

**AMENDMENT NO. 1
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
DENISE DUFFY & ASSOCIATES, INC.**

THIS AMENDMENT NO. 1 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 August 1, 2014 (hereinafter, "Agreement") to provide environmental documentation, California Environmental Quality Act (CEQA)/National Environmental Quality Act (NEPA), and regulatory permitting for the Carmel River Floodplain Restoration and Environmental Enhancement Project (hereinafter, "Project"); and

WHEREAS, the Parties wish to fully comply with Paragraph 12, Compliance with Terms of State or Federal Grant, of this Agreement by incorporating the State of California (hereinafter, "State"), The Natural Resources Agency, Department of Water Resources (hereinafter, "DWR") Agreement between the State DWR and Monterey County under The Flood Corridor Program as Exhibit B, SAP Contract No. 4600010665, into this Agreement by this reference; and

WHEREAS, the Grant Agreement requires compliance with the Monterey County Drug-Free Workplace Policy, attached as Exhibit C and incorporated into this Agreement by this reference; and

WHEREAS, County wishes to revise the Payment Provisions of Exhibit A of the Agreement to allow for monthly invoicing by the CONTRACTOR per Section B, Payment Provisions, of Exhibit A-1, Scope of Services/Payment Provisions, and to comply with the Grant Agreement provisions established by the DWR as outlined in Exhibit B of this Agreement; and

WHEREAS, due to unforeseen circumstances during the scoping of the Project and to meet the Department of Transportation (hereinafter, "Caltrans") documentation requirements, the Parties have identified a need to expand Task 1, Project Initiation, Task 2, Prepare NEPA Required Technical Studies, Task 5, Project Management, and Task 6, Meetings, of the original scope of work for the Project; and

WHEREAS, per Caltrans requirements, the Parties wish to include Task 2.10, Water Quality Assessment Report, to the original scope of work to complete the Project; and

WHEREAS, additional time and funding are necessary; and

WHEREAS, the Parties wish to amend the Agreement to extend the term to July 29, 2017 and increase the amount by \$65,000.00 to allow CONTRACTOR to continue to provide services identified in the Agreement and as amended by this Amendment No. 1.

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 and A-1** 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 and A-1**, 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 \$321,769.25.

3. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from July 29, 2014 to July 29, 2017, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-1, Scope of Services/Payment Provisions", attached and incorporate by this reference, "Exhibit B, SAP Contract No. 4600010665", attached and incorporated by this reference, and "Exhibit C, Monterey County Drug-Free Workplace Policy", attached and incorporated by this reference.

5. All other terms and conditions of the Agreement remain unchanged and in full force.

6. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

7. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: 
Deputy Purchasing Officer

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

Date: 9-11-15

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

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

Date: 8/13/15

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

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

By: 
Deputy County Counsel

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

Date: 8-20-15

Date: 8/13/15

Approved as to Fiscal Provisions

By: 
Auditor/Controller

Date: 8-21-15

Approved as to Indemnity and Insurance Provisions

By: _____
Risk Management

Date: _____

*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. IF CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
Denise Duffy & Associates, Inc., hereinafter referred to as "CONTRACTOR"

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide additional services and staff, and otherwise do all things necessary for or incidental to the performance of work for the Carmel River Floodplain Restoration and Environmental Enhancement Project (hereinafter, "Project"), as set forth below:

Task 1. Project Initiation

This task was originally scoped and contracted to include two (2) meetings with Caltrans and key agencies. The communication, coordination and meetings required to facilitate the Federal lead agency role has dominated this effort. Fairly constant communication has occurred in addition to five (5) agency meetings. The effort increased significantly beyond that which was anticipated during initial scoping for this task.

An additional item identified under this task is identifying data and documentation needs. CONTRACTOR anticipated minimal coordination with Caltrans because a 2010 California Environmental Quality Act (CEQA) document for the Project exists, allowing for a relatively easy review of existing data and analysis. Caltrans has required a significant amount of document review through this process as they are sending each check-list section to multiple Caltrans department technicians for review. Each Caltrans' assigned staff have multiple questions and require that CONTRACTOR put in time to "bring them up to speed" on the Project.

CONTRACTOR has completed Task 1, but is **\$20,000.00** over budget for this task.

Task 2. Prepare National Environmental Protection Act (NEPA) Required Technical Studies

CONTRACTOR has exhausted the approved budget for the Biological Assessment (BA) and for the Natural Environment Study (NES). During the initial scoping of the Project, it was not anticipated that Caltrans would be the Federal lead agency which has required additional effort to complete required Caltrans documentation for the entirety of the Project. As a result, the NES and BA must be prepared in Caltrans format and content requirements and must evaluate the restoration, in addition to the causeway for the Project.

CONTRACTOR has not yet completed this task and requests an additional **\$8,023.00** for completion of Task 2.1, NES and **\$5,986.00** for completion of Task 2.3, BA.

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Caltrans has reviewed the previous documentation for the Project and has directed CONTRACTOR to prepare a technical document not originally anticipated or included during the initial scoping of this Project.

CONTRACTOR will prepare a Water Quality Assessment Report at a cost of **\$9,991.00** and identified as Task 2.10, Water Quality Assessment Report.

Task 3. Preparation of the Combined CEQA/NEPA Document

CONTRACTOR has not initiated the work described under this task for the Project. No increase to the original amount is required.

Task 4. Regulatory Permitting

CONTRACTOR has not initiated the work described under this task for the Project. No increase to the original amount is required.

Task 5. Project Management

CONTRACTOR has used a disproportionate amount of the budget for this task in an effort to offset the significant out-of-scope work associated with Task 1, Project Initiation.

CONTRACTOR requests an additional **\$7,000.00** to continue to provide environmental project management throughout the duration of the Project.

Task 6. Meetings

CONTRACTOR has exhausted the internal meeting line-item component of the meeting budget for this task and is \$8,000.00 over budget. CONTRACTOR has participated in many meetings, including biweekly meetings, which were not anticipated or included in the initial scope and the Agreement budget for the Project.

CONTRACTOR requests an additional **\$14,000.00** for the budget overage and to continue to actively participate in Project meetings through the duration of the Project.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an amount not to exceed **\$65,000.00**, for a total amount not to exceed **\$321,769.25** for the performance of all things necessary for or incidental to the performance of work as set forth in this Exhibit A-1, Scope of Services/Payment Provisions. CONTRACTOR'S compensation for services rendered shall be based on the attached Cost Estimate.

CONTRACTOR shall receive compensation for travel expenses as per the "County Travel Policy". A copy of the policy is available online at www.co.monterey.ca.us/auditor/policies.htm. To receive reimbursement,

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

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 any other client for the same services performed by the same individuals.

B.2 CONTRACTOR'S BILLING PROCEDURES

Payment shall be based upon satisfactory acceptance of the work completed per task as outlined on the Contractor's monthly invoice.

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-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Denise Duffy & Associates, Inc. Budget Amendment dated 7/16/15																				
CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL ENHANCEMENT PROJECT																				
Task Description	Rates	Denise Duffy, Principal	Loch Harveyne, Senior Project Manager	Senior Planner/Scientist	Assistant Planner/Scientist	Planner/Scientist	GIS Specialist	Graphics	Admin	SUB	SUB	SUB	Total Subconsultant Cost	Expenses	Admin Fee	Subtask Totals	Task Total			
1.0 Project Initiation		\$215	\$165	\$145	\$103	\$92	\$98	\$75	\$81								\$ 20,000	\$ 20,000		
2.0 Prepare NEPA-Required Technical Studies																		\$ 24,000	\$ 24,000	
2.1 Natural Environmental Study			10	10	20	28	2		2									\$ 8,023	\$ 8,023	
2.2 Biological Assessment			10	10	12	15	2		2									\$ 5,886	\$ 5,886	
2.10 New Task - Water Quality Assessment Report			10	10	30	30	12		1									\$ 9,991	\$ 9,991	
3.0 Preparation of the Combined CEQA/NEPA Document (no change)																		\$ -	\$ -	
4.0 Regulatory Permitting (no change)																		\$ -	\$ -	
5.0 Project Management			21	8	6	4	7	2	8									\$ 7,000	\$ 7,000	
6.0 Meetings																			\$ 14,000	\$ 14,000
County Board/Council/Board Meetings			66	20			22		10									\$ 100	\$ 100	
Total Budget		\$ -	\$ 23,095	\$ 13,630	\$ 9,064	\$ 10,764	\$ 3,430	\$ 2,650	\$ 2,106	\$ -	\$ -	\$ -	\$ -	\$ 314	\$ 47			\$ 65,000.00	\$ 65,000.00	

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

PAYMENT PROVISIONS

Invoices for services / work products / deliverables under the AGREEMENT shall be submitted monthly, shall identify the document or work product being delivered, include monthly progress reports, state the percentage of task completion, state the percentage of budget expended to date, and shall include the following:

1. Invoice Coversheet

Denise Duffy & Associates, Inc.
Carmel River Floodplain Restoration and Environmental Enhancement Project

Date: Invoice No.

