

Attachment D

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**ATTACHMENT I
AMENDMENT NO. 6
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
WHITSON AND ASSOCIATES, INC., DBA WHITSON ENGINEERS**

THIS AMENDMENT NO. 6 to the Professional Services Agreement No. 13085 between the County of Monterey, a political subdivision of the State of California (“County”) and Whitson and Associates, Inc., dba Whitson Engineers (“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 No. A-13085 with the County on April 14, 2016 (“Agreement”) to provide a Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (“Project”) for a term beginning April 13, 2016 through December 31, 2017 for an amount not to exceed \$1,113,987.00;

WHEREAS, Agreement was amended by the Parties on January 3, 2018 (“Amendment No. 1”) to extend the term for approximately six (6) additional months through June 18, 2018 with no increase in the not to exceed amount;

WHEREAS, Agreement was amended by the Parties on March 2, 2018 (“Amendment No. 2,” including Exhibit A-1 – Scope of Services/Payment Provisions and Exhibit E – State Coastal Conservancy Agreement No. 17-024) to extend the term for approximately eighteen (18) additional months through December 31, 2019, and to increase the amount by \$56,000.00 which resulted in a total not to exceed amount of \$1,169,987.00;

WHEREAS, Agreement was amended by the Parties on December 11, 2019 (“Amendment No. 3”) to update the Indemnification for Design Professional Services Claims provision and to extend the term for three (3) additional years through December 31, 2022, with no increase in the not to exceed amount;

WHEREAS, Agreement was amended by the Parties on May 26, 2020 (“Amendment No. 4,” including Exhibit A-2 – Scope of Services/Payment Provisions) to update the Fee Schedule effective July 1, 2020, to reallocate unused funding in the amount of \$493,090.82 and to increase the amount by \$484,909.18 which resulted in a total not to exceed amount of \$1,654,896.18;

WHEREAS, Agreement was amended by the Parties on December 1, 2020 (“Amendment No. 5,” including Exhibit A-3 – Scope of Services/Payment Provisions) to expand the original scope of the Agreement to include Task 7, Site-Specific ARS Curves and to increase the amount by \$29,000.00 which resulted in a total not to exceed amount of \$1,683,896.18;

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Not to Exceed: \$1,892,089.17

WHEREAS, additional funds are necessary due to the decision to split the floodplain work into two phases in order to take advantage of expiring grant funds and increased environmental permitting work;

WHEREAS, the Parties wish to further amend the Agreement to expand the Scope of Services, and to increase the amount by \$208,193.00 for a new total not to exceed amount of \$1,892,089.17 to allow CONTRACTOR to continue to provide tasks identified in the Agreement as previously amended and as amended by this Amendment No. 6;

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

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

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

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

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibits A, A-1, A-2, A-3, and A-4** 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 \$1,892,089.17

3. Amend first sentence of Paragraph 3, TERM OF AGREEMENT, to read as follows:

The term of this Agreement is from April 13, 2016 to December 31, 2023, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, "Additional Provisions/Exhibits," by adding "Exhibit A-4, Scope of Services/Payment Provisions" to the Agreement.

5. Amend Paragraph 14, "Notices," to read as follows:

FOR COUNTY:

Shandy Carroll, Management Analyst III
County of Monterey, Housing and Community Development
1441 Schilling Place, South 2nd Floor
Salinas, CA 93901-4527
(831) 784-5643
Email: 194-HCD-Contracts@co.monterey.ca.us

6. In all places within the Agreement, any reference to the Resource Management Agency (RMA) is hereby replaced with Housing and Community Development (HCD).

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7. In all places within the Agreement, any reference to the County's email address of RMA-Finance-AP-GP@co.monterey.ca.us for invoicing is hereby replaced with 194-HCD-Finance@co.monterey.ca.us.
8. All invoices shall reference the project name and an original hardcopy shall be sent to the following address or by email to 194-HCD-Finance@co.monterey.ca.us:

County of Monterey
Housing and Community Development – Finance
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to the HCD Finance Division at (831) 755-4800 or via email to: 194-HCD-Finance@co.monterey.ca.us.

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

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

COUNTY OF MONTEREY

PROJECT APPLICANT*

By: _____
Contracts/Purchasing Manager

Date: _____

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By: _____
C21D52A9D630416511 Kristi A. Markey
Deputy County Counsel

Date: 1/25/2022

Approved as to Fiscal Provisions

By: _____
D3834BFEC1D8416511 Gary Giboney
Chief Deputy Auditor-Controller

Date: 1/25/2022

By: _____
DocuSigned by:
Richard Weber
(Signature of Chair, President or Vice President)

Its: Richard Weber, President
(Print Name and Title)

Date: 1/25/2022

By: _____
DocuSigned by:
Kim Woltman
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)

Its: Kim Woltman, CFO
(Print Name and Title)

Date: 1/25/2022

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

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EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
Whitson and Associates, Inc. dba Whitson Engineers, hereinafter referred to as “CONTRACTOR”

A. SCOPE OF SERVICES

- A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work to include additional services for the completion of the Final Design of the Carmel River Floodplain Restoration and Environmental Enhancement (CRFREE) Project (hereinafter, “Project”), as set forth below:

Develop planting and irrigation plans for the highway portion of the Project and develop two separate bid sets (“Phase 1” and “Phase 2”) for the Project, to expedite completion of the Phase 1 bid and permitting package with the intent that Phase 1 construction start in late 2022.

