



Monterey County Board of Supervisors

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor Chris Lopez, as amended to approve consent calendar item No. 70:

Agreement No.: A-15192

- a. Approve Professional Services Agreement with Denise Duffy & Associates, Inc. to provide biological consulting services to facilitate the County's implementation of the Installation-Wide Multispecies Habitat Management Plan for former Fort Ord, California, for an amount not to exceed \$616,205.00 for an initial term of fourteen (14) months from April 20, 2021 to June 30, 2022 with the option to extend the Agreement for not more than a total of five (5) years; and as amended to add the following language to 3.1 Support adding to the list of stakeholders the scope of services Land Watch Monterey County; and to 3.2 Comments on the identification and definition of potential future development assumptions within habitat management areas shall be solicited from stakeholders.
- b. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute the Professional Services Agreement and future amendments to the Agreement to extend the term beyond the original term where the amendments do not significantly alter the scope of work or increase the amount by more than ten percent (10%) of the approved Agreement amount, subject to review and approval of the Office of the County Counsel and the Auditor-Controller's Office.

PASSED AND ADOPTED on this 20th day of April 2021, by roll call vote:

AYES: Supervisors Alejo, Phillips, and Lopez

NOES: Supervisors Askew and Adams

ABSENT: None

(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting April 20, 2021.

Dated: May 12, 2021

File ID: A 21-107

Agenda Item No.: 70

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy

**COUNTY OF MONTEREY AGREEMENT FOR PROFESSIONAL SERVICES
WITH SURVEYORS, ARCHITECTS, ENGINEERS & DESIGN PROFESSIONALS
(MORE THAN \$100,000)***

This Professional Services Agreement (“Agreement”) is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter “County”) and:
Denise Duffy & Associates, Inc.,
(hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. **SERVICES TO BE PROVIDED.** The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows:
Provide biological consulting services to complete a site-specific Habitat Resource Management Plan and any necessary permits from state agencies for the Fort Ord Area.

2. **PAYMENTS BY COUNTY.** County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, 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 \$ 616,205.00.

3. **TERM OF AGREEMENT.** The term of this Agreement is from April 20, 2021 to June 30, 2022, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and CONTRACTOR may not commence work before County signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

- Exhibit A** Scope of Services/Payment Provisions
- Exhibit B** Revision to Paragraph 8 of Agreement, Indemnification

5. **PERFORMANCE STANDARDS.**

5.01. 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.

5.02. 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.

*Approved by County Board of Supervisors on _____.

5.03. 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.

6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to County. If not otherwise specified, the CONTRACTOR may submit such invoice 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 as the County may require. The Contract Administrator or his or her designee shall certify the invoice; either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

7. TERMINATION.

7.01. 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.

7.02. The County may cancel and terminate this Agreement for good cause effective 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, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION.

DD / 4/7/2021
Contractor Initials / Date

8.01 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 the COUNTY under this Indemnity Agreement that is permitted by law shall be provided by CONTRACTOR.~~

DS
DD / 4/7/2021
 Contractor Initials / Date

8.02 Indemnification for Design Professional Services 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 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.

DS
DD / 4/7/2021
 Contractor Initials / Date

8.03 Indemnification for All Other Claims or Loss:

For any claim, loss, injury, damage, expense or liability other than claims arising out of the 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 the COUNTY, or defect in a design furnished by the COUNTY.

9.0 INSURANCE.

9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the 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 the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's, Contracts/Purchasing Department, unless otherwise directed. The 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 the County. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 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 the County's Purchasing Manager.

9.03 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, 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.

Modification (Justification attached; subject to approval).

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.

Modification (Justification attached; subject to 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.

Modification (Justification attached; subject to 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 years following the expiration or earlier termination of this Agreement.

Modification (Justification attached; subject to approval).

9.04 Other Insurance 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.

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.

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 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.

10. RECORDS AND CONFIDENTIALITY.

- 10.01 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.
- 10.02 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.
- 10.03 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. 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.

- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the 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.
- 10.05 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.
11. **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), or sexual orientation, 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.
12. **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. **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.