Original Agreement Term: July 29, 2014 - June 30, 2016

Original Agreement Amount: \$256,769.25

Amendment No. 1: \$65,000.00
Extension of Term to July 29, 2017

Table with 3 columns: This Invoice, Amount, Description. Rows include Project Initiation (\$20,000.00), Prepare NEPA Required Technical Studies (\$8,023.00), Regulatory Permitting (\$0.00), Project Management (\$7,000.00), Meetings (\$14,000.00), and Grand Total (\$65,000.00).

Remaining Balance \$

Approved as to Work/Payment: Melanie Beretti, RMA Service Manager Date

All Invoices Are To Be Sent To:
Diana Lemos, Account Clerk
County of Monterey Resource Management Agency - Finance Division
168 W. Alisal Street, 2nd Floor, Salinas, CA 93901
Telephone: (831) 755-5220

2. Invoice Detail

Each invoice shall indicate the hours worked by task and by staff member, with the corresponding billing rates.

STATE OF CALIFORNIA
THE NATURAL RESOURCES AGENCY
DEPARTMENT OF WATER RESOURCES
AGREEMENT BETWEEN THE STATE OF CALIFORNIA
DEPARTMENT OF WATER RESOURCES AND
MONTEREY COUNTY
UNDER THE FLOOD CORRIDOR PROGRAM

THIS AGREEMENT, made in quadruplicate and commencing this 19th day of June, 2014, is entered into by and between the Department of Water Resources of the State of California (hereinafter called the State, or DWR), and Monterey County, (hereinafter called the Grantee) for the Carmel River Floodplain Restoration and Environmental Enhancement Project.

The State and the Grantee agree as follows:

SECTION 1 PURPOSE OF AGREEMENT

This Agreement is made by and between the State and the Grantee to assist in financing a Flood Protection Project pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006 (Public Resources Code Section 5096.800 et seq, Division 5, Chapter 1.699, Article 4), specifically Public Resources Code 5096.825.

Grant funds may be used only as provided in this Agreement for such Eligible Project Costs as set forth in the Scope of Work and Budget, copies of which are incorporated herein by this reference and set forth in Exhibit B, Project Location, Exhibit C, Scope of Work, and Exhibit D, Budget, which describe tasks to be accomplished and costs associated with those tasks under this Agreement.

SECTION 2 TERM OF AGREEMENT

This Agreement shall remain in effect for four (4) years from the date of execution. The date of execution shall be the last date of the required signatures of the parties to the Agreement. Certain activities specified in this Agreement have a different term such as maintenance responsibilities of the grantee which continue in perpetuity and require annual reporting for five years after project completion.

SECTION 3 PROJECT COSTS

The Total Project Costs (identified in Exhibit D) are estimated to be \$16,137,800.

SECTION 4 STATE GRANT

Pursuant to the Disaster Preparedness and Flood Prevention Bond Act of 2006, and subject to the availability of funds, including any mandates from the Department of

Finance, the Pooled Money Investment Board, or any other State authority, the State will reimburse the Grantee, in accordance with the terms of this Agreement, an amount equal to the Grantee's eligible expenditures for this project not to exceed \$5,000,000.00, as the State Share, as identified in Exhibit D, Budget. The State will not make payments of any kind—advances or reimbursements—until funding is made available by the State Treasurer, after allocation decisions are made by the Pooled Money Investment Board and Department of Finance.

SECTION 5 GRANTEE'S COST SHARE AMOUNT

The Grantee agrees to fund the difference, if any, between the actual Project Cost and the State Grant (Section 4). The total cost of the project will be paid for from a variety of sources including, the County cost of permitting and managing the project, the cost of the property, State and Federal Grants, and participation by the California Department of Transportation. The rate of payment of State grant funds expressed as a percentage share of the State Grant cannot exceed the rate of payment of expenses by the grantee expressed as a percentage of the grantee's share of project costs without prior State authorization. If the grant is cancelled for any reason, the Grantee's obligation to provide the required 10% local match remains in effect for all FCP funds expended to that point.

SECTION 6 INCORPORATION OF STANDARD TERMS AND GRANTEE COMMITMENTS

In addition to Exhibits B, C, and D, this agreement by this reference incorporates Exhibit A, Standard Terms and Exhibit E, Planned Maintenance Activities. The Grantee accepts and agrees to comply with all terms, provisions, conditions, and commitments of this Agreement, including all incorporated documents, and to fulfill all assurances, declarations, representations and statements made by the Grantee in the Application, documents, amendments and communications filed in support of its request for financing.

SECTION 7 METHOD OF PAYMENT

The Grantee shall submit invoices on a quarterly basis for non-capital costs and on an as-needed basis for capital costs, not to exceed one invoice per month. All payments will be made to the Grantee upon receipt of an original invoice by the State of California, Department of Water Resources, 3464 El Camino Avenue, Room 200, Sacramento, California 95821, to the attention of David Wright, Project Manager for the State. Invoices should include SAP contract number and work plan element identification.

The Grantee shall meet all conditions for disbursement of money under this Agreement, including the provisions of the Conditions for Disbursement which is located in Exhibit A.

Failure by Grantee to comply may, at the option of the State, result in termination of the Agreement.

SECTION 8 PROGRESS REPORTS AND STATEMENT OF COSTS

The Grantee shall submit quarterly progress reports, starting with the end of the first complete calendar quarter after date of execution, describing the status of the Project and containing a Statement of Costs to the State. The submittal and approval by the State of these reports is a requirement for continued disbursement of State Grant funds. Progress reports shall summarize the work completed during the reporting period, include a statement of progress toward completion compared to the Project schedule, and provide a comparison of costs to date compared to the approved scope of work and Project budget. Additionally, if the grantee is aware of any anticipated problems, obstacles, or issues that could affect the project budget, schedule, or scope of work, they should be discussed in the progress reports.

SECTION 9 FINAL REPORTS

Upon project completion or termination, the Grantee shall submit a Final Report describing project activities and a report of expenditures (Final Financial Report) for the State's review and comment. The Final Report and Final Financial Report shall both be submitted within sixty (60) days of the project completion or termination. The Final Report shall describe the results of the project's activities, and include photographs of pre-project conditions and of the work completed. The Grantee shall also submit a Post-Completion Annual Report of Maintenance Activities annually for five years following completion of the project, with the first report due 12 months after the project completion date.

For any construction activity undertaken pursuant to and funded by this agreement, upon completion of the project the Grantee shall provide for a final inspection and a written certification by a California Registered Civil Engineer that the project has been completed in accordance with final plans and specifications and any modifications thereto. Such certification shall be submitted to the State with a copy of the final report of project expenditures required in the paragraph below. The Grantee shall keep on file, for the useful life of the project, as built plans and specifications for the project. Such documents shall be made available for inspection by the State upon reasonable notice.

The Final Financial Report documenting total project expenditures shall be submitted by the Grantee at the same time as the Final Report.

SECTION 10 RELATIONSHIPS OF PARTIES

The Grantee, its contractors, subcontractors, and their respective agents and employees required for performing any work under this Agreement shall act in an independent capacity and not as officers, employees, or agents of the State. Grantee is solely responsible for planning, design, construction, maintenance, and operation of the

activity undertaken pursuant to and funded by this agreement. Any review or approval by the State is solely for the purpose of proper administration of State funding and shall not be deemed to relieve or restrict Grantee's responsibility for its work.

SECTION 11 PERMITS, LICENSES, APPROVALS AND LEGAL OBLIGATIONS

The Grantee shall be responsible for obtaining any and all permits, licenses and approvals required for performing any work under this Agreement, including those necessary for planning and implementing the Project. The Grantee shall be responsible for complying with all applicable federal, State and local laws, rules or regulations affecting any such work, specifically including, but not limited to, environmental, labor, procurement and safety laws, rules, regulations and ordinances.

Without limiting the foregoing, Grantee shall keep informed of and take all measures necessary to ensure compliance with the California Labor Code requirements, including but not limited to Section 1720 *et seq.* of the California Labor Code regarding public works, limitations on use of volunteer labor (California Labor Code Section 1720.4), labor compliance programs (California Labor Code Section 1771.5), and payment of prevailing wages for work done under this funding agreement.

