

Attachment A

This page intentionally left blank.

**AMENDMENT NO. 9
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
WOOD RODGERS, INC.**

THIS AMENDMENT NO. 9 to Professional Services Agreement No. A-11286 between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Wood Rodgers, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into Professional Services Agreement No. A-11286 with County on October 27, 2008 (hereinafter, "Agreement") to provide environmental documentation and Plans, Specifications and Engineer's Estimate (PS&E) (hereinafter, "services") for the Monterey Bay Sanctuary Scenic Trail – Moss Landing Segment (hereinafter, "Project") through December 30, 2011 for an amount not to exceed \$1,048,896.04; and

WHEREAS, Agreement was amended by the Parties on December 3, 2009 (hereinafter, "Amendment No. 1", including Exhibit A-1 – Scope of Services/Payment Provisions and Exhibit B-1 – Federal Provisions) to increase the amount by \$15,700.00 which resulted in a total not to exceed amount of \$1,064,596.04 and to revise Exhibit B - Federal Provisions with no extension to the term; and

WHEREAS, Agreement was amended by the Parties on September 29, 2010 (hereinafter, "Amendment No. 2", including Exhibit A-2 – Scope of Services/Payment Provisions) to increase the amount by \$139,359.75 which resulted in a total not to exceed amount of \$1,203,955.79 with no extension to the term; and

WHEREAS, Agreement was amended by the Parties on September 2, 2011 (hereinafter, "Amendment No. 3", including Exhibit A-3 – Scope of Services/Payment Provisions) to extend the term for approximately two (2) additional years through December 31, 2013, to increase the amount by \$100,200.00 which resulted in a total not to exceed amount of \$1,304,155.79 and to revise the indemnification provisions; and

WHEREAS, Agreement was amended by the Parties on September 26, 2012 (hereinafter, "Amendment No. 4", including Exhibit A-4 – Scope of Services/Payment Provisions) to extend the term for six (6) additional months through June 30, 2014 and to increase the amount by \$428,422.00 which resulted in a total not to exceed amount of \$1,732,577.79; and

WHEREAS, Agreement was amended by the Parties on May 14, 2014 (hereinafter, "Amendment No. 5") to extend the term for two (2) additional years through June 30, 2016 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on November 12, 2014 (hereinafter, "Amendment No. 6", including Exhibit A-5 – Scope of Services/Payment Provisions) to increase the amount by \$86,830.00 which resulted in a total not to exceed amount of \$1,819,407.79 with no extension to the term; and

WHEREAS, Agreement was amended by the Parties on July 5, 2016 (hereinafter, "Amendment No. 7") to extend the term for six (6) additional years through June 30, 2022 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on February 6, 2018 (hereinafter, "Amendment No. 8", including Exhibit A-6 – Scope of Services/Payment Provisions) to increase the amount by \$377,660.00 which resulted in a total not to exceed amount of \$2,197,067.79 with no extension to the term; and

WHEREAS, to continue with the Project, funding within the Agreement was reallocated from Task 6, Prepare Project Study Report/Project Report, Task 7, Assistance During Bidding, Task 8, Assistance During Construction, and Task 9, Additional Services, to Task 5, Prepare Regulatory Permits, of Exhibit A-6 of the Agreement; and

WHEREAS, tasks associated with Right-of-Way, Permitting and Project Design continue to be required from the CONTRACTOR; and

WHEREAS, the indemnification provisions of the Agreement require an update; and

WHEREAS, new subtasks associated with Task 5 in Exhibit A-6 of the Agreement have been identified and are required from the CONTRACTOR; and

WHEREAS, additional funding is necessary to allow CONTRACTOR to perform services associated with the completion of Task 5, Task 6, Task 7, Task 8 and Task 9 in Exhibit A-6 to complete the Project; and

WHEREAS, the Parties wish to further amend the Agreement to update the indemnification provisions and to increase the amount by \$110,120.00 for a total amount not to exceed \$2,307,187.79 with no extension to the term to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 9.

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

1. Amend the first sentence of Paragraph 1, "Services to be Provided", to read as follows:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibits A, A-1, A-2, A-3, A-4, A-5, A-6 and A-7 in conformity with the terms of this Agreement.

2. Amend Paragraph 2, "Payments by County", to read as follows:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibits A, A-1, A-2, A-3, A-4, A-5, A-6 and A-7, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of \$2,307,187.79.

3. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-7, Scope of Services/Payment Provisions".
4. Amend Section 8.02, "Indemnification for Design Professional Services Claims", of Paragraph 8, "Indemnification", to read as follows:

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.

5. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
6. This Amendment No. 9 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
7. The recitals to this Amendment No. 9 are incorporated into the Agreement and this Amendment No. 9.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 9 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By:

Contracts/Purchasing Officer

Date:

**Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager**

By:

Mary Grace Perry
Deputy County Counsel

Date:

Approved as to Fiscal Provisions

By:

Auditor/Controller

Date:

**Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager**

By:

Name:

Title:

Date:

Wood Rodgers, Inc.

Contractor's Business Name

By:

(Signature of Chair, President or Vice President)

Its:

Jeffrey W. Carpenter, VP

(Print Name and Title)

Date:

7/10/2019

By:

(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Its:

PETE TOBIA, ASST SECRETARY

(Print Name and Title)

Date:

7/10/19

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 9 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*


By:

Contracts/Purchasing Officer

Date:

Approved as to Form and Legality
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By:



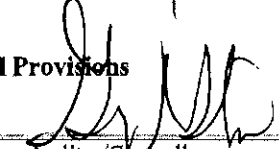
Mary Grace Perry
Deputy County Counsel

Date:

7-10-19

Approved as to Fiscal Provisions

By:



Auditor/Controller

Date:

7-11-19

Approved as to Indemnity and Insurance Provisions
Office of the County Counsel-Risk Management
Charles J. McKee, County Counsel-Risk Manager

By:

Name:


Title:

Date:

Wood Rodgers, Inc.

Contractor's Business Name

By:



(Signature of Chair, President or Vice President)

Its:

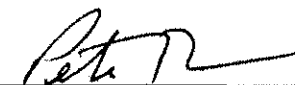
Jeffrey M. Carpenter, VP

(Print Name and Title)

Date:

7/10/2019

By:



(Signature of Secretary, Asst. Secretary, CFO,
Treasurer or Asst. Treasurer)

Its:

PETE TOGIA, ASST SECRETARY

(Print Name and Title)

Date:

7/10/19

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

EXHIBIT A-7 – SCOPE OF SERVICES/PAYMENT PROVISIONS

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

and

Wood Rodgers, Inc., hereinafter referred to as “CONTRACTOR”

A. SCOPE OF SERVICES

CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of additional services associated with completion of the Project Report (PR), Plans, Specifications, and Engineer’s Estimate (PS&E), Environmental Permitting, and Bidding and Construction Support for the Monterey Bay Sanctuary Scenic Trail – Moss Landing Segment (hereinafter, “Project”), as set forth below:

TASK 5 – PREPARE REGULATORY PERMITS

Task 5.4: Marine Mammal Incidental Take Authorization Application

With County consent, CONTRACTOR’s Subcontractor, LSA Associates, Inc. (LSA), engaged Illingworth & Rodkin, Inc. (Illingworth & Rodkin) to prepare the hydroacoustic assessments required to respond to National Marine Fisheries Service’s (NMFS) and United States Fish and Wildlife Service’s (USFWS) comments provided on the Incidental Harassment Authorization (IHA) form.

Budget: \$12,620.00

Task 5.5: Coastal Development Permit Application

LSA shall finalize the Coastal Development Permit (CDP) application for submittal to the California Coastal Commission (CCC). Following submittal of the CDP application package, LSA shall correspond with County; LSA shall also attend up to one (1) meeting with County, two (2) meetings with CCC staff, and one (1) CCC hearing. This scope includes preparing up to two (2) sets of responses to CCC staff requests for additional information specific to the CDP application.

Please note that obtaining a CDP can take longer than expected and cannot be guaranteed. The proposed budget does not account for fulfilling unforeseen CCC requests for information beyond what the CDP application requires. The CCC’s staff is currently backlogged with application reviews, and this backlog frequently results in delays. Furthermore, CCC’s staff and Commissioners occasionally disagree, resulting in multiple staff reports and hearings. Therefore, LSA has attempted to provide a thorough scope and a sufficient budget to complete a CDP application and conduct the necessary work to obtain a CDP under typical conditions. Additional budget may be needed if the CCC requires information or deliverables that are beyond what they typically request.

