

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
HARRIS & ASSOCIATES, INC.**

THIS AMENDMENT NO. 2 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Harris & 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, due to the exigent need to complete repair work on Palo Colorado Road at the Rocky Creek Crossing caused by the January and February 2017 Winter Storm Events and to avert any further catastrophic damage that may ensue during the 2017/2018 Winter Storm Season on the roadway and at the direction of Federal Emergency Management Agency (hereinafter, "FEMA") personnel, CONTRACTOR was selected using a three (3) bid process to provide professional engineering services (hereinafter, "services") for Phase 2 of the Palo Colorado Road Emergency Repair at the Rocky Creek Crossing (hereinafter, "Project"); and

WHEREAS, CONTRACTOR entered into a Professional Services Agreement with County on July 26, 2017 (hereinafter, "Agreement") to provide services for the Project through June 13, 2020 for an amount not to exceed \$418,428.00; and

WHEREAS, Agreement was amended by the Parties on December 14, 2017 (hereinafter, "Amendment No. 1", including Exhibit D – Federal Emergency Management Agency (FEMA) Federal Provisions) to include Exhibit D to comply with FEMA requirements with no extension to the term and with no increase in the not to exceed amount; and

WHEREAS, Task 2.1, Wetland Delineation and Preliminary Jurisdictional Determination, Task 2.3, Central Coast Regional Water Quality Control Board (RWQCB) Water Quality Certification (WQC) and/or Waste Discharge Requirements (WDR) (Section 401), Task 2.9, Coastal Development Permit (CDP) Support, and California Environmental Quality Act (CEQA) Documentation of Task 2.10, CEQA/National Environmental Policy Act (NEPA) Documentation, of the original scope of the Agreement have been completed; and

WHEREAS, due to delays caused by the exhaustive and extensive coordination during the environmental permitting effort of the Project, the Parties reallocated funding for Task 8, Bid Period Services and Design Support During Construction, in the amount of \$52,376 from the original scope of the Agreement, to Task 2, Environmental Documentation and Permits; and

WHEREAS, due to the complexity of regulatory permitting, additional coordination and support during construction is required from CONTRACTOR; and

WHEREAS, additional funding is necessary to allow CONTRACTOR to provide additional Project Management, complete and implement the Environmental Documentation and Permits, and provide for Bid Period Services and Design Support During Construction to complete services for the Project; and

WHEREAS, the Parties wish to further amend the Agreement to reallocate funding in the amount of \$52,376 from Task 8 to Task 2 and to increase the amount by \$157,058 for a total amount not to exceed \$575,486 to allow CONTRACTOR to continue to provide tasks identified in the Agreement and as amended by this Amendment No. 2.

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

1. 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 \$575,486.

2. Amend Paragraph 4, "Additional Provisions/Exhibits", to add "Exhibit A-1, Scope of Services/Payment Provisions".
3. Amend Section 8.02, "Indemnification for Design Professional Services Claims", under Paragraph 8, "Indemnification", to read as follows:

CONTRACTOR shall indemnify, defend and hold harmless COUNTY, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of COUNTY, or defect in a design furnished by COUNTY, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one or more defendants to any action involving such claim or claims against COUNTY is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

4. 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 Multi-Year Agreement (MYA) number MYA 3000*3362, Project Name and associated Delivery Order number and an original hardcopy shall be sent to the following:

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Amendment No. 2 to Professional Services Agreement

Harris & Associates, Inc.

Palo Colorado Road Emergency Repair at Rocky Creek Crossing (RFQ #1601)

RMA – Public Works, Parks and Facilities

Term: June 13, 2017 – June 13, 2020

Not to Exceed: \$575,486.00

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

Any questions pertaining to invoices under this AGREEMENT shall be directed to the RMA – Finance Division at (831) 755-4800.

5. All terms and conditions of the Agreement remain unchanged and in full force.
6. This Amendment No. 2 and the previous 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. 2 are incorporated into the Agreement and this Amendment No. 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

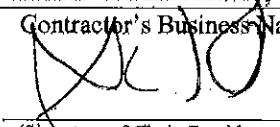
COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Contracts/Purchasing Officer

Harris & Associates, Inc.
Contractor's Business Name

Date: _____


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

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

Its: Steven Winchester, Sr. Vice Pres.
(Print Name and Title)

Date: 5/22/18

By: _____
Mary Grace Perry
Deputy County Counsel

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

Date: _____

Its: Steven Winchester, CFO
(Print Name and Title)

Date: 5/22/18

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

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

By: _____

Name: _____

Title: _____

Date: _____

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

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Contracts/Purchasing Officer

