

DEPARTMENT: Public Works

BY: Peter Rei/Darleen Peterson
PHONE:

RECOMMENDED ACTION AND JUSTIFICATION:

Resolution authorizing the first amendment to the Professional Services Agreement with Monighan Design for the Lower Courtroom Remodel, Project No. 09-14, extending the termination date to June 30, 2012; authorizing the Interim Public Works Director to execute said amendment.

BACKGROUND AND HISTORY OF BOARD ACTIONS

On March 15, 2011, Public Works entered into an Agreement with Monighan Design in the amount not to exceed \$15,000.

On June 30, 2011, per Resolution No. 11-329, the Board of Supervisors approved Change Order No. 1 in the amount of \$31,000.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

Do not approve. Work will not be completed and outstanding invoices will not be processed for payment.

Financial Impact? () Yes (x) No	Current FY Cost: \$	Annual Recurring Cost: \$
Budgeted In Current FY? () Yes () No () Partially Funded		
Amount in Budget: \$		List Attachments, number pages consecutively
Additional Funding Needed: \$		1. First Amendment
Source:		2. Change Order No. 1
Internal Transfer _____		3. Original Agreement
Unanticipated Revenue _____ 4/5's vote		
Transfer Between Funds _____ 4/5's vote		
Contingency _____ 4/5's vote		
() General () Other		

CLERK'S USE ONLY:

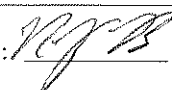
Res. No.: 11-329 Ord. No. _____
 Vote - Ayes: 4 Noes: _____
 Absent: Rei Abstained: _____
 Approved
 () Minute Order Attached () No Action Necessary

COUNTY ADMINISTRATIVE OFFICER:

Requested Action Recommended
 No Opinion
 Comments:

The foregoing instrument is a correct copy of the original on file in this office.

Date: _____
 Attest: MARGIE WILLIAMS, Clerk of the Board
 County of Mariposa, State of California
 By: _____
 Deputy

CAO: 

FIRST AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT

THIS FIRST AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT is made and entered into this 6th day of September, 2011, by and between the County of Mariposa, a political subdivision of the State of California, hereinafter referred to as "**County**" and Monighan Design, hereinafter referred to as "**Consultant**".

WHEREAS, the **County** and **Consultant** have heretofore entered into an Agreement dated March 15, 2011, wherein **Consultant** agreed to provide documentation relative to the Mariposa County Courthouse Remodel project ; and

WHEREAS, **County** and **Consultant** desire to amend said Agreement to extend the term of the Agreement to June 30, 2012.


NOW THEREFORE, the parties hereto in consideration of the mutual covenants herein recited, hereby agree as follows:

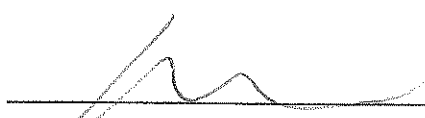
1. Paragraph 1.01 ""TERM OF AGREEMENT"" is hereby amended to extend the term of the Agreement to June 30, 2012.
2. Except as herein amended, the Agreement dated March 15, 2011, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed on the date first above written.

COUNTY OF MARIPOSA:

CONTACTOR: Monighan Design





Peter M. Rei
Interim Director

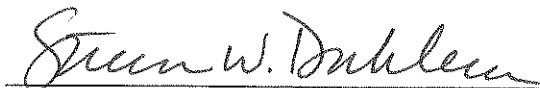
(Signature)

Taxpayer I.D. No.:

ADDRESS: 710 12th Street

Sacramento, CA 95814

APPROVED AS TO FORM



STEVEN W. DAHLEM

County Counsel

MAINE USA COUNTY DEPARTMENT OF PUBLIC WORKS
AUTHORIZATION FOR CHANGE OF WORK

RES. NO. 11-329

PROJECT NAME: Lower Courtroom Remodel

CHANGE ORDER NO.: 1

PROJECT NO.: 09-14

CONTRACT NUMBER: 11-008

CONTRACTOR: Monighan Design

CONTRACTOR is hereby authorized to make the following changes:

Produce complete construction documents, including architectural, electrical and plumbing drawings and specifications. Provide 3 sets of wet stamped drawings for permit submittal. Provide consultation and inspection services during construction and certify project at completion. In accordance with the May 6, 2011 request from Monighan Design, attached as Exhibit A.

