS, nighttime surveys in the rain would require walking the entire 134 acres with a flashlight looking for CTS dispersing through the site from the adjacent breeding sites to the south. This would potentially harm CTS, and CTS would be difficult to find in the understory. Therefore, DD&A will perform two nighttime surveys in the rain for a period of six (6) hours along Gigling Road, the southern boundary of the Property. Surveyors would more easily detect CTS crossing the road from the breeding sites, and because there is no unauthorized vehicle traffic along Gigling Road, there is no safety issue.

2.4 Task 3. Baseline Biological Letter Report

Upon completion of the baseline biological field survey, DD&A will prepare a Draft Baseline Biological Letter Report detailing the results of the survey. The draft of the letter report will be provided to County for review and comment. This task includes response to one round of comments from the County. After receiving comments, DD&A will prepare a final letter report and submit to CDFW, County, Union Community Partners East Garrison, LLC, (hereinafter referred to as UCP East Garrison) and the Fort Ord Reuse Authority (FORA).

2.5 Task 4. Initial Land Management Assessment

The Baseline Biological Letter Report will guide future monitoring of the Property. Management of the Property will be consistent with requirements set forth by the USFWS and the Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord (1997) (hereafter referred to as (HMP) and the latest version of the Draft Fort Ord Habitat Conservation Plan (hereinafter “Draft HCP”), including both maintenance activities and timing requirement of those activities. This task includes meeting with the County and CDFW to discuss the Baseline Biological Letter Report results and recommendations, and determined the appropriate monitoring and management activities. The scope and budget allocations will be reviewed and discussed with the County and CDFW to ensure consistency with existing and proposed requirements and intent of the Incidental Take Permit (ITP). DD&A will memorialize the determinations in a memorandum for group distribution.

2.6 Task 5. Installation of Barriers and Signs

Based on the recommendations of the Baseline Biological Letter Report and the determinations made during Task 4, SEL, Inc. will install barriers and signs to restrict access by off-road vehicles and pedestrians at all existing road and illegal trail entrances into the Property, or as determined necessary by the Baseline Assessment Letter Report. Installation of barriers and signage will be performed at the direction of and under the supervision of the County, and will utilize existing signage to the maximum extent possible. This task does not include installation of fencing. Fencing is not proposed under the Interim MMP, as fencing is not currently being considered under the Draft HCP. This task assumes the materials for barrier and sign installation will be funded by the allocated budget and will not be provided by the County. The budget includes the materials and costs for installation.

2.7 Task 6. Biannual Field Visits for Monitoring of CTS Habitat

DD&A will perform biannual monitoring of CTS habitat on the Property for five years. As the Property does not support CTS breeding habitat, surveys for breeding CTS individuals are not required. A qualified DD&A biologist will conduct a habitat assessment once a year in the active season for CTS to evaluate changes to both habitat and wildlife for the explicit purpose of noting any changes to the conservation value of the Property for CTS. As part of each monitoring event, DD&A will assess the following; these are described in more detail in Task 2:

Vegetation/Habitat

- 2.7.1 Plant species diversity (compile a species list of dominant species)
- 2.7.2 Soil erosion noting the extent and location
- 2.7.3 Non-native invasive plant species noting extent and location
- 2.7.4 Natural disturbances such as fire or significant soil shifts

Wildlife

- 2.7.5 Wildlife species diversity (species noted during monitoring events)
- 2.7.6 Nighttime surveys of upland habitat for CTS during the rainy season
- 2.7.7 Distribution status (if any) of listed species
- 2.7.8 Approximate distribution of small mammal burrows

2.8 Task 7. Data Analysis and Annual Monitoring Report

No later than December 1 of each year, DD&A will submit to the County an Annual Monitoring Report, along with any other additional documentation. DD&A will prepare a Draft Annual Monitoring Report and submit electronically to the County for review and comment. DD&A will revise the Annual Monitoring Report in response to one round of comments from the County and submit to the County for circulation to the Permitting Agencies by December 31 of each year. After receiving comments, DD&A will prepare a final Annual Monitoring Report and submit to CDFW, County, UCP East Garrison, LLC, and FORA.

The Annual Monitoring Report will include the following:

- 2.8.1 A list of management activities performed, with dates of tasks including management of firebreaks, invasive weed removal, prescribed burns, installation of erosion barriers, etc.;
- 2.8.2 Recommendations with regard to any habitat enhancement measures deemed to be warranted. Any recommendations for weed abatement shall be consistent with the USFWS 4(d) rule as to avoid harm to CTS;
- 2.8.3 Recommendations with regard to any problems that need near, short, and/or long-term attention; and
- 2.8.4 Any changes in the monitoring or management program that appear to be warranted based on monitoring results to date.

