

Attachment E

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**AMENDMENT NO. 6
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
DENISE DUFFY & ASSOCIATES, INC.**

THIS AMENDMENT NO. 6 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Denise Duffy & Associates, Inc. (hereinafter, "CONTRACTOR") is hereby entered into between the County and the CONTRACTOR (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, CONTRACTOR entered into a Professional Services Agreement with County on May 1, 2013 (hereinafter, "Agreement") to provide a Programmatic Biological Assessment (BA) and Initial Study (IS) for projects located in the Carmel River Lagoon Area and Carmel River Lagoon Restoration and Management Plan for Phases 1 and 2 (hereinafter, "Project") through April 23, 2014 for an amount not to exceed \$353,100; and

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

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

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

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

WHEREAS, Agreement was amended by the Parties on December 9, 2016 (hereinafter, "Amendment No. 5") to extend the term for eighteen (18) additional months through June 30, 2018 with no increase in the not to exceed amount; and

WHEREAS, the Draft EIR was released for public review on December 2, 2016; and

WHEREAS, due to delays in the ongoing coordination with landowners and stakeholders related to the environmental review process, completion of Phase 2 of the Project has not been completed; and

WHEREAS, additional time is necessary; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for eighteen (18) additional months to December 31, 2019 with no associated dollar amount increase to allow CONTRACTOR to continue to provide tasks identified in the Agreement and as amended by this Amendment No. 6.

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

1. Revise "Task 8.1" to "Task 8.2.1" under Task 8, Optional Tasks, in Exhibit A-2 – Scope of Services/Payment Provisions of this Agreement.
2. In all places within the Agreement, any reference to Task 8.1 shall be deemed to be Task 8.1, NHPA Section 106 & Indian Trust Assets Compliance, and any reference to Task 8.2.1 shall be deemed to be Task 8.2.1, Additional Response and Revisions to Prepare Draft Final EIR.
3. Revise "PHASE 2 FY 15/16 Funds: ENVIRONMENTAL DOCUMENTATION CARLIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)" to "PHASE 2 FY 15/16 Funds: ENVIRONMENTAL DOCUMENTATION AND PERMITTING" under Paragraph A.1 of Section A, Scope of Services, in Exhibit A-2 – Scope of Services/Payment Provisions of this Agreement.
4. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from April 23, 2013 to December 31, 2019, unless sooner terminated pursuant to the terms of this Agreement.

5. Amend Section 8.02, "Indemnification for Design Professional Services Claims", under 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 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.

6. Amend the Business automobile liability insurance sentence of Section 9.03 of Paragraph 9.0, "Insurance", to read as follows:

Business automobile liability insurance, covering all motor vehicles, including 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. In all places within the Agreement, any reference to the County's address at 168 West Alisal Street, 2nd Floor, Salinas, California, 93901, is hereby replaced with 1441 Schilling Place, South 2nd Floor, Salinas, California, 93901-4527.
8. All other terms and conditions of the Agreement remain unchanged and in full force.
9. This Amendment No. 6 and all previous amendments which show the Schedule of Rates applicable until the effective date of this Amendment No. 6, shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
10. The recitals to this Amendment No. 6 are incorporated into the Agreement and this Amendment No. 6.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 6 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By:

 W. J. Springer
For Contracts/Purchasing Officer

W. J. Springer
Deputy Purchasing Agent
County of Monterey

Denise Duffy & Associates, Inc.

Contractor's Business Name

Date:

5/31/18

By:

Denise Duffy
(Signature of Chair, President or Vice President)

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

By:

 Brian P. Briggs
Deputy County Counsel

Its:

Denise Duffy, President
(Print Name and Title)

Date:

5/14/18

Date:

5-29-18

By:

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

Its:

Denise Duffy, Secretary
(Print Name and Title)

Date:

5/14/18

Approved as to Fiscal Provisions

By:

 [Signature]
Auditor/Controller

Date:

5/30/18

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: _____

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