All work to be performed as directed by the Department of Public Works

Total Change Order No. 1 Cost: \$36,000 (Not to Exceed)

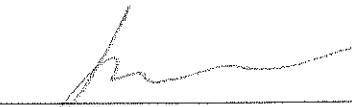
CONTRACTOR has given careful consideration to this Change Order and agrees to perform all services necessary for the work specified in accordance with contract documents. For these services, CONTRACTOR accepts as full compensation 45 working days as extension of time, and an estimated Change Order price of: \$36,000.

CHANGE ORDER NO. 1: \$36,000 (Not to Exceed)

ORIGINAL CONTRACT PRICE: \$15,000

UNUSED PORTION OF ORIGINAL CONTRACT: \$(5000)

NEW CONTRACT PRICE: \$46,000



Monighan Design
CONTRACTOR



Allen Toschi
PUBLIC WORKS DIRECTOR


STEVEN W. DAHLEM, COUNTY COUNSEL

Date Accepted: _____

Date Authorized: _____

Above change of work completed on: _____

Above change of work completed by: _____

REMARKS:



May 6, 2011

Mr. Ken Pritchett Jr, Engineer
Mariposa County Depart. Of public Works
4639 Ben Hur Road
Mariposa, Ca 95338

By Email: kpritchett@mariposacounty.org

RE: Mariposa County Courtroom Renovations –
Professional Service Fees Project Documentation

Ken I am providing a fee based on what I believe the County will need considering what we have found to date at the site and based on our current Schematic Plan. The project consists of two areas. The first being the Courtroom remodeling to include a Jury Room and then second is the reconfiguration of the toilet rooms to provide for accessibility compliance.

We will need structural engineering for the intersection of the north flat roof addition and the east addition to remove the wing wall and add a longer floor support beam, post and footing. We will need additional electrical circuits and lighting for the courtroom and toilet rooms and will need plumbing engineering for the toilet rooms. The scope does not anticipate additional low voltage wiring, alarm systems or heating or air conditioning in this fee.

Proposed Construction Documents Scope:

Upon approval of the Research, Programming, Schematic Design Phase we will prepare documents for the purposes of bidding and project construction. The drawn documents will establish the location and quantity of materials and the Project Manual will define the conditions of construction, types and quality of material, and standards of installation.

- Development of plans and details for permitting and construction.
- Direction and coordination of Architect supplied engineering.
- Project Manual; technical specifications. Bidding and construction conditions by the County.

Proposed Bidding Processing:

We will provide to you for your distribution to the bidders, our documents defining the conditions of the contract and construction. The County will provide all bidding procedures and processes. monighandesign will be available to answer questions during bidding by the County.

Proposed Construction Contract Administration Scope:

General Administration

- Respond to all RFI's via e-mail, with copies to the County and General Contractor.

Evaluations of the Work

- Assist your review of the construction work with site trips during construction; three trips provided for in the fee. Additional trips as requested as an additional service.

Submittals

- Review of Architectural shop drawings or submittals for the products required in the project manual.

Changes in the Work

- Any major changes in approved Construction Documents (design, material or assembly) or requests for alternate material or assembly evaluation during bidding or construction requested by the County shall be a Change of Service.

Proposed Consulting Services:

Structural Engineering

- Design and engineering documents, drawings, calculations and specifications, for the revisions to the corner of the building (footing and framing) for the purposes of removing the wing wall and adding an exterior door.

MEP/Fire Protection Scope:

- Plumbing design and construction documents for the revised toilet rooms.
- Electrical lighting and power design and construction documents for the toilet rooms, Courtroom and Jury Room.
- Project specifications.

Related Work Items Not included:

- Environmental, toxic reviews or studies or approval process.
- Civil Engineering
- Acoustical Engineering
- Project Cost Estimating
- Financial or accounting studies.
- Legal advice or representation.
- Review of alternative engineering or material systems, reports, analysis and or presentations of information.
- Title 24 energy compliance documentation not expected to be required.
- Telephone, low voltage communication or data wiring, or security alarm systems.