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

| FOR COUNTY: | FOR CONTRACTOR: |
|---|---|
| Shandy Carroll, Management Analyst III | Erin Harwayne, AICP, Project Manager |
| Name and Title | Name and Title |
| County of Monterey, Housing & Community Development 1441 Schilling Place, 2nd Floor South Salinas, California 93901 | Denise Duffy & Associates, Inc. 947 Cass Street, Suite 5 Monterey, California 93940 |
| Address | Address |
| 831-784-5643 194-HCD-Contracts@co.monterey.ca.us | (831) 373-4341 |
| Phone | Phone |

15. **MISCELLANEOUS PROVISIONS.**

- 15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.
- 15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 15.03 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.
- 15.04 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.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 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.
- 15.07 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.

- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 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.
- 15.13 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.
- 15.14 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.
- 15.15 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.
- 15.16 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.
- 15.17 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.

This space is left blank, intentionally.

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

COUNTY OF MONTEREY

CONTRACTOR

By: DocuSigned by: Michael Derr
367942E6F04199
Purchasing Officer
Date: 5/12/2021

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

By: _____
Date: Department Head (if applicable)

By: DocuSigned by: Denise Duffy
1AE402F4D393490...
(Signature of Chair, President, or Vice-President)*

By: _____
Date: Board of Supervisors (if applicable)

Denise Duffy, President
Name and Title
Date: 4/7/2021

Approved as to Form 1
By: DocuSigned by: Kristi Markey
C21D52A9D63044C
County Counsel
Date: 4/7/2021

By: DocuSigned by: Denise Duffy
1AE402F4D393490...
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Fiscal Provisions 2
By: DocuSigned by: Gary Giboney
D3834BFEC1D8449
Auditor/Controller
Date: 4/7/2021

Denise Duffy, Secretary
Name and Title
Date: 4/7/2021

Approved as to Liability Provisions 3
By: _____
Date: Risk Management

County Board of Supervisors' Agreement Number: _____.

*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.

¹ Approval by County Counsel is required for all Professional Service Agreements over \$100,000

² Approval by Auditor/Controller is required for all Professional Service Agreements

³ Approval by Risk Management is required only if changes are made in paragraph 8 or 9

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

EXHIBIT A

To Agreement by and between
County of Monterey, hereinafter referred to as “County”

AND

Denise Duffy & Associates, Inc., hereinafter referred to as “CONTRACTOR”

Scope of services and payment provisions are outlined below, subject modification by mutual agreement of the parties as allowed by paragraph 15.02 of the Agreement.

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

TASK 1. PROJECT INITIATION

CONTRACTOR will initiate the project by coordinating with the County to obtain pertinent project information, including GIS data, parcel deeds, agreements, and other background documentation associated with the project. Project initiation will include the following tasks:

- Review available background information,
- Attend a kick-off meeting with the County to discuss the project approach and finalize the scope of work,
- Identify data and documentation needs,
- Confirm format and quantities of deliverables, and
- Establish the project schedule and protocol for communication.

During this task, CONTRACTOR will complete a review and assessment of the information already available and identify any outstanding data needs. This task will also include a meeting with USFWS staff to confirm the Habitat Management Plan (HMP) compliance approach, identify deliverables, obtain project-related information, and establish review timelines.

TASK 2. PUBLIC OUTREACH AND EARLY COORDINATION WITH INTERESTED PARTIES

Public outreach and early coordination with interested parties will be an important part of developing the proposed Resource Management Plan (RMP). In coordination with the County and USFWS, CONTRACTOR will prepare a mailing/email list of stakeholders and public agencies based on its existing database from previous projects. This contact database will be used and updated, as needed, throughout the duration of the project. It is recommended that a Public Participation Plan be developed to outline a process to solicit public input

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

regarding the proposed RMP. CONTRACTOR will prepare a draft plan, which will be clear, concise, and contain a detailed description of milestones. The plan will identify outreach strategies for the key stakeholders, including regulatory agencies, non-governmental organizations, interest groups, recreational users, local municipalities, and the general public. It will outline the public outreach methods that may be considered, including potential meeting types (i.e., site visits/field visits, workshops, small group, one-on-one¹), periodic project updates for the public, and providing a project website. It will also include outreach methods for low-income and minority populations, including multi-lingual noticing and translators at public meetings. CONTRACTOR will submit a Draft Public Participation Plan to the County and USFWS for review and comment. Upon receipt of comments, CONTRACTOR will revise accordingly and finalize the plan. This scope of work assumes one round of comments from the County and USFWS.