This Task includes one meeting with County and CDFW.

2.9 Task 8. Biannual Assessment of Land Management Issues

DD&A and SEL, Inc. will biannually (once in summer and once in winter) assess the need for erosion control along firebreaks, trails, and other bare-earth areas on the Property, repair or replacement of

barriers and signs, and perform invasive non-native plant removal. This assessment will be conducted based on the recommendations of the Baseline Biological Report, monitoring results, field visits, and discussions with the County and CDFW. DD&A will prepare a draft memorandum of the assessment and submit to the County for review and comment. After receiving one round of comments from the County, DD&A will prepare a final memorandum and submit to CDFW, County, UCP East Garrison, LLC, and FORA.

2.10 Task 9. Perform Land Management Tasks

2.10.1 As necessary, DD&A and SEL, Inc. will install erosion controls to prevent erosion of bare-earth areas that may result in erosion of these features and/or siltation of off-site CTS breeding ponds. Erosion control measures may include, but are not necessarily limited to, earthen berms, mulch, waddle with biodegradable netting, or biodegradable erosion blankets

2.10.2 DD&A and SEL, Inc. will assess barriers and signs placed at all existing road and illegal trail entrances twice per year for condition, and will replace and/or repair signs as necessary. Trash pick-up on the Property will be conducted concurrently with inspection of signs and barriers. DD&A will implement removal and/or management measures of invasive non-native plant species as may be required in areas identified during the baseline surveys. Such removal and/or management measures will be limited to the areas along firebreaks and any existing pedestrian trails within the Property. Such plants will be removed via hand pull or hand tools only.

2.10.3 During all land management activities, to the extent possible, DD&A will avoid earth movement within the drip line of oak trees, and will avoid excavation in the root zone of oak trees.

2.10.4 This task assumes materials will be funded by the allocated budget and will not be provided by the County. The budget includes the materials and costs for installation.

2.10.5 This task does not include controlled burns as the cost is anticipated to be above the allocated budget, oak woodland is not required to be burned under the HMP or Draft HCP, and there does not seem to be a clear benefit for CTS upland habitat at the Property. There is the potential for local fire departments to participate in a controlled burned as a training exercise, but this activity would be outside this proposed scope and budget.

2.11 Task 10. Annual Assessment of Fuel-Breaks and Access Roads

DD&A and SEL, Inc. will annually assess the condition of fuel-breaks and access roads on the Property. This assessment will be conducted based on the recommendations of the Baseline Biological Report, monitoring results, field visits, and discussions with the County and CDFW. DD&A prepare a draft memorandum of the assessment and submit to the County for review and comment. After receiving one round of comments from the County, DD&A will prepare a final memorandum and submit to CDFW, County, UCP East Garrison, LLC, and the FORA.

2.12 Task 11. Perform Maintenance of Fuel-Breaks and Access Roads

DD&A and SEL, Inc. will implement all required repairs and maintenance, as appropriate and recommended in the Annual Monitoring Report and agreed to by CDFW. Repairs and maintenance to fuel-breaks and access roads on the Property will be performed in summer months only and any plant removal will be completed via hand pull or hand tools only. No heavy equipment will be permitted. Fuel-break and access road maintenance is limited to summer months to avoid impacts to CTS. To the

extent possible, use of hand tools to implement maintenance activities will avoid earth movement within the drip line of oak trees, and will avoid excavation in the root zone of oak trees. This summer activity will be performed concurrently with trash pick-up.

3.0 TERM OF AGREEMENT

- 3.1 The term of the AGREEMENT shall commence with the signing of this AGREEMENT through and including August 1, 2020, unless terminated earlier by the County upon CDFW's issuance of the HCP ITP. If CDFW does not issue the ITP within the five-year term of this AGREEMENT, The County shall have the option to extend the AGREEMENT for additional one (1) year periods until CDFW does issue the HCP ITP.
- 3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.
- 3.1.2 The County reserves the right to cancel any AGREEMENT(S), or any extension of any AGREEMENT(S), without cause, with a thirty day (30) written notice, or immediately with cause.
- 3.2 If County exercises its option to extend, all applicable parties shall mutually agree upon the extension, including any changes in rate or terms or conditions in writing.
- 3.3 During the term of this AGREEMENT, the County may terminate the AGREEMENT for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this AGREEMENT shall be reduced in proportion to the services provided prior to the date of termination.
- 3.4 The County may terminate this AGREEMENT for good cause immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this AGREEMENT. If County terminates this AGREEMENT for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner in which the County deems proper. The cost to the County shall be deducted from any sum due CONTRACTOR under this AGREEMENT.