Work that is subject to the California Environmental Quality Act (CEQA) and funded under this Agreement shall not proceed until documents that satisfy the CEQA process are received by the State Project Manager and the State has completed its CEQA compliance. Work funded under this Agreement that is subject to a CEQA document shall not proceed until and unless approved by the State Project Manager. Such approval is fully discretionary and shall constitute a condition precedent to any work for which it is required. Once CEQA documentation has been completed, the State will consider the environmental documents and decide whether to continue to fund the project or to require changes, alterations or other mitigation.

SECTION 12 GRANTEE'S RESPONSIBILITIES FOR WORK

The Grantee shall be responsible for any and all disputes arising out of its contracts for work on the Project, including but not limited to bid disputes and payment disputes with the Grantee's contractors and subcontractors. The State will not mediate disputes between the Grantee and any other entity concerning responsibility for performance of work.

SECTION 13 PROJECT OFFICIALS AND NOTICES

The State's Program Manager shall be the Chief, Division of Flood Management, Department of Water Resources. The State's Program Manager shall be the State's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment for work performed under the Funding Agreement. The State's Program Manager may delegate any task to the State's Project Manager.

The Project Manager for the State is David Wright.

The Grantee's Program Manager shall be Benny Young, Director Monterey County Resource Management Agency. The Grantee's Program Manager shall be the Grantee's representative and shall have the authority to make determinations and findings with respect to each controversy arising under or in connection with the interpretation, performance, or payment of work performed under the Funding Agreement. The Grantee's Program Manager may delegate any task to the Grantee's Project Manager.

The Grantee Project Manager shall be John Ford, Management Analyst, Monterey County Resource Management Agency. The Grantee Project Manager shall be the Grantee's representative for the administration of the Agreement and shall have full authority to act on behalf of the Grantee, including authority to execute all payment requests. All communications given to the Project Manager shall be as binding as if given to the Grantee.

Either party may change its representative upon written notice to the other party. Any notice, demand, request, consent, or approval that either party desires or is required to give to the other party under this Funding Agreement shall be in writing to the Project Manager.

Notices required to be given to the State in writing by the Grantee under this Agreement shall be sent to:

David Wright, P.E., Senior Engineer, Water Resources
State of California
Department of Water Resources
Flood Corridor Program
3464 El Camino Avenue, Suite 200
Sacramento, CA 95821

Notices required to be given to the Grantee in writing by the State under this Agreement shall be sent to:

Benny Young, Director
Monterey County Resource Management Agency
168 W. Alisal Street, 2nd Floor
Salinas, CA 93901

A change of address for delivery or notice may be made by either party by written notice of such change of address to the other party.

Notices may be sent by any of the following means: delivery in person, by certified U.S. Mail, postage prepaid, by "overnight" delivery service or, electronic transmission followed by submittal of a hard copy.

SECTION 14 MAINTENANCE OF PROPERTY IMPROVED

Grantee agrees to make provisions to insure that the property is used, managed, maintained, developed, rehabilitated, or restored with the grant funds provided in this Agreement consistent with the purposes of the program and is required to continue in perpetuity or until deemed no longer necessary by the State. Specific maintenance activities are outlined in Exhibit E, Planned Maintenance Activities. The Grantee or their successors may, with the approval of the State, transfer this responsibility to use, manage, and maintain the property as discussed in Exhibit A, Standard Terms: Easements.

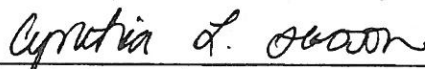
IN WITNESS HEREOF, the following authorized representatives have executed this Agreement as of the date first above written and approved as to Legal form and sufficiency.

MONTEREY COUNTY

By: 
Benny Young, Director Resource Management Agency

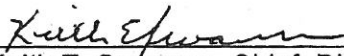
Date: 6/12/2014

Approved as to Legal Form and Sufficiency

By: 
Deputy County Counsel Cynthia L. Hasson

Date: 6-12-14

STATE OF CALIFORNIA, DEPARTMENT OF WATER RESOURCES

By: 
Keith E. Swanson, Chief, Division of Flood Management

Date: 6/18/14

Approved as to Legal Form and Sufficiency

By: 
Robin E. Brewer, Assistant Chief Counsel

Date: 6-13-14

Attachments

List of Exhibits:

- Exhibit A – Standard Terms
- Exhibit B – Project Location
- Exhibit C – Scope of Work
- Exhibit D – Budget
- Exhibit E – Planned Maintenance Activities

STANDARD TERMS

1. ACCOUNTING AND DEPOSIT OF GRANT DISBURSEMENT:

- a) Separate Accounting of State Grant Disbursements and Interest Records: The Grantee shall account for the money disbursed pursuant to this Agreement separately from all other Grantee's funds. The Grantee shall maintain audit and accounting procedures that are in accordance with generally accepted accounting principles and practices, consistently applied. The Grantee shall keep complete and accurate records of all receipts, disbursements, and interest earned on expenditures of such funds. The Grantee shall require its contractors or subcontractors to maintain books, records, and other documents pertinent to their work in accordance with generally accepted accounting principles and practices. Records are subject to inspection by the State at any and all reasonable times.
- b) Disposition of Money Disbursed: All money disbursed pursuant to this Agreement shall be deposited, administered, and accounted for pursuant to the provisions of applicable law.
- c) Remittance of Unexpended Funds: The Grantee, within a period of sixty (60) days from the final disbursement from the State to the Grantee of State Grant funds, shall remit to the State any unexpended funds that were disbursed to the Grantee under this Agreement and were not needed to pay Eligible Project Costs.
- d) Interim and Final Audits: The State reserves the right to conduct an audit at any time between the execution of this Agreement and the completion of the Project, with the costs of such audit borne by the State. After completion of the Project, the State may require the Grantee to conduct a final audit, at the State's expense.

Pursuant to Government Code Section 8546.7, the contracting parties shall be subject to the examination and audit of the State for a period of five (5) years after project completion. All Grantee's records and those of the Grantee's subcontractors related to this Agreement shall be retained for at least five (5) years after Project completion.

2. **ACKNOWLEDGEMENT OF CREDIT:** The Grantee shall include appropriate acknowledgement of credit to the State and to all cost-sharing partners for their support when promoting the Project, erecting signs at the project site, or using any data and/or information developed under the Agreement.
3. **AMENDMENT:** This Agreement may be amended at any time by mutual agreement of the parties, except insofar as any proposed amendments are in

any way contrary to applicable law. Requests by the Grantee for amendments must be in writing stating the amendment request and the reason for the request.

4. AMERICANS WITH DISABILITIES ACT: By signing this Agreement, Grantee assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, (42 U.S.C. 12101 et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA.
5. ANTITRUST CLAIMS: Grantee shall comply with all applicable laws and regulations regarding securing competitive bids and undertaking competitive negotiations in Grantee's contracts with other entities for acquisition of goods, and services and construction of public works with funds provided by the State under this Agreement.
6. APPROVAL: This Agreement is of no force or effect until signed by all parties to the agreement. Grantee may not submit invoices or receive payment until has all required signatures have been obtained.
7. AVAILABILITY OF FUNDS: Work to be performed under this Agreement is subject to availability of funds through the State's normal budget process.
8. CALIFORNIA CONSERVATION CORPS: As required in Water Code Section 79038(b), Grantee shall examine the feasibility of using the California Conservation Corps or community conservation corps to accomplish the habitat restoration, enhancement and protection activities listed in the Scope of Work (Exhibit C), and shall use the services of one of these organizations whenever feasible.
9. CLAIMS DISPUTE: Any claim that the Grantee may have regarding the performance of this agreement including, but not limited to, claims for additional compensation or extension of time, shall be submitted to the Project Manager, Department of Water Resources, within thirty (30) days of the Grantee's knowledge of the claim. Project Manager and Grantee shall then attempt to negotiate a resolution of such claim and process an amendment to this Agreement to implement the terms of any such resolution.
10. COMPETITIVE BIDDING AND PROCUREMENTS: Grantee shall comply with all applicable laws and regulations securing competitive bids and undertaking competitive negotiations in Funding Recipient's contracts with other entities for acquisition of goods and services and construction of public works with funds provided by State under this Funding Agreement.