The development of the proposed RMP will also require coordination with agencies and stakeholders, which may include but are not limited to, the following:

- California Department of Fish and Wildlife (CDFW)
 - Bureau of Land Management (BLM)
 - Fort Ord Coordinated Resource Management Planning team (CRMP)
 - Adjacent property owners
 - Keep Fort Ord Wild (KFOR)
 - California Native Plant Society (CNPS)
 - Transportation Agency for Monterey County (TAMC) (as related to the Fort Ord Regional Trail and Greenway Project)
 - LandWatch of Monterey County
- 4/23/2021 km 4/23/2021

This scope of work assumes up to three (3) County presentations at various hearings (e.g., Fort Ord Committee, Planning Commission, and/or Board of Supervisors), two (2) community workshops, and two (2) stakeholder meetings.

This scope of work assumes CONTRACTOR will facilitate the meetings (assumed to be virtual) and provide all necessary meeting materials, including, but not limited to, agendas, meeting notes, PowerPoint presentations, etc. CONTRACTOR will submit drafts of all meeting materials to the County and USFWS, as determined necessary, for review and comment prior to public meeting distribution.

¹ Any proposed meeting types will be conducted in compliance with public health and safety guidelines related to COVID-19 (e.g., virtual and/or small, socially distanced site visits).

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

TASK 3. PREPARE RESOURCE MANAGEMENT PLAN

In accordance with the requirements described in the HMP and the deed restrictions for the parcels, CONTRACTOR will prepare a Resource Management Plan (RMP) for the County's Habitat Management Areas (HMAs²), including the East Garrison North, East Garrison South, Travel Camp, Habitat Corridor, Parker Flats, Oak Oval, Lookout Ridge, and Wolf Hill HMAs. Although not County property, the Monterey Peninsula College (MPC) Reserve HMA will also be included in the RMP, per direction from the County.

CONTRACTOR proposes to prepare one (1) RMP to address the County's HMP responsibilities for all eight of its HMAs as well as the HMP responsibilities of the MPC Reserve HMA. The RMP will also address the existing land management responsibilities within a portion of the Parker Flats HMA, required under Incidental Take Permit No. 2081-2013-003-04, issued by the CDFW. The RMP will address HMP requirements for habitat management activities and borderlands within the HMAs (and adjacent parcels, if designated as borderlands).

The RMP will incorporate the County's Draft Fort Ord Recreational Habitat Area Trail Master Plan (Draft FORHA Plan), which outlines the County's proposed trail plan, open space management and maintenance activities, and recreational amenities within the HMAs. The RMP will include the HMA development allowances, as designated in the HMP and describe any proposed development activities within the HMAs in accordance with the HMP. The preparation of the RMP will include the tasks outlined below.

Task 3.1. Data Collection/Baseline Inventory and Mapping

CONTRACTOR will utilize our existing database of the resources on the former Fort Ord to the greatest extent feasible to serve as the foundation of the RMP. CONTRACTOR will coordinate with the County and surrounding jurisdictions and conduct research and surveys to update the database, as necessary. During this task, CONTRACTOR will perform the following:

- Conduct research utilizing available resources including the CDFW California Natural Diversity Database (CNDDDB), CNPS inventories, information from local experts, and other published and unpublished materials, including recent biological studies and environmental documents;

² The HMP identifies what type of activities can occur on each parcel at former Fort Ord; parcels are designated as "development," "habitat reserve," "habitat corridor," and "development with reserve areas or development with restrictions." Development parcels do not have any habitat management requirements, while the remaining categories do have varying habitat management requirements. As a result, the remaining categories are collectively referred to as "Habitat Management Areas" or "HMAs."