Harris & Associates, Inc.
Contractor's Business Name

Date: _____

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

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

Its: Steven Winchester, Sr. Vice Pres.
(Print Name and Title)

By: _____
Mary Grace Perry
Deputy County Counsel

Date: 5/22/18

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

Date: 5/24/2018

Its: Steven Winchester, CFO
(Print Name and Title)

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: 5/22/18

Date: 5/25/18

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

By: _____

Name: _____

Title: _____

Date: _____

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

EXHIBIT A-1 – SCOPE OF SERVICES/PAYMENT PROVISIONS

**To Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
Harris & Associates, Inc., hereinafter referred to as “CONTRACTOR”
for the
Palo Colorado Road Emergency Repair at Rocky Creek Crossing,
hereinafter referred to as “Project”**

BACKGROUND:

CONTRACTOR’s team has been working hard to finalize the Project for the County and the Community of Palo Colorado. The environmental permitting effort for this Project has been exhaustive and required extensive coordination from the CONTRACTOR’s team. This is a result of the following factors:

- Federal Emergency Management Agency (FEMA) was not able to provide timely resources to approve the Project Worksheet and initiate environmental consultation, which in turn allows the United States Army Corps of Engineers (USACE) to begin the 404 permitting process.
- While coordinating with USACE, the USACE staff took exception to the Wetlands Delineation prepared by CONTRACTOR’s team. This required additional time to address and conference calls to discuss.
- The Central Coast Regional Water Quality Control Board (RWQCB) required additional tree mitigation outside their jurisdiction which is not considered the norm.
- The California Department of Fish and Wildlife (CDFW) did not accept the tree mitigation plan as presented and required mitigation elsewhere. This came as a surprise since the Central Coast RWQCB accepted the plan.
- The delays prevented tree removal before the bird nesting season; therefore, preconstruction nesting bird surveys are required.
- CONTRACTOR has since received the draft permit from CDFW which requires various surveys and monitoring efforts not included in CONTRACTOR’s original scope of services.

Because of these delays and additional coordination, CONTRACTOR has moved previously allocated budget amounts from other tasks to cover CONTRACTOR’s efforts; this approach was presented to the County and approved to keep the Project moving forward. As of the preparation of this Amendment No. 2, CONTRACTOR has approximately \$15,000 remaining in CONTRACTOR’s original budget.

Amendment No. 2 provides for an additional budget for Phase 2 to provide Project Management services, complete and implement the Environmental Documents and Permits, and increase the budget for Bid Period Services and Design Support During Construction. CONTRACTOR has accounted for the remaining budget in the original Agreement.

The following includes the remaining tasks to be provided to complete the Project.

EXHIBIT A-1 – SCOPE OF SERVICES/PAYMENT PROVISIONS

SCOPE OF SERVICES:

TASK 1 – PROJECT MANAGEMENT

TASK 1.1 – PROJECT MANAGEMENT

Project Management responsibilities shall involve preparation and maintenance of the Critical Path Method (CPM) schedule, resource management, and coordination meetings with the Project Development Team (PDT).

TASK 2 – ENVIRONMENTAL DOCUMENTATION AND PERMITS

CONTRACTOR is supplementing CONTRACTOR's in-house environmental team with key staff from ICF Jones & Stokes, Inc. (ICF). The following tasks are presented as shown in the original Agreement and are remaining, unless otherwise noted.

TASK 2.1 – WETLAND DELINEATION AND PRELIMINARY JURISDICTIONAL DETERMINATION

Complete

TASK 2.2 – USACE NATIONWIDE PERMIT (SECTION 404)

CONTRACTOR has been coordinating with USACE since May 2017; however, they cannot move forward with the permitting process until FEMA (Lead Federal Agency) initiate's consultation on Section 106 of the National Historic Preservation Act (NHPA) and Section 7 of the Federal Endangered Species Act (ESA). This has caused inefficiencies due to the prolonged period of coordination. Therefore, CONTRACTOR is requesting additional budget to complete this effort.

It should be noted that the CONTRACTOR's Team has made some progress with FEMA, and CONTRACTOR expects USACE to begin their process in March 2018.