Task 2.a. Additional FEMA CLOMR Coordination

This Task addresses additional coordination with FEMA due to staffing turnover at FEMA.

Deliverables:

- *Respond to additional comments from FEMA*

CONTRACTOR has not yet completed this task and requests an additional \$2,838.00 for completion of Task 2.a.

Task 4.1.d. Highway Planting and Irrigation Plans

This task addresses the requirement from Caltrans to prepare planting and irrigation plans for tree planting within the right-of-way.

Deliverables:

- *Prepare a concept plan for plantings (pole cuttings and/or container plants) and irrigation within the highway right-of-way and coordinate the scope of the proposed work with Caltrans.*
- *Prepare 90% and Final construction documents for the proposed planting and irrigation within the highway right-of-way.*

CONTRACTOR has not yet completed this task and requests an additional \$37,418.00 for completion of Task 4.1.d.

This task addresses additional coordination needed to obtain right-of-way cost estimates, appraisals, review, and acquisition/negotiation for services for Phase 1 construction.

Deliverables:

- *For Phase 1 construction, only temporary construction easements are anticipated to be required from Big Sur Land Trust, Monterey Peninsula Regional Parks District, and Eastwood Family, and no permanent easements or acquisition is anticipated.*

CONTRACTOR has not yet completed this task and requests an additional \$13,800.00 for completion of Task 5.a.

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS**Task 8. Phased Construction Documents**

This task addresses the request by Monterey County to split the project into two separate construction and bid packaged (“Phase 1” and “Phase 2”). Phase 1 construction is proposed to begin in late 2022 and Phase 2 in early 2024. Current Contract Scope will be used for the Phase 2 review letter.

Deliverables

- *Coordinate with the Project Team on the scope of Phase 1 construction. Update and modify the overall 65% design as needed due to the proposed phasing and develop separate Phase 1 and Phase 2 bid packages (Plans, Specifications and Estimates).*
- *Review the Phase 1 Plans and Specifications and prepare a Geotechnical Review Letter for Phase 1.*

This is a new task, and CONTRACTOR requests \$154,137.00 for completion of Task 8.

Any newly identified tasks not included herein shall not be conducted by CONTRACTOR until presented to County in writing and with County approval, amended into this Agreement.

B. PAYMENT PROVISIONS**B.1 COMPENSATION/ PAYMENT**

County shall pay an increased amount of **\$208,193.00** for a total not to exceed amount of **\$1,892,089.17** for the performance of all things necessary for or incidental to the performance of work as set forth in this Exhibit A-4. CONTRACTOR's compensation for services rendered shall be based on time and materials basis in accordance with the Agreement's Fee Schedule (in Exhibit A-2 of this Agreement) and the Proposed Budget below.

Proposed Budget

	Whitson Engineers	Balance Hydrologics	Cornerstone Structural Engineering Group	H.T. Harvey	Kleinfelder	Avila Consulting Engineers	ARWS	Bierman Hydro- geologic	Aurum Consulting Engineers	10% Admin. Fee	Expenses	Total
Task 2.a. Additional FEMA CLOMR Coordination		\$ 2,580								\$ 258	\$ -	\$ 2,838
Task 4.d. Highway Planting and Irrigation Plans	\$ 3,900			\$ 30,471						\$ 3,047	\$ -	\$ 37,418
Task 5.a. TCE's for Phase 1 Construction	\$ 7,800						\$ 5,000			\$ 500	\$ 500	\$ 13,800
Task 8. Phased Construction Documents	\$ 29,700	\$ 46,530		\$ 63,140	\$ 3,000					\$ 11,267	\$ 500	\$ 154,137
Total	\$ 41,400	\$ 49,110	\$ -	\$ 93,611	\$ 3,000	\$ -	\$ 5,000	\$ -	\$ -	\$ 15,072	\$ 1,000	\$ 208,193

CONTRACTOR agrees that pursuant to Labor Code Section 1771, not less than general prevailing rate of per diem wages shall be paid to all workers employed on any public work projects in excess of one thousand dollars (\$1,000.00).

County and CONTRACTOR agree that CONTRACTOR shall be reimbursed for travel expenses during this Agreement. CONTRACTOR shall receive compensation for travel expenses as per the “County Travel and Business Expense Reimbursement Policy”. A copy

EXHIBIT A-4 - SCOPE OF SERVICES/PAYMENT PROVISIONS

of the policy is available online at:
<https://www.co.monterey.ca.us/home/showdocument?id=69364>.

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

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

B.2 CONTRACTOR'S BILLING PROCEDURES

Payment shall be based upon satisfactory acceptance of each deliverable.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6, "Payment Conditions", of the Agreement. All invoices shall reference the Multi-Year Agreement (MYA) number **MYA 3000*2218**, Project Name and associated Delivery Order number, and an original hardcopy shall be sent to the following address or via email to 194-HCD-Finance@co.monterey.ca.us:

County of Monterey
Housing and Community Development Department - Finance
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

Any questions pertaining to invoices under this Agreement should be directed to the Housing and Community Development Department - Finance at (831) 755-4800 or via email to: 194-HCD-Finance@co.monterey.ca.us.

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

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

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

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

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