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

- Conduct desktop reviews, focused protocol-level botanical surveys, and reconnaissance-level surveys of the HMAs to assess the environmental conditions of the HMAs and their surroundings; and
- Prepare narratives and provide figures of the following:
 - HMP species and habitats, as well as other special-status species and sensitive habitats known, or with the potential to occur within and adjacent, to the HMAs
 - Natural vegetative communities
 - Wildlife species and habitat
 - Physical conditions including:
 - soil erosion, noting the extent and location
 - non-native invasive plant species, noting extent and location
 - natural disturbances, such as fire or significant soil shifts
 - areas exhibiting potential erosion control issues (along trails and fuelbreaks)
 - areas with populations of invasive non-native plant species potentially in need of removal, focusing on jubata/pampas grass, iceplant, French broom, (along trails and fuelbreaks)
 - volunteer trails that should be signed and monitored for trespass and erosion issues
 - Conditions and locations of existing barriers and signage and identify locations for future installation to restrict access by off-road vehicles and pedestrians
 - conditions and locations of existing fuelbreaks and access roads.

CONTRACTOR will prepare a draft set of baseline narratives and inventory maps for the County to review and comment. Based on comments from the County, CONTRACTOR will finalize the baseline narratives and inventory maps for inclusion in the RMP. This scope of work assumes one round of comments.

This scope of work assumes that existing wildlife occurrence data will be sufficient for the RMP and that any protocol-level wildlife surveys if required, will be conducted during the RMP implementation phase. However, if the USFWS requires any protocol-level wildlife surveys (e.g., California tiger salamander surveys, California red-legged frog surveys, etc.) prior to RMP approval, CONTRACTOR can provide a proposal for the requested services and this scope of work can be amended.

Task 3.2. Identify and Define Potential Future Development Projects within HMAs

As discussed above, this scope of work assumes the incorporation of potential future development projects within HMAs, where allowed under the HMP, into

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

the RMP. During this task, CONTRACTOR will work with the County to identify and define the potential future projects that may occur within the HMAs. CONTRACTOR will prepare a brief project description and figures for each project for inclusion in the RMP. This scope of work assumes one round of comments on the descriptions and figures. Comments on the identification and definition of potential future development assumptions within HMAs shall be solicited from stakeholders. ^{DS} 4/23/2021 ^{DS} 4/23/2021

Task 3.3. Prepare Administrative Draft RMP

CONTRACTOR will prepare an Administrative Draft RMP and submit to the County for review and comment. The results from the baseline inventory and descriptions of the potential future projects will provide the information necessary to develop the RMP. The RMP will include the following:

- baseline inventory
- description of potential future development projects within HMAs
- goals and objectives
- habitat management activities, including
 - erosion control
 - restoration/enhancement
 - non-native species control
 - prescribed burns/alternative vegetative treatments
 - security/patrols
 - vehicle access controls
 - signage/displays
 - trash/debris maintenance
 - road/trail maintenance
 - fuelbreak construction and maintenance
 - preservation
- borderland requirements
- avoidance and minimization measures
- monitoring program
- implementation plan (including two scenarios: entire plan implementation and phased implementation)
- adaptive management strategies

Please note that the cost estimate for RMP implementation described in Task 4 will be completed and included as part of the 2nd Administrative Draft RMP (please see Task 3.4).

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

CONTRACTOR will submit the Administrative Draft RMP to the County for review and comment. This scope of work assumes one round of comments. This task includes two (2) meetings with the County to discuss the plan and County comments.

Task 3.4. Prepare 2nd Administrative Draft RMP

Based on comments received from the County, CONTRACTOR will revise the RMP and prepare a 2nd Administrative Draft RMP. The 2nd Administrative Draft RMP will include a cost estimate for RMP implementation under the two proposed implementation plan scenarios, as described in Task 4.

CONTRACTOR will submit the 2nd Administrative Draft RMP to USFWS for review and comment. This scope of work assumes one round of comments. This task includes two (2) meetings with the County and USFWS to discuss the plan and USFWS comments.

Task 3.5. Prepare Public Draft RMP

Based on comments received from the USFWS, CONTRACTOR will prepare a Public Draft RMP to support and facilitate the various public outreach efforts, as defined and determined during Task 2.

Task 3.6. Prepare Final RMP and CEQA Review

Based on comments received from the public, Planning Commission, Board of Supervisors, and others (as defined during Task 2), CONTRACTOR will prepare a Final RMP in coordination with the County and USFWS staff. The Final RMP will be submitted to the USFWS and the County for approval.