TASK 2.3 – CENTRAL COAST RWQCB WATER QUALITY CERTIFICATION AND/OR WASTE DISCHARGE REQUIREMENTS (WDR) (SECTION 401)

Complete

TASK 2.4 – CDFW LAKE OR STREAMBED ALTERATION AGREEMENT (SECTION 1602)

CDFW has issued a draft of their 1602 permit application. CONTRACTOR is requesting additional budget to address their requirement for riparian tree replacement, which requires another offsite mitigation. Also, the draft permit requires the following surveys and monitoring for which CONTRACTOR has included in this Amendment No. 2:

California Red-Legged Frog. Construction activities will be monitored by a qualified biological monitor to confirm that no California red-legged frogs are in the work area during ground disturbing activities and prevent frog mortality or injury. Clearance surveys prior to the onset of activities each day will determine if any California red-legged frogs are present within the Project and, if so, individuals are able to leave on their own volition prior to initiation or commencement of work within 500 feet of the observation.

Western Pond Turtle. To avoid impacts on western pond turtles, the County will retain a qualified wildlife biologist to conduct a preconstruction survey for western pond turtles no more than 48 hours before the

EXHIBIT A-1 – SCOPE OF SERVICES/PAYMENT PROVISIONS

start of construction within suitable aquatic habitat and adjacent upland habitat. The wildlife biologist will look for adult pond turtles, in addition to nests containing pond turtle hatchlings and eggs. If an adult western pond turtle is located in the construction area, the biologist will move the turtle to a suitable aquatic site, outside the construction area. If an active pond turtle nest containing either pond turtle hatchlings or eggs is found, the County will consult with CDFW to determine and implement appropriate avoidance measures, which may include a “no-disturbance” buffer around the nest site until the hatchlings have moved to a nearby aquatic site.

Nesting Birds. The Project area may serve as breeding area for migratory birds. To avoid impacts on migratory birds that are protected under the Migratory Bird Treaty Act (MBTA), the County will retain a qualified biologist to conduct pre-construction surveys within two (2) weeks before the initiation of construction activities and at any time between February 1 and August 31. If surveys indicate that migratory bird or raptor nests are found in any areas that would be directly affected by construction activities (e.g., the noise associated with construction would substantially exceed ambient noise levels), then the appropriate no-work buffer will be established in consultation with the United States Fish and Wildlife Service (USFWS) and CDFW to avoid disturbance or destruction of the nest site until after the breeding season or after a wildlife biologist determines that the young have fledged (usually late June to mid-July).

A Fish Removal and Rescue Plan shall be prepared and submitted to CDFW for approval prior to the start of Project activities, and kept on-site during all phases of the Project. The plan shall be prepared and implemented by a qualified fisheries biologist with all the necessary State and Federal permits. Rescued fish shall be moved to the nearest appropriate site outside the work area. A record shall be maintained of all fish rescued and moved. The record shall include at a minimum, the date of capture and relocation, the method of capture, location of relocation in relation to the Project site, and the number and type of fish captured and relocated. The record shall be provided to CDFW within two (2) weeks of completing fish rescue activity. Additional requirements are identified in the draft CDFW permit.

TASK 2.5 – BIOLOGICAL RESOURCES ASSESSMENT (SECTION 7)

As stated previously, USACE has not officially initiated consultation on Biological Resource Assessment and awaiting FEMA’s consultation. CONTRACTOR has met with USACE unofficially and received feedback on CONTRACTOR’s permit documents. Therefore, CONTRACTOR feels this assessment is in good standing, however, nothing is certain. Therefore, CONTRACTOR is requesting additional budget to complete this task.

TASK 2.6 – CULTURAL RESOURCES STUDIES (SECTION 106)

As stated previously, USACE has not officially initiated consultation on the Cultural Resources Studies and is awaiting FEMA’s consultation. CONTRACTOR has met with USACE unofficially and received feedback on CONTRACTOR’s permit documents. Therefore, CONTRACTOR feels this study is in good standing, however, nothing is certain. Therefore, CONTRACTOR requests additional budget to complete this task.

TASK 2.7 – CONCEPTUAL MITIGATION PLAN

The Conceptual Mitigation Plan, including the recently prepared Riparian Revegetation Plan, is currently being revised pursuant to feedback received by CDFW regarding the location of replacement trees for the riparian trees removed. This feedback was unexpected since the Central Coast RWQCB approved the offsite location Glen Deven Ranch, which provides for replacement trees at an upland location, and CDFW did

EXHIBIT A-1 – SCOPE OF SERVICES/PAYMENT PROVISIONS

not express comments or concerns, at least initially. Therefore, CONTRACTOR is requesting additional budget to complete this task.

TASK 2.8 – PERMITTING PROCESS MANAGEMENT AND MEETINGS

This task will be absorbed within the respective tasks already identified. Therefore, additional budget is not requested at this time.