11. CONDITIONS FOR DISBURSEMENT: The State shall have no obligation to disburse money under this Agreement unless and until the Grantee has satisfied the State that the disbursement is in accordance with the requirements of the legislation creating the funding source for the grant funds. Before engaging in site modifications to be paid for from State funds, the Grantee must complete the following:

- a) For Construction Projects, the Grantee must submit to the State, final plans and specifications certified by a California Registered Civil Engineer or equivalent documentation as to compliance with the approved Project.
- b) The Grantee must submit a written statement by an authorized representative that it has obtained all necessary permits, easements, rights-of-way and approvals as may be required by other State, federal, and/or local agencies, as specified in Section 11 of this Agreement.
- c) The Grantee must demonstrate compliance with the California Environmental Quality Act and if applicable the National Environmental Policy Act by submitting copies of any environmental documents, including environmental impact reports, environmental impact statements, negative declarations, mitigation agreements, legal notices and environmental permits as may be required prior to modifying the Project site.
- d) The Grantee must demonstrate continuing availability of sufficient funds to complete the Project.
- e) The Grantee shall develop, and submit for State approval, a plan to minimize the impacts to adjacent landowners (California Water Code Section 79041, Division 26, Chapter 5, Article 2.5). This plan may require completion of a hydrologic and hydraulic study, and if so the specifications will be included in Exhibit C, the project Scope of Work.

12. CONFLICT OF INTEREST:

- a) Current State Employees:
No state officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.

No state officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

- b) Former State Employees:

For the two year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the Agreement while employed in any capacity by any state agency.

For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed Agreement within the twelve-month period prior to his or her leaving state service.

c) City/County/Non Profit Employees:

No employee, officer, employer or agency of the City/County/Non Profit shall participate in the selection or in the award or administration of a contract supported by State Funds if a conflict of interest, real or apparent, would be involved. The City/County/Non Profit shall comply with all applicable laws on conflict of interest including, but not limited to the following: Public Contract Code (PCC) Sections 10335.5 et seq., PCC Sections 10365.5 et seq., PCC Sections 10410 et seq., and Government Code Sections 1090 et seq., and 8100 et seq.

13. DRUG-FREE WORKPLACE CERTIFICATION: By signing this contract, the Grantee hereby certifies under penalty of perjury under the laws of the State of California that the Grantee will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- a) Publish a statement notifying employees, contractors and subcontractors that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees, contractors or subcontractors for violations.
- b) Establish a Drug-Free Awareness Program to inform employees, contractors and subcontractors about all of the following:
 - 1. The dangers of drug abuse in the workplace,
 - 2. The Grantee's policy of maintaining a drug-free workplace,
 - 3. Any available counseling, rehabilitation and employee assistance programs, and
 - 4. Penalties that may be imposed upon employees, contractors or subcontractors for drug abuse violations.
- c) Every employee, contractor and subcontractor who works under this Agreement:

1. Will receive a copy of the Grantee's drug-free policy statement, and
 2. Will agree to abide by terms of the Grantee's statement as a condition of employment, contract or subcontract.
14. **EASEMENTS:** Where the Grantee acquires property in fee title or funds improvements to property already owned in fee by the Grantee using grant funds provided through this Agreement, or proposes that property be conserved as open space and such conserved property is used in determining the benefits score for the project, an appropriate easement or other title restriction providing for floodplain preservation and agricultural and/or wildlife habitat conservation for the subject property in perpetuity, approved by the State, shall be conveyed to a regulatory or trustee agency or conservation group acceptable to the State. Any easement or other title restriction applied to any portion of the project area as part of the project must be in first position ahead of any recorded mortgage or lien on the property unless this requirement is waived by the State.
- Where the Grantee acquires an easement under this Agreement, the Grantee agrees to monitor and enforce the terms of the easement, unless the easement is subsequently transferred to another land management or conservation organization or entity with State permission, at which time monitoring and enforcement responsibilities will transfer to new easement owner.
- Failure to provide an easement acceptable to the State can result in termination of this Agreement.
15. **ELIGIBLE PROJECT COSTS:** Grantee shall apply State Grant funds received only to eligible project costs, as identified in Exhibit D - Budget.
16. **GOVERNING LAW:** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California.
17. **INDEMNIFICATION:** Grantee shall indemnify and hold and save the State, its officers, agents, and employees, free and harmless from any and all liabilities for any claims and damages (including inverse condemnation) that may arise out of the Project and this Agreement, including, but not limited to any claims or damages arising from the planning, design, construction, maintenance and/or operation of levee rehabilitation measures for this Project and any breach of this Agreement. Grantee shall require its contractors to name the State, its officers, agents, and employees as additional insureds on their liability insurance for activities undertaken pursuant to this Agreement.
18. **INSPECTIONS OF PROJECT BY STATE:** The State shall have the right to inspect the work being performed at any and all reasonable times during the term of the Agreement. This right shall extend to any subcontracts, and the

Grantee shall include provisions ensuring such access in all its contracts or subcontracts entered into pursuant to its Agreement with the State.

19. **INSPECTIONS OF BOOKS, RECORDS AND REPORTS:** During regular office hours, each of the parties hereto and their duly authorized representatives shall have the right to inspect and to make copies of any books, records, or reports of either party pertaining to this Funding Agreement or matters related hereto. Each of the parties hereto shall maintain and shall make available at all times for such inspection accurate records of all its costs, disbursements, and receipts with respect to its activities under this Funding Agreement. Failure or refusal by Grantee to comply with this provision shall be considered a breach of this Funding Agreement, and the State may withhold disbursements to Grantee or take any other action it deems necessary to protect its interests as provided in the Funding Agreement.
20. **LABOR COMPLIANCE PLAN:** Prior to awarding a contract for public works projects funded in whole or in part from Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, or any other source of funding so requiring, the Grantee shall comply with Public Resources Code Section 75075, which requires adoption and enforcement of a labor compliance program pursuant to subdivision (b) of Labor Code Section 1771.5 for application to the funded public works project. At the State's request, Grantee must promptly submit written evidence of its compliance with Labor Compliance Program requirements.
21. **NONDISCRIMINATION:** During the performance of this Agreement, the Grantee, its contractors, and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Grantee and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Grantee and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Govt. Code § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et. seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code § 12990 (a-f), 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. Grantee and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

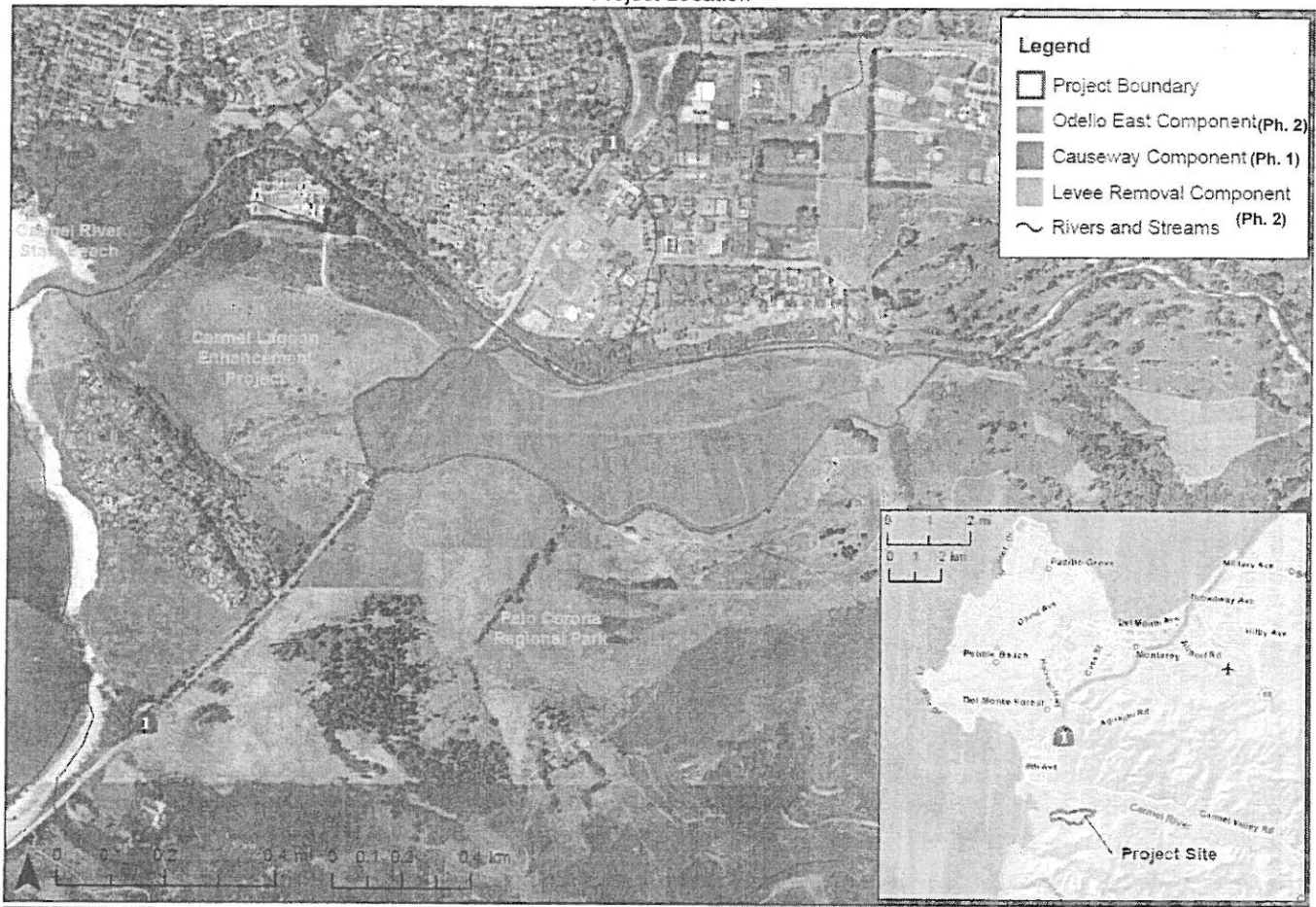
Grantee shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Funding Agreement.