4.0 COMPENSATION AND PAYMENTS

- 4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto (**ATTACHMENT B - FEE SCHEDULE**).
- 4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- 4.3 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.
- 4.3.1 Rate changes are not binding unless mutually agreed upon in writing by County and CONTRACTOR.

- 4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- 4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- 4.6 Tax:
- 4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
- 4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

5.0 INVOICES AND PURCHASE ORDERS

- 5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the County at the following address:
- Monterey County Resource Management Agency
168 W. Alisal St., 2nd Floor
Salinas, CA 93901
Attention: Special Projects Engineer
- 5.2 CONTRACTOR shall reference the RFP 10519 on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.
- 5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- 5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

6.0 INDEMNIFICATION

- 6.1 For purposes of the following indemnification provisions (“Indemnification Agreement”), “design professional” has the same meaning as set forth in California Civil Code section 2782.8. If any term, provision or application of this Indemnification Agreement is found to be invalid, in violation of public policy or unenforceable to any extent, such finding shall not invalidate any other term or provision of this Indemnification Agreement and such other terms and provisions shall continue in full force and effect. If there is any conflict between the terms, provisions or application of this Indemnification

Agreement and the provisions of California Civil Code Sections 2782 or 2782.8, the broadest indemnity protection for County under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.

6.2 Indemnification for Design Professional Service Claims:

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.

6.3 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of CONTRACTOR's performance of design professional services under this AGREEMENT, CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claim for loss, injury, damage, expense or liability resulting from or alleging injury to or death of any person or loss of use of or damage to property, arising from or related to the performance of services under this AGREEMENT by CONTRACTOR, its employees, subcontractors or agents, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County.

7.0 INSURANCE REQUIREMENTS

7.1 Evidence of Coverage:

7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.

7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.

7.2 Qualifying Insurers: All coverage's, 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 Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

7.3 Insurance Coverage Requirements:

7.3.1 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:

7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform 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.

- 7.3.1.2 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.
- 7.3.1.3 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.
- 7.3.1.4 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, 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 years following the expiration or earlier termination of this AGREEMENT.

7.4 Other Insurance Requirements:

- 7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to 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.
- 7.4.2 Each liability policy shall provide that 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.
- 7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- 7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. 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.

- 7.4.5 CONTRACTOR shall at all times 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.

8.0 RECORDS AND CONFIDENTIALITY

- 8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.
- 8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- 8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- 8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

9.0 NON-DISCRIMINATION

- 9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the

applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).

- 9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- 9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- 10.1 Independent Contractor: In the performance of work, duties, and obligations under this AGREEMENT, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this AGREEMENT to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this AGREEMENT. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- 10.2 Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total AGREEMENT amount, except that any designated 'Specialty Items' may be performed by subcontract and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT amount before computing the amount of work required to be performed by CONTRACTOR with his own organization or per a consortium.
- 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.
- 10.4 Amendment. This AGREEMENT may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 10.5 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.
- 10.6 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

- 10.7 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in AGREEMENT.
- 10.8 No CONTRACTOR or subcontractor (or consultant or sub-consultant) is permitted to work on the same project in more than one capacity. CONTRACTORS that have staff or subcontractors in common may not work on the same project. This prohibition includes, but is not limited to, a CONTRACTOR performing work under its own contract and performing work as a sub-consultant under a separate contract on the same project. Work on a single project by a CONTRACTOR in its capacity as the primary CONTRACTOR as well as sub-consultant or subcontractor is presumed to constitute a conflict of interest.
- 10.9 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.
- 10.10 Headings. The headings are for convenience only and shall not be used to interpret the terms of this AGREEMENT.
- 10.11 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.
- 10.12 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.
- 10.13 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.
- 10.14 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.
- 10.15 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.
- 10.16 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.

11.0 CONFLICT OF INTEREST

- 11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this

AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with County that CONTRACTOR has no present, and will have no future, conflict of interest between providing County services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to County, as determined in the reasonable judgment of the Board of Supervisors of County.

- 11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for County will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify County in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to County hereunder.

12.0 COMPLIANCE WITH APPLICABLE LAWS

- 12.1 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. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.
- 12.2 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.
- 12.3 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.
- 12.4 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT. If this AGREEMENT has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this AGREEMENT, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 DRUG FREE WORKPLACE

CONTRACTOR and CONTRACTOR'S employees shall comply with the County's policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any County facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a County facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the County department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

14.0 TIME OF ESSENCE

Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so.