This scope of work includes preliminary assessments of the appropriate level of environmental review. The Consultant will provide an additional scope of work and cost estimate, as needed for the environmental review. CONTRACTOR will review existing NEPA and CEQA documents in connection with CEQA compliance for the RMP approval. CONTRACTOR will consult with the County on this approach.

Task 3.7. Hearing Attendance

This scope of work assumes that CONTRACTOR will attend two (2) public hearings (Planning Commission and Board of Supervisors) and assist with preparing associated materials, including the staff reports, CEQA findings, and presentations. CONTRACTOR will be available at the hearings to present the project and answer any questions.

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TASK 4. COST ESTIMATE FOR RMP IMPLEMENTATION

CONTRACTOR will prepare a cost estimate for implementation of the proposed RMP based on the 2nd Administrative Draft RMP and will update the estimate as needed through plan development (one cost estimate and two updates). The cost estimate will outline the proposed habitat management activities and assumptions in a Microsoft Excel spreadsheet, which will be an appendix to the RMP. The cost estimate will include costs under two scenarios: implementation of the entire plan and phased implementation of the plan. CONTRACTOR will coordinate closely with the County on the assumptions.

TASK 5. CDFW AND USFWS INCIDENTAL TAKE PERMIT ACQUISITION

In the event that it is determined that the approval and implementation of the proposed RMP may result in take of federal and state listed species, CONTRACTOR will coordinate with the COUNTY, CDFW, and USFWS to obtain the necessary take authorizations required under the federal and state Endangered Species Acts (ESA). It is anticipated that the implementation of the proposed RMP will require the issuance of incidental take permits (ITPs) under Section 2081 of the California ESA and Section 10 of the federal ESA. The acquisition of ITPs is a complex process and, for the purposes of this proposal, this task will require the subtasks outlined below with the identified assumptions.

TASK 5.1. MEETINGS AND COORDINATION

- Schedule bi-monthly meetings with the COUNTY and resource agencies for 12 months; and
- Continue and frequent coordination and project management efforts for duration of task (assumes 12 months)

TASK 5.2. PREPARE PERMIT APPLICATIONS

- Includes preparation of permit applications for CDFW and USFWS, including permit forms and required supporting documentation
- Proposed RMP will serve as foundation of the Habitat Conservation Plan and Mitigation and Monitoring Plan required by the USFWS and CDFW, respectively, but will need to be revised to meet established permit issuance criteria
- COUNTY will be responsible for payment of all application fees
- Additional NEPA and CEQA will not be required beyond described in Task 3.6, above

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

- Assumes three (3) drafts of the permit package will be prepared before formal application submittal (i.e., Administrative Draft, Screencheck Draft, and Draft sets of documentations)

TASK 5.3. FORMAL PERMITTING PHASE

- Includes formal application submittal and permit processing by the USFWS and CDFW

These tasks will be refined once the proposed RMP is further defined and provided in writing to the COUNTY. An estimate of the anticipated costs to acquire ITPs from the resources agencies has been provided; however, an updated cost estimate will be provided by the CONTRACTOR when the tasks are refined and provided to the COUNTY. These tasks will not be initiated unless authorized in writing by the COUNTY. Initiation and completion of these tasks prior to receiving the COUNTY'S written authorization to proceed will not be eligible for compensation. Any newly identified tasks not included herein will not be initiated until presented to the COUNTY and with COUNTY approval, amended into this scope of work.

A.2 CONTRACTOR shall produce the following deliverables (written reports, installed products, etc.) as indicated below:

| TASK | DELIVERABLE |
|--|---|
| TASK 1. Project Initiation | <i>Final Scope and Budget, Draft and Final Schedule, Information Needs Request (if required)</i> |
| TASK 2. Public Outreach and Early Coordination with Interested Parties | <i>Draft and Final Public Participation Plan, Contact Database, Draft and Final Meeting Materials</i> |
| TASK 3. Prepare Resource Management Plan | |
| Task 3.1. Data Collection/Baseline Inventory and Mapping | <i>Draft and Final Baseline Narratives and Inventory Maps</i> |
| Task 3.2. Identify and Define Potential Future Development Projects within HMAs | <i>Draft and Final Project Descriptions and Figures</i> |
| Task 3.3. Prepare Administrative Draft RMP | <i>Administrative Draft RMP</i> |
| Task 3.4. Prepare 2nd Administrative Draft RMP | <i>2nd Administrative Draft RMP</i> |
| Task 3.5. Prepare Public Draft RMP | <i>Public Draft RMP</i> |
| Task 3.6. Prepare Final RMP and CEQA Review | <i>Final Public Draft RMP</i> |
| Task 3.7. Hearing Attendance | <i>Assist with Hearing Materials</i> |
| Task 4. Cost Estimate for RMP Implementation | <i>Cost Estimate, including two updates</i> |
| Task 5. CDFW and USFWS Incidental Take Permit Acquisition | <i>Meeting materials, Permit Applications, Permit Processing Coordination</i> |

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

All written reports required under this Agreement must be delivered to the following individual:

Jacquelyn M. Nickerson, Management Analyst II
County of Monterey
Housing and Community Development – Special Programs
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527
Email: Nickersonj@co.monterey.ca.us

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed \$616,205.00 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the terms below. Invoices for services, work products, deliverables under the Agreement shall be submitted when the work product is complete, shall identify the document or work product being delivered and shall include the following:

This area intentionally left blank.

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

Invoice Coversheet

**Denise Duffy & Associates, Inc.
Fort Ord Habitat Management Plan**

Date: _____

Invoice No. _____

Original Agreement Term: April 20, 2021 to June 30, 2022
 Original Agreement Amount: \$546,935.00

| | | | | |
|--------------------------|------------|------------|--|---------------------|
| This Invoice: | 1.0 | | Project Initiation | \$ 2,187.50 |
| | 2.0 | | Public Outreach | 34,130.00 |
| | | \$1,126.00 | Contact Database | |
| | | 3,982.00 | Draft and Final PPP | |
| | | 29,022.00 | Public Meetings (7) | |
| | 3.0 | | Prepare Habitat Management Plan | 271,656.00 |
| | | 3.1 | 82,687.00 Data Collection/baseline Inventory and Mapping | |
| | | 3.2 | 15,254.00 Identify and Define Potential Future Projects | |
| | | 3.3 | 40,998.00 Prepare Administrative Draft RMP | |
| | | 3.4 | 23,220.00 Prepare 2 nd Administrative Draft RMP | |
| | | 3.5 | 16,170.00 Prepare Public Draft RMP | |
| | | 3.6 | 15,227.00 Prepare Final Public Draft RMP & CEQA Review | |
| | | 3.7 | 8,830.00 Hearing Attendance | |
| | 4.0 | | Cost Estimate for RMP Implementation | 34,294.00 |
| | 5.0 | | CDFW and USFWS Incidental Take Permit Acquisition | 273,937.50 |
| | | 5.1 | 47,603.00 Meetings and Coordination | |
| | | 5.2 | 204,281.50 Prepare Permit Applications | |
| | | 5.3 | 22,047.00 Formal Permitting Phase | |
| Grand Total | | | | \$616,205.00 |
| Remaining Balance | | \$ _____ | | |

Approved as to Work/Payment: _____
 Manager Approval Date

All invoices are to be sent to:
 Housing and Community Development – Finance
 1441 Schilling Place, 2nd Floor
 Salinas, CA 93901-4527
194-HCD-Finance@co.monterey.ca.us

There shall be no travel reimbursement allowed during this Agreement.

EXHIBIT A – SCOPE OF SERVICES/PAYMENT PROVISIONS

CONTRACTOR warrants that the cost charged for services under the terms of this Agreement are not in excess of those charged any other client for the same services performed by the same individuals.

B.2 CONTRACTORS BILLING PROCEDURES

NOTE: Payment may be based upon satisfactory acceptance of each deliverable, payment after completion of each major part of the Agreement, payment at conclusion of the Agreement, etc.

County may, in its sole discretion, terminate the contract or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT B – REVISION TO PARAGRAPH 8, INDEMNIFICATION, OF AGREEMENT

8. INDEMNIFICATION.

8.01 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.

8.02 Indemnification for Design Professional Services 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, 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 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.

8.03 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.