PROFESSIONAL SERVICE FEE:

Construction Documents	
Architectural	\$19,000
Structural Engineering	\$2,700
Electrical and Plumbing Engineering	\$8,800
Total Document Fee	\$30,500
Construction Phase Services	\$4,300

REIMBURSABLES:

Reimbursable expenses will include:

- Printing of documents required by the public agencies or those requested by the Owner. Plotting is charged at 80 cents per square foot. Color printing is charged at \$2.00 per copy for up to 11" x 17" and \$10.00 per square foot for all large format copies.
- Shipping and/or delivery charges related to project materials.
- There will be a 10% mark up on printing, models, renderings, or other engineering sourced through the office.
- Express mail and delivery will be charged at cost plus 10%.

Additional Services:

Services not included in the base fee are available at an hourly rate when requested and approved under and "Additional Services" agreement. Hourly rates are subject to adjustment in January of each calendar year. If requested by you they will be billed at the following rates

Hourly Rate Schedule 2011

Principal	\$195
Project Designer	\$155
Project Manager	\$135
Production	\$95
Accounting	\$90
Clerical	\$65

Sincerely,

Bruce Monighan

Bruce Monighan C11667

Approved By:

Date

PROFESSIONAL SERVICE AGREEMENT

THIS AGREEMENT is made this 15th day of March, 2011 between:

COUNTY: Mariposa County Department of Public Works
4639 Ben Hur Road
Mariposa, CA 95338

and

CONTRACTOR: Monighandesign
710 12th Street
Sacramento, CA 95814

ARTICLE 1. TERM OF AGREEMENT

- 1.01 Agreement Term: This Agreement shall become effective on February 22, 2011, and shall terminate on June 30, 2011, unless terminated in accordance with the provisions of Article 7 of this Agreement.

ARTICLE 2. INDEPENDENT CONTRACTOR STATUS

- 2.01 Independent Contractor: It is the express intention of the parties that Contractor is an independent Contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.
- 2.02 Contractor Qualifications: Contractor warrants that it has the necessary competence, experience and qualifications for the services to be performed.
- 2.03 Agreement Management: Contractor shall report to the Public Works Director who will review the activities and performance of the Contractor and administer this Agreement.

ARTICLE 3. SERVICES TO BE PERFORMED BY CONTRACTOR

- 3.01 Scope of Services: Contractor agrees to perform the services as described on Exhibit "A" attached hereto.

No additional services shall be performed by Contractor unless approved in advance in writing by the County stating the dollar value of the services, the method of payment, and any adjustment in Agreement time. All such services are to be coordinated with County and the results of the work shall be monitored by the Public Works Director or his/her designee. However, the means by which the work is accomplished shall be the sole responsibility of the Contractor.

- 3.02 Method of Performing Services: Contractor will determine the method, details, and means of performing the above-described services. County shall not have the right to, and shall not, control the manner or determine the method of accomplishing Contractor's services.
- 3.03 Employment of Assistants: Contractor may, at the Contractor's own expense, employ such assistants as Contractor deems necessary to perform the services required of Contractor by this Agreement. County may not control, direct, or supervise Contractor's responsibility for assistants or employees in the performance of those services. Contractor assumes full performance of those services. Contractor assumes full and sole responsibility for the payment of all compensation and expenses of such assistants and for all state and federal income tax, unemployment insurance, Social Security, disability insurance and other applicable withholdings.

ARTICLE 4. COMPENSATION

- 4.01 Compensation: In consideration for the services to be performed by Contractor, County agrees to pay Contractor in proportion to the services satisfactorily performed in the not to exceed amount of \$15,000 for services as described above. The total sum to be paid to Contractor includes all labor, materials, travel and other expenses to be incurred by Contractor in the performance of the services described herein. Payment shall be made upon submission of a formal claim approved by the appropriate official of the County as follows:
- [] Total sum to be paid upon completion of services,
or
[x] Incremental payments based on the following schedule: #502-1301-771-0601
Summittal of invoice
- 4.02 Invoices: Contractor shall submit detailed invoices for all services being rendered from the Contractor to the County. All invoices shall reference Agreement number.
- 4.03 Date for Payment of Compensation: County will endeavor to make payment within 45 days of invoices being submitted from the Contractor to the County, and approval and acceptance of the work by the County.
- 4.04 Expenses: Contractor shall be responsible for all costs and expenses incident to the performance of services for County, including but not limited to, all costs of equipment provided by Contractor, all fees, fines, licenses, bonds or taxes required of or imposed against Contractor and all other of Contractor's costs of doing business. County shall not be responsible for any expense incurred by Contractor in performing services for County.