16.0 NOTICES

Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm receipt of the FAX by telephone to the receiving party's office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below. Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:

Contracts/Purchasing Officer
County Of Monterey, Contracts/Purchasing
1488 Schilling Place
Salinas, CA 93901
Tel. No.: (831)755-4990
FAX No.: (831)755-4969
E-mail: DerrM@co.monterey.ca.us

TO CONTRACTOR:

Denise Duffy & Associates, Inc.
947 Cass St., Suite 5
Monterey, CA. 93940
Tel. No.: (831)373-4341
FAX. No.: (831)373-1417
Email: dduffy@ddplanning.com

17.0 RIGHTS AND REMEDIES OF THE COUNTY FOR DEFAULT

In the case of default by CONTRACTOR, County may procure the articles or services from other sources and may recover the loss occasioned thereby from any unpaid balance due to CONTRACTOR or by proceeding against any performance bond of CONTRACTOR, if any, or by suit against CONTRACTOR. The prices paid by County shall be considered the prevailing market price at the time such purchase(s) may be made. Inspections of deliveries or offers for deliveries that do not meet specifications shall be made at the expense of CONTRACTOR.

18.0 FORCE MAJEURE

- 18.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.
- 18.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.
- 18.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

19.0 TRAVEL REIMBURSEMENT

- 19.1 If travel expenses are to be reimbursed, they must be approved in writing in advance.
- 19.2 If County approves travel, lodging and meal reimbursement, CONTRACTOR shall receive compensation for travel expenses as per the "Monterey County Travel and Business Expense Reimbursement Policy". A copy of the policy is available online at: http://www.co.monterey.ca.us/auditor/pdfs/County_Travel_Business_Expense_Policy_12-5-12.pdf . To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

20.0 LEGAL DISPUTES

- 20.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
- 20.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- 20.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- 20.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

MONTEREY COUNTY

CONTRACTOR

By: _____
Contracts/Purchasing Officer

Date: _____

By: _____
Department Head (if applicable)

Date: _____

Approved as to Form¹

By: Cynthia L. O'Leary
Deputy County Counsel

Date: 10-6-15

Approved as to Fiscal Provisions²

By: [Signature]
Auditor/Controller

Date: 10-7-15

Approved as to Liability Provisions³

By: N/A
Risk Management

Date: _____

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

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

Denise Duffy President
Name and Title

Date: 11/21/15

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

Denise Duffy Secretary
Name and Title

Date: 11/21/15

*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.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 6 or 7



ATTACHMENT B – FEE SCHEDULE

East Garrison Interim CTS Habitat Mitigations

TASK	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. Baseline biological field survey	\$ 7,500					\$ 7,500
2. Baseline biological letter report	\$ 5,000					\$ 5,000
3. Initial land management assessment	\$ 1,500					\$ 1,500
4. Instillation of barriers and signs	\$ 7,000					\$ 7,000
5. Biannual field visits for monitoring of CTS habitat	\$ 1,200	\$ 1,400	\$ 1,600	\$ 1,700	\$ 1,700	\$ 7,600
6. Data analysis and Annual Monitoring Report (includes one meeting with County and CDFW)	\$ 4,000	\$ 4,100	\$ 4,200	\$ 4,350	\$ 4,400	\$ 21,050
7. Biannual assessment of land management issues (firebreaks , erosion control, vegetation management, barriers & signs, etc.)	\$ 1,400	\$ 1,500	\$ 1,650	\$ 1,750	\$ 1,900	\$ 8,200
8. Perform land management tasks (firebreaks, erosion control/repair, vegetation management, repair/replace barriers & signs, trash pick-up, etc.)	\$ 4,000	\$ 4,200	\$ 4,100	\$ 4,150	\$ 4,250	\$ 20,700
9. Annual assessment of fuel-breaks and access roads	\$ 1,200	\$ 1,300	\$ 1,400	\$ 1,550	\$ 1,650	\$ 7,100
10. Perform maintenance of fuel-breaks and access roads	\$ 3,500	\$ 3,300	\$ 3,800	\$ 3,800	\$ 3,900	\$ 18,300
TOTAL COST	\$ 36,300	\$ 15,800	\$ 16,750	\$ 17,300	\$ 17,800	\$ 103,950

Reimbursable expenses, including printing and computer plots, delivery services, computer supplies/disks, mileage, etc., will be reimbursed at actual cost WITH NO MARKUP. Mileage cost may not exceed current County-approved rates. Appropriate documents shall accompany requests for reimbursement.



End of Attachment B – Fee Schedule