22. PROHIBITION AGAINST DISPOSAL OF PROPERTY WITHOUT STATE PERMISSION: The Grantee shall not sell, abandon, lease, transfer, exchange, mortgage, hypothecate, or encumber in any manner whatsoever all or any portion of any real or other property necessarily connected or used in conjunction with the Project, without prior permission of the State. The Grantee shall not take any action, including but not limited to actions relating to user fees, charges, and assessments that could adversely affect the ability of the Grantee to meet its obligations under this Agreement, without prior written permission of the State. The State may require that the proceeds from the disposition of any real or personal property be remitted to the State, up to the value of the State funds disbursed to the Grantee for improvements to the property under this Agreement.
23. REIMBURSEMENT CLAUSE: If applicable, travel and per diem expenses to be reimbursed under this contract shall be the same rates the State provides for unrepresented employees in accordance with the provisions of Title 2, Chapter 3, of the California Code of Regulations.
24. SEVERABILITY: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.
25. SUCCESSOR AND ASSIGNS: This Agreement and all of its provisions shall apply to and bind the successors and assigns of the parties hereto. No assignment or transfer of this Agreement or any part thereof, rights hereunder, or interest herein by the Grantee shall be valid unless and until it is approved by the State and made subject to such reasonable terms and conditions as the State may impose.
26. TERMINATION WITHOUT CAUSE: The State may terminate this Agreement without cause on thirty (30) days advance written notice. The Grantee shall be reimbursed for all reasonable expenses incurred up to the date of termination.
27. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Grantee fail to perform the requirements of this Agreement at the time and in the manner herein provided including but not limited to reasons of default under Standard Term 28 – Termination By Grantee.
28. TERMINATION BY GRANTEE: Subject to State approval which may be reasonably withheld, Grantee may terminate this Agreement and be relieved of contractual obligations. In doing so, Grantee must provide a reason(s) for termination. Grantee must submit all progress reports summarizing accomplishments up until termination date. If the grant is cancelled, the Grantee obligation to provide the required 10% local funding remains in effect

for all Flood Corridor Program funds expended to that point.

29. **THIRD PARTY BENEFICIARIES:** The parties to this Agreement do not intend to create rights in, or grant remedies to, any third party as a beneficiary of this Agreement, or any duty, covenant, obligation or understanding established herein.
30. **TIMELINESS:** Time is of the essence in this Agreement.
31. **WITHHOLDING OF GRANT FUNDS BY STATE:**
- a) **Withholding Clause:** The State, at its discretion, may withhold ten percent (10%) of the funds requested by the Grantee for reimbursement of Eligible Project Costs until applicable milestones are completed or until the Project is completed and Final Report is received. Withheld funds may be released upon completion of milestones identified in Exhibit C, the project Scope of Work.
 - b) **Additional Conditions for Withholding:** If the State determines that the Project is not being completed substantially in accordance with the provisions of this Agreement or that the Grantee has failed in any other respect to comply substantially with the provisions of this Agreement, and if the Grantee does not remedy any such failure to the State's satisfaction, the State may withhold from the Grantee all or any portion of the State Grant commitment and take any other action that it deems necessary to protect its interests.
32. **WORKERS' COMPENSATION:** The Grantee affirms that it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self insurance in accordance with the provisions of that code, and the Grantee affirms that it will comply with such provisions before commencing the performance of the work under this Agreement and will make its contractors and subcontractors aware of this provision.

Carmel River Floodplain Restoration and Environmental Enhancement Project
Project Location



SCOPE OF WORK**MONTEREY COUNTY**
Carmel River Floodplain Restoration and
Environmental Enhancement Project**I. Project Goals and Objectives**

The Carmel River Floodplain Restoration and Environmental Enhancement Project (Project) is a multi-objective project that combines flood protection, wildlife corridor and habitat enhancement, agricultural land protection, storm water detention, and public recreation on a 130-acre site in the lower Carmel River floodplain.

Project Objectives

- A. **Reduce Flood Flows in Urban Areas:** County Services Area 50 (CSA-50) is a developed area located along the north side of the lower Carmel River and includes the highest number of repetitive loss properties in Monterey County. Of the 147 acres of developed land in CSA-50, approximately 105 acres flood during the 50-year flood event and all 147 acres flood during the 100-year event. The Project will reconnect the historic floodplain on the south side of the River, by removal of levees and excavation of material in the floodplain. This expanded floodplain will receive the floodwaters moving water away from the developed areas of the floodplain and reduce the water surface elevations by an estimated 0.5-1.0 foot during a 100-year storm event. This is expected to reduce potential liabilities for flood damage costs for up to 50 repetitive loss structures in Monterey County and reduce the number of structures needing coverage under the federal Flood Insurance Program.
- B. **Increase Riparian and Wetland Habitat:** The Project will restore approximately 90 acres of riparian and wetland habitat in the historic floodplain, providing increased habitat acreage for sensitive species including steelhead trout, California red-legged frog, and western pond turtle, as well as six additional state species of concern. The project will provide increased quantity and quality of breeding and/or foraging habitat for 27 avian species that have been identified by one or more bird conservation plans as species of concern.
- C. **Provide Habitat Connection Across the Floodplain:** The Project includes a flood conveyance by-pass or causeway under Highway 1. This causeway will be sized such that large animals can migrate between the open space area connecting to the Carmel Lagoon on the west with the recreated wetlands on the east side of Highway 1. This will provide a connection under Highway 1 for wildlife species utilizing over 25,000 acres of protected habitat areas in the immediate project vicinity.
- D. **Protect Agricultural Land from Flooding:** The Project will establish a permanent 36-acre organic farm above the level of the 100-year floodplain. The material removed

from the reconstituted floodplain will be used to fill the farm land to the south. The resulting farm land would then not be subject to inundation in a flood event.

- E. Improve Water Quality: The Project will provide additional filtration for sediment and nutrients through the creation of a functioning floodplain and associated riparian habitat and wetlands, resulting in improved water quality in the surface and groundwater flows entering the Carmel River Lagoon, the Carmel Bay (State-designated Area of Special Biological Significance, Marine Protected Area, and Critical Coastal Area) and the Monterey Bay National Marine Sanctuary.
- F. Recharge Groundwater and Base Flows to the Carmel River: The Project will address one of the watershed's most critical environmental concerns - very low or no flow in the Lower Carmel River and Carmel Lagoon during the dry season. The restored floodplain will expose storm water to a greater surface area which will provide for a greater degree of water infiltration to the aquifer. Groundwater monitoring wells established on the project site in 2009 documented that groundwater recharge from the Carmel River establishes a base level in the aquifer underlying the Project site. Sedimentary interbedding on the floodplain provide additional capacity for infiltration and recharge to the aquifer above this base level. Due to these conditions, opportunities exist on the parcel to enhance groundwater recharge.
- G. Public Trails and Recreation: The Project will include a public trail along the southern edge of the farm field and will link to over 5000 acres of public land (Palo Corona Regional Park) immediately adjacent to the project site.