ARTICLE 5. OBLIGATIONS OF CONTRACTOR

- 5.01 Tools and Instrumentalities: Contractor will supply all tools and instrumentalities, required to perform the services under this Agreement. Contractor is not required to purchase or rent any tools, equipment or services from County. County shall not provide working space, supplies, materials or other such support to Contractor in the performance of the services and tasks as described herein.

arising directly or indirectly from any act or failure of Contractor or Contractor's assistants, employees or agents, including all claims relating to the injury or death of any person or damage to any property. Contractor agrees to maintain a policy of liability insurance in the minimum amount of One Million Dollars (\$1,000,000) or an amount as otherwise determined appropriate by the County Risk Manager to cover such claims. Contractor shall furnish a certificate of insurance evidencing such insurance and naming the County as an additional insured for the above-cited liability coverage prior to commencing work. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by County of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

- 5.03 General Liability and Automobile Insurance: During the term of this Agreement Contractor shall obtain and keep in full force and effect a commercial, general liability and automobile policy or policies of at least \$1,000,000 combined limit for bodily injury and property damage; provided that the County, its officers, employees, volunteers and agents are to be named additional insureds under the policies, and that the policies shall stipulate that this insurance will operate as primary insurance for work performed by Contractor and its sub-contractors, and that no other insurance effected by County or the named insureds will be called on to cover a loss covered hereunder. The General Liability insurance shall be provided by an ISO Commercial General Liability policy, with edition dates of 1985, 1988, or 1990. The County will be named as an additional insured using ISO form CG 2010 1185 or the same form with an edition date no later than 1990, or in other form satisfactory to County.
- 5.04 Professional Liability Coverage: Contractor shall provide proof of professional liability coverage satisfactory to County prior to commencing work under the Agreement.
- 5.05 Certificate of Insurance: Contractor shall complete and file with the County prior to engaging in any operation or activity set forth in this Agreement, certificates of insurance evidencing coverage as set forth in paragraphs 5.02 and 5.03 above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to County prior to the effective date of such cancellation.
- 5.06 Workers' Compensation: During the term of this Agreement Contractor agrees to provide workers' compensation insurance for Contractor's employees and agents and agrees to hold harmless and indemnify County for any and all claims arising out of any injury, disability, or death of any of Contractor's employees or agents.
- 5.07 Public Employees Retirement System (CalPERS): In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

5.08 State and Federal Taxes: As Contractor is not County's employee; Contractor is responsible for paying all required state and federal taxes. In particular:

- a) County will not withhold FICA (Social Security) from Contractor's payments;
- b) County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c) County will not withhold state or federal income tax from payment to Contractor;
- d) County will not make disability insurance contributions on behalf of Contractor;
- e) County will not obtain workers' compensation insurance on behalf of Contractor.

5.09 Records: It is understood and agreed that all plans, studies, specifications, and data magnetically or otherwise recorded on computer or computer diskettes, records, files, reports, etc., in possession of the Contractor relating to the matters covered by this Agreement shall be the property of the County, and Contractor hereby agrees to deliver the same to the County upon request. It is understood and agreed that the documents and other materials including but not limited to those set forth hereinabove, prepared pursuant to this Agreement are prepared specifically for the County and are not necessarily suitable for any future or other use. Contractor shall maintain such records for a minimum of three (3) years or as otherwise required by law.

5.10 Contractor's Books and Records: Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the County for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Contractor. Any records or documents required to be maintained shall be made available for inspection, audit and/or copying at any time during regular business hours, upon oral or written request of the County.

5.11 Assignability of Agreement: It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

ARTICLE 6. OBLIGATIONS OF COUNTY

6.01 Cooperation of County: County agrees to comply with all reasonable requests of Contractor and provide access as allowed by law to all documents reasonably necessary to the performance of Contractor's duties under this Agreement.