TASK 2.9 – COASTAL DEVELOPMENT PERMIT (CDP) SUPPORT

Complete

TASK 2.10 – CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)/NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) DOCUMENTATION

CEQA.

Complete

NEPA. The NEPA documentation will be prepared by FEMA, as federal lead agency. Based on CONTRACTOR's conversation with Cal OES (Monique Wilber, Senior Environmental Planner), FEMA will serve as the federal lead agency. FEMA does not delegate NEPA authority to the USACE or any other agency, and will coordinate with the USACE for NEPA compliance, which is triggered by a federal action, such as a federal permit or federal funding. Based on CONTRACTOR's conversation with Cal OES, it is anticipated that NEPA documentation will be a Categorical Exclusion or Programmatic Environmental Assessment (EA), using the same documentation and supporting materials prepared to support the Section 404 permit and other permits.

An increase in budget for this effort is not required.

TASK 2.11 – BIRD NESTING SURVEY (NEW)

Due to the delays in tree removal before the bird nesting season, preconstruction nesting bird surveys are required. Therefore, CONTRACTOR has estimated an effort to provide this service during construction.

ASSUMPTIONS

This scope of services includes ongoing coordination with the Big Sur Land Trust to finalize offsite mitigation plans. This scope of services does not include implementation of the onsite mitigation (tree/vegetation planting, management, monitoring and reporting) because it is assumed that it will be implemented by a County-selected contractor. This scope of services also assumes that the construction crews will flag the limits of construction/encroachment and the trees for removal. However, CONTRACTOR can do this work upon request and amendment to this scope of services and cost estimate.

TASK 8 – BID PERIOD SERVICES AND DESIGN SUPPORT DURING CONSTRUCTION

The initial budget for this task has been allocated to Task 2, Environmental Documentation and Permits. Therefore, CONTRACTOR requests additional budget to assist the County with reviewing project submittals from the contractor. The effort associated with this task is difficult to estimate. Therefore, CONTRACTOR has estimated a budget for this task.

EXHIBIT A-1 – SCOPE OF SERVICES/PAYMENT PROVISIONS

COST ESTIMATE

The not to exceed time and materials cost estimate for performing the tasks described above is **\$157,058**, which does not include the remaining budget under the existing Agreement. The following is a summary of the Palo Colorado Agreements to date:

Agreement	Harris JN	Budget	Budget Remaining	Actual Fee (to date)
Palo Colorado Phase 1	150-1003.003	\$299,714.30	\$13,043.76*	\$286,670.54
Palo Colorado Phase 2	170-0288.01	\$418,428.00	\$15,000	\$403,428.00
Total (to date) =		\$718,142.30		\$690,098.54
Palo Colorado Phase 2 – Amendment No. 2	170-0288.01	\$157,058.00	--	

*This budget is not available due to contractual dates in the original Agreement.

**Billing rates have been revised to reflect 2018 rates per Exhibit 10-H of this Agreement.

Please note that it is difficult to estimate the cost for permit and design services for a project that has received various FEMA contacts and resulting delays. Therefore, CONTRACTOR's cost (see the following Fee Estimate) may be subject to change pending permit reviews and actual design services performed for this emergency Project. CONTRACTOR pledges to communicate these changes as soon as they are known.

The CONTRACTOR's team remains committed to this important Project and will keep this Project a priority until the Project is constructed and the County is reimbursed.

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Harris & Associates

County of Monterey
Palo Colorado Road Emergency Repair (MP 3.0-3.5) Project at Rocky Creek Crossing
Amendment No. 2
FEE ESTIMATE

Task/Subtask	Harris & Associates, Inc.											Subconsultants					Subtotals
	QA/QC <i>Gay Yegade</i>	PM <i>Frank Lopez</i>	Roadway Lead <i>Espano</i>	H&H Lead <i>Alex Yacars</i>	Project Engineer <i>TBD</i>	Design Engineer <i>Omair Jalili</i>	ENV Lead <i>Kate Giberson</i>	ENV Biologist <i>Shannon Baiss</i>	Grant Coordinator <i>Ken Leap</i>	Senior CM <i>Dana Van Horn</i>	Project Coordinator <i>Carol Johnson</i>	Survey MBE Allowance	Geo PCE Allowance	Permitting ICF Allowance	Structural TRC Allowance	Arborist	
Task 1 Project Management																	
Task 2 Environmental Documentation and Permits																	
Task 8 Bid Period Services and Design Support During Construction																	
Note: ICF subconsultant for Fish Removal/Rescue Plan implementation. The estimate includes 54 hours for five days (10 hours/day) for field work, 4 hours for NMFS report, and travel expenses.																	

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