II. Project Description

The project consists of two interrelated phases. Each phase is an integral component of the overall project, but they are differentiated because each has a set of constraints which may result in one phase moving along faster than the other phase. The phases are described as follows:

Phase One – Causeway

Phase One includes reconstruction of Highway 1 south of the Carmel River Bridge in including a 520-foot long flood by-pass or conveyance causeway under State Route 1 and contouring the embankments along the Highway consistent with current California Department of Transportation standards. The causeway will allow floodwaters from the Carmel River to flow into the south branch of the Carmel River channel which was dammed with installation of State Route 1. Excess material taken from the road bed for the causeway will be placed in the "fill" area for the agricultural preserve.

Phase Two – Levee Removal, Agricultural Preserve, Restoration of Floodplain Habitat

Phase Two will include: removal of approximately 2,400 linear feet of the levee along the south side of the Carmel River, grading of approximately 55 acres of existing farmland to create restored floodplain habitat and filling approximately 36 acres of land to create an agricultural preserve above the 100-year floodplain. The grading on the existing 55 acres of farmland area will result in 36 acres of farmland above the 100 year floodplain, and 19 acres

of land restored to floodplain. The floodplain restoration grading will be designed for the re-establishment of riparian vegetation and grading for a public trail. The soil excavated from the levee removal and floodplain restoration will be used to fill the new agricultural preserve area. The ability to retain fill material on site will result in significant cost savings. Upon completion of grading, the restored floodplain will be planted with native species and invasive species control will occur as part of the restoration plan.

III. Tasks and Deliverables

Subtasks in bold indicate project elements funded under this Agreement.

Task 1: Administration

Subtask 1.1 Quarterly Progress Reports

Progress reports will be submitted to DWR on a quarterly basis in accordance with Section 8 of this Agreement.

- Deliverable: Quarterly Progress Reports

Subtask 1.2 Final Report

The final report will be submitted in accordance with Section 9 of this Agreement. It will include a description of results of project activities, as well as photographs of pre-project conditions and work completed.

- Deliverable: Final Report

Subtask 1.3 Written Certification by California Registered Civil Engineer

Per Section 9 of this Agreement, the completed construction will be inspected and written certification of conformance with final approved contract documents, including project plans and specifications will be provided by a registered Civil Engineer.

- Deliverable: Wet-stamped certification by a registered Civil Engineer on final record drawings and appropriate contract documents.

Subtask 1.4 Final Financial Report

The final financial report will be submitted in accordance with Section 9 of this Agreement. It will be submitted concurrently with the final report.

- Deliverable: Final Financial Report

Subtask 1.5 Post Completion Reports

This subtask includes the delivery of an annual report of maintenance activities on an annual basis in accordance with Section 9 of this Agreement and Exhibit E: Planned Maintenance Activities.

- Deliverable: Annual Maintenance Summary Report

Task 2: Design

Subtask 2.1 Causeway Design

This subtask includes work associated with advancing the design of the causeway. This work includes updates to the Hydrologic and Hydraulic Study.

- Deliverable: Updated Hydrologic and Hydraulic Study

Subtask 2.2 Project Study Report for Caltrans

Subtask 2.3 Restoration Plan

A restoration plan including planting ratios, success criteria for monitoring, and a monitoring plan will be developed as part of this subtask.

- Deliverable: Final Restoration Plan

Subtask 2.4 Finalize Plans

Subtask 2.5 Prepare Stormwater Pollution Prevention Plan (SWPPP)

This subtask includes preparation of a Storm Water Pollution Prevention Program in accordance with State and Federal requirements to protect water quality during construction and implementation of the project.

- Deliverable: SWPPP

Subtask 2.6 Construction Staking, Management, and Testing

This subtask includes construction staking services performed under the direction of a licensed Land Surveyor, project management, and soils testing.

- Deliverable: Completed Highway 1 Plans, Restoration Plans, and SWPPP.

Task 3: Property Acquisition

Subtask 3.1 Acquisition of Easements for construction of Causeway.

Subtask 3.2 Property Tenure/Acquisition

- Deliverables: Phase 1: Construction Easements, Phase 2: Property Title.

Task 4: Permitting and Environmental Review

Subtask 4.1 Preparation and Public Review of Negative Declaration

A subsequent Initial Study and Mitigated Negative Declaration/Environmental Assessment or Finding of No Significant Impact will be prepared to address the work within the Caltrans Right of Way. The County of Monterey will function as Lead agency for the CEQA document and Caltrans will coordinate the NEPA document.

- Deliverable: Mitigated Negative Declaration and public comment letters

Subtask 4.2 Coastal Development Permit from California Coastal Commission

- Deliverable: Coastal Development Permit

Subtask 4.3 Encroachment Permit

- Deliverable: Encroachment Permit from California Department of Transportation

Subtask 4.4 Section 401 National Pollutant Discharge Elimination Systems (NPDES) Permit

- Deliverable: Section 401 NPDES Permit from Central Coast Regional Water Quality Control Board

Subtask 4.5 Section 404 Permit

- Deliverable: Clean Water Act Section 404 Permit

Subtask 4.6 Streambed Alteration Agreement

- Deliverable: Section 1603 Streambed Alteration Agreement from California Department of Fish and Wildlife

Subtask 4.7 Section 4(f) Compliance with US Department of Transportation

- Deliverable: Documentation of compliance.

Task 5: Project Implementation

Subtask 5.1: Project Administration

This subtask includes cost associated with administration of the project implementation and grant administration, including staff labor and project-related overhead costs. In addition, a Plan to Minimize Impacts to Adjacent Landowners will be drafted and submitted to the satisfaction of DWR in accordance with Water Code Section 79041.

- Deliverable: Invoices, Labor charges, overhead costs, receipts, and backup documentation.
- Deliverable: Plan to Minimize Impacts to Adjacent Landowners

Subtask 5.2: Contractor Procurement

5.2.1: Bidding Period

- Send out Request for Proposals
- Pre-bid meeting
- Answer questions from prospective contractors

5.2.2 Bid opening and contract award

- Receive Proposals and bids

- Evaluate proposals
 - Negotiate final contract
- 5.2.3 Notice to proceed
- Issue notice to proceed

Subtask 5.3: Construction Activities

- Deliverables: Project status reports

5.3.1 Existing Utility Removal and Replacement

This task involves the removal and temporary relocation of existing overhead utilities along Highway 1. The utilities along Highway 1 will be installed underground as part of the causeway improvements.

5.3.2 Temporary Detour Construction

This subtask includes construction of a temporary detour on east side of State Route 1.

5.3.3 Embankment Removal and Causeway Construction

Remove and replace existing State Route 1 to include new slope embankments and a new 520-foot long causeway under State Route 1. Remove temporary detour and restore topography.

5.3.4 Utility removal Along Existing Levee

This task involves the removal and relocation of existing overhead utilities along the Levee along the south side of the Carmel River. The utilities along Highway 1 will be installed underground as part of the causeway improvements.

5.3.5 Levee and Debris Removal

Removal of approximately 2,400 feet of existing levee and debris along the south side of the Carmel River and placement of fill in an area designated to be organic farmland elevated out of the floodplain.

5.3.6 Initial Grading

This subtask includes the grading and re-contouring of the east edge of the Odello property to allow flood flows to access the floodplain via the south bank of the Carmel River.

5.3.7 Finish Grading

This subtask includes activities to restore area within restored floodplain to support a riparian environment and creation of agricultural preserve area outside of the floodplain. It includes top soil installation.

5.3.8 Planting of Vegetation (Seeding)

This subtask includes planting of vegetation in the floodplain area. Application methods include hydro seeding.

5.3.9 Construction Biological Monitoring

This subtask includes the biologist being on site to conduct pre-construction surveys, and ongoing site monitoring as required by the Mitigation Measures contained in the CEQA/NEPA document. The Biologist will provide reports of their findings and recommendations in the event that unexpected biological resources are potentially impacted.

5.3.10 Storm Water Pollution Prevention Program

This subtask includes implementation of a Storm Water Pollution Prevention Program to protect water quality during construction and during implementation of the project.

Subtask 5.4 Notice of Completion

Task 6: Construction Implementation

Subtask 6.1 As-Built Engineering Documentation

- Deliverable: As-Built Engineering Documentation (Plans and Specifications)

Subtask 6.2 Post Construction Mitigation Monitoring

Maintenance and monitoring will be conducted in accordance with Section 9 of this Agreement and Exhibit E: Planned maintenance activities.