Budget: \$26,000.00

TASK 6 – PREPARE PROJECT STUDY REPORT/PROJECT REPORT (PSR/PR)

Task 6.2 - Final PSR/PR

County/California Department of Transportation (Caltrans) Review: The Draft Final PSR/PR shall be circulated within County and Caltrans for review and comment. CONTRACTOR shall address all review comments in writing and make necessary revisions to the Draft Final PSR/PR. It is anticipated that two (2) submittals and revision cycles to County and Caltrans shall be required for approval. CONTRACTOR assumes there will be no revisions to the approved Environmental Document (ED) and that the ED shall not be re-circulated for Public comment. It is also assumed that substantial revisions to the ninety percent (90%) PS&E shall not be required. Examples of substantial changes

EXHIBIT A-7 – SCOPE OF SERVICES/PAYMENT PROVISIONS

include, but are not limited to, major shifts in alignment and profile, revisions to retaining wall type and design, revisions to the previously approved bridge type and design. Under this Task, CONTRACTOR shall attend up to two (2) meetings with the Project Development Team (PDT). Once approval has been received, CONTRACTOR shall produce the required number of copies for County and Caltrans files.

Budget: \$20,000.00

TASK 7 – ASSISTANCE DURING BIDDING

CONTRACTOR shall assist County during bidding of the Project. Services shall include: attendance at Bidder's conference, responding to Bidder inquiries, assisting with addendums, and preparing the Bid Summary, if required.

Budget: \$ 6,500.00

TASK 8 – ASSISTANCE DURING CONSTRUCTION

CONTRACTOR shall provide assistance to County during construction. This will include review of the Request for Information (RFI) and submittals, review of shop drawings, and assistance with evaluation of CONTRACTOR's prepared Change Orders.

Budget: \$30,000.00

TASK 9 – ADDITIONAL SERVICES

Additional Services are defined as other related services as requested in writing by County. Additional services related to the Tasks described herein shall not be provided unless authorized in writing by County prior to additional services being provided. Services completed by CONTRACTOR prior to receiving County's written authorization to proceed shall not be eligible for compensation. Any newly identified tasks not included herein shall not be conducted by CONTRACTOR until presented to County and with County approval, amended into this Agreement.

Budget: \$15,000.00

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall increase the amount of the Agreement by \$110,120.00 for a total amount not to exceed \$2,307,187.79 for the performance of all things necessary for or incidental to the performance of work as set forth in this Exhibit A-7. CONTRACTOR's compensation for services rendered shall be based according to the budgets outlined for each Task as included in the Summary of Budget, of this Exhibit A-7 and according to the Agreement's latest Fee Schedule included in Exhibit A-6 of this Agreement.

County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for travel expenses within the not to exceed task budgets during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the "County Travel and Business Expense Reimbursement Policy". A copy of the policy is available online at: https://www.co.monterey.ca.us/auditor/pdfs/County_Travel_Business_Expense_Policy_12-5-12.pdf

EXHIBIT A-7 – SCOPE OF SERVICES/PAYMENT PROVISIONS

To receive reimbursement, CONTRACTOR must provide a detailed breakdown of authorized expenses, identifying what was expended and when.

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

B.2 CONTRACTOR'S BILLING PROCEDURES

Payment shall be based upon satisfactory completion and acceptance of each major part of the Agreement.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number #3000*2618, Project name and associated Purchase Order number, and an original hardcopy shall be sent to the following address or via email to RMA-Finance-AP-GP@co.monterey.ca.us:

County of Monterey
Resource Management Agency (RMA) – Finance Division
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: RMA-Finance-AP-GP@co.monterey.ca.us.

County may, in its sole discretion, terminate the Agreement 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 A-7 – SCOPE OF SERVICES/PAYMENT PROVISIONS

SUMMARY OF BUDGET:

TASK 5 – PREPARE REGULATORY PERMITS

Task 5.4 – Marine Mammal Incidental Take Authorization Application \$ 12,620.00
Task 5.5 – Coastal Development Permit Application \$ 26,000.00

TASK 6 – PREPARE PROJECT STUDY REPORT/PROJECT REPORT (PSR/PR)

Task 6.2 – Final PSR/PR \$ 20,000.00

TASK 7 – ASSISTANCE DURING BIDDING

(formerly Milestone 4 in Exhibit A of Agreement) \$ 6,500.00

TASK 8 – ASSISTANCE DURING CONSTRUCTION

(formerly Milestone 5 in Exhibit A of Agreement) \$ 30,000.00

TASK 9 – ADDITIONAL SERVICES

\$ 15,000.00

GRAND TOTAL:

\$110,120.00

This page intentionally left blank.