6.02 Assignment: Neither this Agreement nor any duties or obligations under this Agreement may be assigned by County without the prior written consent of Contractor.

ARTICLE 7. TERMINATION OF AGREEMENT

7.01 Termination Occurrence of Stated Events: This Agreement shall terminate automatically on the occurrence of any of the following events:

1. Bankruptcy or insolvency of Contractor;
2. Death of Contractor.

- 7.02 Termination by County for Default of Contractor: Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at County's option, may terminate this Agreement by giving written notification to Contractor.
- 7.03 Termination for Convenience of County: County may terminate this Agreement at any time by mailing a notice in writing to Contractor that the Agreement is terminated. Said Agreement shall then be deemed terminated and no further work shall be performed by Contractor. If the Agreement is so terminated, the Contractor shall be paid for that percentage of the phase of work actually completed, based on a pro rata portion of the compensation for said phase satisfactorily completed at the time the notice of termination is received.
- 7.04 Termination of Funding: The parties acknowledge that the nature of government finance is unpredictable, and that the rights and obligations set forth in this Agreement are necessarily contingent upon the receipt and/or appropriation of the necessary funds. In the event that funding is terminated, in whole or in part, for any reason, at any time, this Agreement and all obligations of County arising from this Agreement shall be immediately discharged. County agrees to inform Contractor no later than thirty (30) calendar days after County determines, in its sole judgment, that funding will be terminated and the final date for which funding will be available.

ARTICLE 8. GENERAL PROVISIONS

- 8.01 Notices: Any notices to be given hereunder by either party to the other may be effected either by personal delivery in writing or by mail, registered or certified, postage prepaid and return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change the address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of two (2) days after mailing.
- 8.02 Entire Agreement of the Parties: This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of services by Contractor for County and contains all the covenants and agreements between the parties with respect to the rendering of such services in any manner whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which is not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged and approved by the County as provided herein or as otherwise required by law.
- 8.03 Partial Invalidity: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
- 8.04 Attorney's Fees: If any action at law or in equity, including an action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

- 8.05 Conformance to Applicable Laws: Contractor shall comply with the standard of care regarding all applicable federal, state and county laws, rules and ordinances. No discrimination shall be made by Contractor in the employment of persons who work under this Agreement because of race, color, national origin, ancestry, disability, sex or religion of such person.
- 8.06 Waiver: In the event that either County or Contractor shall at any time or times waive any breach of this Agreement by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Agreement, whether of the same or any other covenant, condition or obligation.
- 8.07 Governing Law: This Agreement and all matters relating to it shall be governed by the laws of the State of California and County of Mariposa and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Mariposa.


Executed at Mariposa, California, on the date and year first above written.

COUNTY:

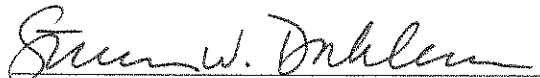


Allen Toschi, Director
Department of Public Works

CONTRACTOR:


(Signature)

APPROVED AS TO FORM:



STEVEN W. DAHLEM
County Counsel

Social Security or Taxpayer Identification
Number 68-0312608

Monighandesign
710 12th Street
Sacramento, CA 95814
(916) 448-1901

Cost Estimate for Mariposa Courthouse Lower Courtroom Remodel

1) Project Analysis \$2,100

Review conceptual plan for conformance with fire and life safety codes and accessibility requirements
Prepare recommendations for compliance with code requirements
Prepare concept plan that complies with code requirements

2) Historic Property Issues \$3,600

Site visit to review and photo document conditions
Review historic preservation implications of project; interior finish disturbance and/or destruction, exterior modifications if necessary for exiting requirements.
Consult with State Office of Historic Preservation for approvals required and process needed

3) Historic Property Approvals - Hourly

Prepare required preservation document submittals for State Office of Historic Preservation, monitor review and advocate approvals

4) Programming - Program requirements \$900, Verify existing services \$3,400

Gather program requirements for electrical and communication needs of the courtroom and jury room
Verify electrical and mechanical services existing and their condition and make recommendations for improvements

Hourly Rate Schedule 2011

Principal	\$195
Project Designer	\$155
Project Manager	\$135
Production	\$95
Accounting	\$90
Clerical	\$65