- Deliverable: Annual Maintenance Summary Report

V. Benefits

Flood Benefits

The Lower Carmel River Floodplain Restoration and Enhancement Project will be completed on the 130-acre historic floodplain located just upstream of the Carmel River Lagoon and east of Highway One on land known as the Odello fields. The land is part of the historic floodplain along the Carmel River but has not been available for a typical flooding regime for almost 100 years due to agricultural production on the land. In the early 1900s, earthen levees were built on the south side of the river by the farmer-landowner to constrain the river and the entire expanse of wetlands and riparian forest surrounding the Carmel River Lagoon and Odello East was put into agricultural production for artichokes. Downstream of the present day Highway One, the levee and agricultural production narrowed the riparian forest and wetlands on the south side of the river for nearly ½-mile at their widest to a narrow strip along the river. Upstream of Highway One, the riparian forest on the south side of the main stem was reduced from a maximum of about 1400 feet wide to a narrow strip.

The levees kept flood events out of the fields except during larger flows (10-year storms and larger), which spread into the floodplain and caused damages to residential and commercial properties. The existing levees are not adequate to hold the 1% annual chance flood.¹ The construction of Highway One in the early 1930s further diminished the ecological condition of the entire coastal ecosystem by placing a physical barrier between the Carmel River Lagoon and the larger floodplain thereby preventing hydrologic connectivity across the floodplain. Highway One created a north-south barrier to flood flows as well, resulting in flood waters flowing to the north side of the river, which affects areas such as Mission Fields, the Crossroads Shopping Center and Rio Road/Val Verde Road. Today the lower Carmel River is confined by levees on both sides, beginning near the river's mouth and running 1.2 miles upstream.² Recent major floods include January and March 1995 events and the February 1998 event. These events resulted in approximately \$10,520,000 (2009 dollars) in damages and affected 220 residences and the Highway One Bridge over the river had to be completely replaced.

The project focuses on restoring a more frequent flooding regimen to 90-acres of the Odello East property and provides a flood conveyance by-pass or causeway to both reconnect the west and east sides of the floodplain hydrologically and for habitat connectivity and wildlife movement. The remaining 36 acres of the Odello property will be retained as an agricultural preserve with an organic farming operation and native plant nursery with public access. The ecological goals of the project are to restore connectivity, increase riparian and wetland habitat and natural ecological function to a critical section of the Carmel River watershed. The flood benefit goal of the project is to reduce flood damages to the north overbank areas which historically have sustained damages and are repetitive loss properties.

The project is subsequent to a series of habitat conservation and restoration activities occurring in the lower floodplain and lagoon since the 1990s including the Carmel River Lagoon Riparian

¹Monterey County Water Resources Agency. Monterey County Flood Management Plan, pp. 20. Update 2008. Prepared for Monterey County.

²Balance Hydrologics, Inc., 2007. Design Alternatives Analysis for Floodplain Restoration at the Odello Property.

Restoration Project completed in 2000 and the Carmel River Lagoon South Arm Restoration Project completed in 2004. Both of these projects were completed by California State Parks in partnership with the State Department of Transportation and the Big Sur Land Trust. Partners in this Project include California State Parks, Coastal Conservancy, Monterey County Water Resources Agency, Monterey County Public Works, Monterey Peninsula Water Management District and the Big Sur Land Trust.

Wildlife and/or Agricultural Benefits

The key wildlife objectives associated with this project are to restore important habitat for several wildlife species by establishing the type of vegetation typical of river corridor environments and to provide a more dense and diverse riparian corridor. This would create important habitat for sensitive species including California red-legged frogs and western pond turtles. In addition the project will increase flow conveyance and habitat connectivity between the project site and the Carmel River Lagoon benefiting habitat for the south/central California Coast Steelhead.

The project will also maintain an active organic agricultural operation on a portion of the Project site in order to preserve historically important agricultural operations.

EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT D
SAP Contract No. 4600010665

BUDGET

MONTEREY COUNTY

CARMEL RIVER FLOODPLAIN RESTORATION AND ENVIRONMENTAL ENHANCEMENT PROJECT

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
1 – Administration	\$2,500	\$2,500	\$5,000			\$5,000
1.1 Quarterly Progress Reports	\$1,000	\$1,000	\$2,000			\$2,000
1.2 Final Report	\$750	\$750	\$1,500			\$1,500
1.3 Written Certification	\$250	\$250	\$500			\$500
1.4 Final Financial Report	\$250	\$250	\$500			\$500
1.5 Post Completion Reports	\$250	\$250	\$500			\$500
2 – Design	\$247,200	\$225,000	\$472,200		\$1,827,800	\$2,300,000
2.1 Causeway Design					\$1,000,000	\$1,000,000
2.2 Project Study Report						
2.3 Restoration Plan		\$200,000	\$200,000			\$200,000
2.4 Finalize Plans						
2.5 SWPPP Preparation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
2.6 Construction Staking, Management, and Testing	\$222,200		\$222,200		\$727,800	\$950,000

EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT D
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
3 – Property Acquisition				\$1,810,000		\$1,810,000
3.1 Acquisition of Easements						
3.2 Property Tenure				\$1,810,000		\$1,810,000
4 – Permitting and Environmental Review	\$157,800	\$100,000	\$257,800			\$257,800
4.1 Preparation and Public Review of Negative Declaration	\$137,800	\$95,000	\$232,800			\$232,800
4.2 Coastal Development Permit	\$5,000		\$5,000			\$5,000
4.3 Encroachment Permit	\$5,000		\$5,000			\$5,000
4.4 Section 401 (NPDES) Permit	\$5,000		\$5,000			\$5,000
4.5 Section 404 Permit	\$5,000		\$5,000			\$5,000
4.6 Streambed Alteration Agreement		\$5,000	\$5,000			\$5,000
4.7 Section 4(f) Compliance with State Parks						
5 – Project Implementation	\$2,092,500	\$2,152,500	\$4,245,000		\$7,370,000	\$11,615,000
5.1 Project Administration	\$25,000	\$25,000	\$50,000		\$190,000	240,000
5.2 Contractor Procurement						
5.2.1 Bidding Period						
5.2.2 Bid opening and contract award						
5.2.3 Notice to proceed						

EXHIBIT B – SAP CONTRACT NO. 4600010665

EXHIBIT D
SAP Contract No. 4600010665

Task	DWR Funds (Phase 1)	DWR Funds (Phase 2)	DWR Funds (Total)	Monterey County Funds	Other Grant Funds	Total
5.3 Construction Activities						
5.3.1 Existing Utility Removal and Replacement	\$500,000		\$500,000		\$100,000	\$600,000
5.3.2 Temporary Detour Construction	\$500,000		\$500,000		\$250,000	\$750,000
5.3.3 Embankment Removal and Causeway Construction	\$1,042,500	\$377,500	\$1,420,000		\$6,530,000	\$7,950,000
5.3.4 Utility Removal Along Existing Levee		\$125,000	\$125,000			\$125,000
5.3.5 Levee and Debris Removal		\$200,000	\$200,000		\$30,000	\$230,000
5.3.6 Initial Grading		\$600,000	\$600,000		\$40,000	\$640,000
5.3.7 Finish Grading		\$300,000	\$300,000		\$30,000	\$330,000
5.3.8 Planting of Vegetation (Seeding)		\$300,000	\$300,000			\$300,000
5.3.9 Construction Biological Monitoring		\$200,000	\$200,000		\$100,000	\$300,000
5.3.10 SWPPP Implementation	\$25,000	\$25,000	\$50,000		\$100,000	\$150,000
5.4 Notice of Completion						
6 Construction Implementation		\$20,000	\$20,000		\$130,000	\$150,000
6.1 As-Built Engineering Documentation						
6.2 Post Construction Mitigation Monitoring		\$20,000	\$20,000		\$130,000	150,000
Total	\$2,500,000	\$2,500,000	\$5,000,000	\$1,810,000	\$9,327,000	\$16,137,800

1. \$500,000 used as 10% local match for DWR Grant.

PLANNED MAINTENANCE ACTIVITIES

COUNTY OF MONTEREY
CARMEL RIVER FLOODPLAIN RESTORATION AND
ENVIRONMENTAL ENHANCEMENT PROJECT

Facilities to be Maintained

Causeway – A roadway structure will be constructed on State Highway 1 that will be elevated over the Carmel Lagoon to provide for water to flow under. The structure will be approximately 520 feet in length and will consist of two 12 foot wide travel lanes and 8 foot wide shoulders.

Levee Removal/Enhancement Area – The Enhancement Area, after the levee is removed, will consist of areas planted with native plants and maintained with irrigation for the first three years as needed. The Enhancement Area will also be designed for self-recruitment of native plants and shrubs with inundation by annual flood flows. The objective of the grading and planting will be to create a natural floodplain environment that does not require ongoing management of either vegetation or sedimentation.

Maintenance Goals

Maintenance activities will be based on the preservation of land, protection of wildlife habitat and maintaining transitory storage capacity for reducing flood risk, consistent with the purposes of the Flood Corridor Program.

Maintenance Framework

The Causeway Project is to be located on State Route 1, will be constructed by the County of Monterey, but will be a Caltrans facility after construction. As such, it will be owned and maintained by Caltrans as part of the state highway system. The County of Monterey and Caltrans will enter into a Cooperative Agreement prior to construction that will provide for maintenance.

The Levee Removal/Enhancement Area Project will be constructed/installed by the County of Monterey. The agricultural preserve will be owned and maintained by the Big Sur Land Trust after construction while the floodplain area will be dedicated to the County of Monterey.

Maintenance of Restoration Area

Maintenance activities will be performed in accordance with the following descriptions:

The Enhancement Area will be documented as to type, location and number of native plants and shrubs installed in each planting area via flagging system and planting plan. Primary maintenance will be to conduct weeding and/or mowing for Years 1-3 along with maintaining irrigation to each planting area and plant. The planting area will be checked as needed for irrigation, plant condition, target planting density, and considerations for target roughness values (i.e., Manning's n) for floodwater conveyance, if applicable. Plant replacement or thinning will be

determined based on likelihood of failure and condition of plants, native and invasive nonnative plant recruitment and, if applicable (i.e., if the floodplain hydrologic and hydraulic modeling indicate a need for continued maintenance of the channel to keep roughness sufficiently low), maintenance of floodwater conveyance capacity. Replacement plants will be noted in planting plan as needed. The ongoing collection of litter on the site will be accomplished under the same programs for all County owned and maintained property.

Maintaining Agency

Causeway - Caltrans
Enhancement Area – Big Sur Land Trust

Maintenance Funding

Causeway – State Highway Funding
Enhancement Area – Stewardship funds from Big Sur Land Trust

Maintenance Reporting

The County of Monterey will submit an Annual Report of Maintenance Activities for the Causeway Project and the Levee Removal/Enhancement Area Project to the Department of Water Resources for a period of 5 years following the completion the project. The cooperative agreements with Caltrans and the Big Sur Land trust will require that those entities submit reporting information to the County of Monterey as required to complete the Annual Reports. The Annual Reports will include photos and will describe the maintenance inspections and activities performed during the year and any outstanding maintenance items.

Long Term Maintenance Plan

Causeway – Caltrans will be responsible for the long term maintenance of the Causeway as part of their maintenance responsibilities for the State highway system.

Levee Removal/Enhancement Area - The Big Sur Land Trust will incorporate the maintenance of the Restoration Area into its annual stewardship program for all properties in ownership by the Big Sur Land Trust. Annual activities for land stewardship include non-native plant species management, irrigation management if appropriate, plant condition assessment and replacement, and volunteer stewardship crews. BSLT Land Stewardship staff will oversee the long term maintenance of the Restoration Area.

EXHIBIT C – MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY

*Before the Board of Supervisors in and for the
County of Monterey, State of California*

Resolution No. 91-384 ---)
Establishing the "Monterey)
County Drug-Free Workplace)
Policy")

WHEREAS, the County of Monterey is desirous of providing and maintaining a safe workplace for all its employees; and

WHEREAS, the County of Monterey desires to protect the health, safety and well-being of employees and of the public,

BE IT RESOLVED THAT, the County does hereby establish the following policy for all its employees and volunteers, which shall be known as the "Monterey County Drug-Free Workplace Policy."

POLICY

1. The unlawful manufacture, sale or distribution, dispensing, possession, use or being under the influence of a controlled substance is prohibited while on County property, at a County location, or while on duty as a County employee or volunteer.
2. In the case of any County employee or volunteer found to have violated any of the prohibitions contained in Section 1, appropriate disciplinary action consistent with any applicable collective bargaining agreement covering that employee and/or consistent with the current Monterey County Personnel Resolution, as amended, will be taken.
3. In addition to compliance with Section 1 of this policy, any County employee or volunteer engaged in the performance of duties or services pursuant to a federal grant or contract must as a condition of employment, notify the appointing authority (or his/her designee) of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction. If the violation occurred at a work site where work is/was being done in connection with a specific federal grant or contract, the appointing authority shall inform the grant administrator and the granting agency within ten (10) days of such notification.
4. If any appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace through some means other than Section 3 of this policy, and if the violation occurred at a work site where work is/was being done with a specific federal grant or contract, the appointing authority (or his/her designee) shall inform the granting agency within ten (10) days.
5. If the appointing authority (or his/her designee) becomes aware of any criminal drug statute conviction for a violation occurring in the workplace, it will take appropriate disciplinary

EXHIBIT C – MONTEREY COUNTY DRUG-FREE WORKPLACE POLICY

action against such employee, up to and including termination, as provided for in any applicable collective bargaining agreement covering the employee and/or the Monterey County Personnel Resolution, as amended and/or will require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement or other appropriate agency.

6. In order to assure employee drug-free awareness and policy, the County shall provide the following program for all County employees and volunteers: distribution to each County employee and volunteer of (1) a brochure on the dangers of drug abuse; (2) distribution to all County employees and volunteers of a copy of this policy, and (3) dissemination of information regarding the County Employee Assistance program, in order to provide counseling and/or referral for extended counseling and/or treatment of drug-related problems. In addition, copies of applicable Monterey County collective bargaining agreements and of the current Monterey County Personnel Resolution, as amended, shall be available at each department work site for County employee and volunteer review.
7. The County will make good faith efforts to continue to maintain a drug-free workplace as described above.

PASSED AND ADOPTED on this 23rd day of July, 1991, upon motion of Supervisor Del Piero, seconded by Supervisor Strasser Kauffman, by the following vote, to-wit:

AYES: Supervisors Del Piero, Shipnuck, Perkins, Karas & Strasser Kauffman.

NOES: None.

ABSENT: None.

I, ERNEST K. MORISHITA, 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 at page _____ of Minute Book 65, on July 23, 1991
Date: July 23, 1991

ERNEST K. MORISHITA, Clerk of the Board
of Supervisors, County of Monterey,
State of California.

By



Deputy

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

I. Additional Insured by Contract, Agreement or Permit

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

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

- (1) Your acts or omissions; or
- (2) The acts or omissions of those acting on your behalf, but only with respect to:
- (3) "Your work" for the additional insured(s) at the location designated in the contract, agreement or permit; or
- (4) Premises you own, rent, lease, control or occupy.

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

b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage" or

"personal and advertising injury";

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

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

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

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

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

M. Other Insurance

1. Additional Insureds

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

primary and non-contributory, the following applies:

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

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

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

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

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

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

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

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

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

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

c. Method Of Sharing

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

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

III. Aggregate Limit of Insurance (Per Project)

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

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

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

a. "Your project" means:

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

IV. Blanket Waiver of Subrogation

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**GENERAL LIABILITY SUPPLEMENTARY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM**I. Additional Insured by Contract, Agreement or Permit**

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

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

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

but only with respect to:

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

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

- b. This provision does not apply:

- (1) Unless the written contract or written agreement has been executed or permit has been issued prior to the "bodily injury", "property damage" or

"personal and advertising injury";

- (2) To any person or organization included as an insured by an endorsement issued by us and made part of this Policy;

- (3) To any lessor of equipment:

(a) After the equipment lease expires; or

(b) If the "bodily injury", "property damage" or "personal and advertising injury" arises out of the sole negligence of the lessor;

- (4) To any:

(a) Owners or other interests from whom land has been leased which takes place after the lease for that land expires; or

(b) Managers or lessors of premises if:

(i) The occurrence takes place after you cease to be a tenant in that premises; or

(ii) The "bodily injury", "property damage" or "personal and advertising injury" arises out of structural alterations, new construction or demolition operations performed by or on behalf of the manager or lessor; or

- (5) To "bodily injury", "property damage" or "personal and advertising injury" arising out of

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

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

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

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

M. Other Insurance

1. Additional Insureds

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

primary and non-contributory, the following applies:

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

a. Primary Insurance

This insurance is primary to other insurance that is available to the Additional Insured which covers the Additional Insured as a Named Insured. We will not seek contribution from any other insurance available to the Additional Insured except:

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

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

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:

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

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

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

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

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

c. Method Of Sharing

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

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

III. Aggregate Limit of Insurance (Per Project)

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

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

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

a. "Your project" means:

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

IV. Blanket Waiver of Subrogation

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

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