

**AMENDMENT NO. 6
TO FUNDING AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
VARIOUS PROJECT APPLICANTS
FOR THE MOSS LANDING COMMUNITY PLAN UPDATE
ENVIRONMENTAL IMPACT REPORT**

THIS AMENDMENT NO. 6 to the Funding Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Elkhorn Slough Foundation; Haute Properties, LLC; Monterey Bay Aquarium Research Institute; Moss Landing Commercial Park, LLC dba Moss Landing Business Park; Moss Landing Harbor District; Quin Delta, LLC; San Jose State University Research Foundation; Keith Family Investments, LLC and/or assignee; and Phil DiGirolamo (hereinafter, "PROJECT APPLICANTS") is hereby entered into between the County and the PROJECT APPLICANTS (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, PROJECT APPLICANTS entered into a Funding Agreement with County on February 9, 2011 (hereinafter, "Agreement"); and

WHEREAS, Agreement was amended by the Parties on May 31, 2011 (hereinafter, "Amendment No. 1"), June 4, 2012 (hereinafter, "Amendment No. 2"), May 29, 2013 (hereinafter, "Amendment No. 3"), June 2, 2014 (hereinafter, "Amendment No. 4"), and May 26, 2015 (hereinafter, Amendment No. 5"); and

WHEREAS, an Environmental Impact Report (EIR) is required for the Moss Landing Community Plan Update (hereinafter, "PROJECT"); and

WHEREAS, County engaged EMC Planning Group, Inc. (hereinafter, "CONTRACTOR") to prepare the EIR for the PROJECT; and

WHEREAS, the EIR has not been completed for the PROJECT; and

WHEREAS, County has identified a need to complete a County-funded Corridor Traffic Study in the Moss Landing Area to better understand options for implementation of the Moss Landing Community Plan Update; and

WHEREAS, County has identified a need to revise the impact analysis to be contained in the EIR to account for a revised project description; and

WHEREAS, due to the CONTRACTOR's detailed knowledge and work history with the PROJECT and as a cost saving measure, County will further engage CONTRACTOR to complete the Corridor Traffic Study as well as the revised impact analysis for the Moss Landing Project; and

WHEREAS, data collected by the CONTRACTOR for the completion of the Corridor Traffic Study may, as time allows, be incorporated into the Final EIR for the PROJECT; and

WHEREAS, the Corridor Traffic Study and the revised impact analysis for the Draft EIR will be funded by the County; and

WHEREAS, the Parties wish to further amend the Agreement to increase the amount by \$69,448.00 to allow County funding for costs incurred by CONTRACTOR to complete the Corridor Traffic Study and revise the impact analysis for the Draft EIR for completion of the PROJECT as identified in the Agreement and as amended by this Amendment No. 6.

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

1. Amend Paragraph B of "Recitals", to read as follows:

Due to the magnitude and complexity of THE PROJECT, the County of Monterey, Resource Management Agency (RMA), Director of Planning, hereinafter, "DIRECTOR", in conjunction with the RMA – Public Works, and PROJECT APPLICANTS have agreed that it is necessary and desirable that COUNTY engage EMC Planning Group, Inc., hereinafter, "CONTRACTOR", to prepare an Environmental Impact Report, hereinafter, "EIR", attend public hearings and meetings on THE PROJECT, and perform related work. CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement between COUNTY and CONTRACTOR, attached to this AGREEMENT as Exhibits "1" and "1A", and incorporated herein by reference as if fully set forth. COUNTY shall manage THE PROJECT work performed by CONTRACTOR.

2. Amend Paragraph C of "Recitals", to read as follows:

COUNTY and PROJECT APPLICANTS hereby agree that COUNTY shall engage CONTRACTOR to provide the services set forth in Exhibits "1" and "1A" of this AGREEMENT.

3. Add Paragraph I to "Recitals", as follows:

COUNTY and PROJECT APPLICANTS acknowledge that the County of Monterey, RMA – Planning will fund the CONTRACTOR's Base budget as set forth in Exhibit "1A" of this AGREEMENT.

4. Amend Paragraph 1, "Maximum Budget for THE PROJECT", to read as follows:

1. **Maximum Budget for THE PROJECT.** The maximum amount assessed for THE PROJECT is increased in the amount of \$69,448.00, for a total amount not to exceed \$473,588.00:

CONTRACTOR's Base Budget:	\$254,986.00
COUNTY Deposit (based on time and materials):	\$ 53,140.00
COUNTY Deposit: (based on percentage of CONTRACTOR's Base Budget and Project Contingency):	\$ 51,000.00
Project Contingency:	\$ 45,014.00
CONTRACTOR's Base Budget (based on Amendment No. 6):	\$ 69,448.00

<u>Maximum Budget Under AGREEMENT:</u>	<u>\$473,588.00</u>
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5. Amend the first sentence of Paragraph 3, "CONTRACTOR – CONTRACTOR'S Base Budget", to read as follows:

COUNTY shall engage CONTRACTOR in accordance with the Professional Services Agreement between COUNTY and CONTRACTOR, attached hereto and incorporated by this reference as Exhibits "1" and "1A".

6. All other terms and conditions of the Agreement remain unchanged and in full force.
7. This Amendment No. 6 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
8. The recitals to this Amendment No. 6 are incorporated into the Agreement and this Amendment No. 6.

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

COUNTY OF MONTEREY

By: *McNamee*
Director of Planning

Date: 7/31/15

PROJECT APPLICANTS*

Elkhorn Slough Foundation

By: *Judith Connor*
(Signature)

Its: Judith Connor, Vice President
(Print Name and Title)

Date: June 15, 2015

By: *Robert Hartmann*
(Signature)

Its: Robert Hartmann, Secretary
(Print Name and Title)

Date: 6/15/15

Approved as to Form and Legality
Office of the County Counsel

By: *May Ann Poma*
Deputy County Counsel

Date: 6.30.15

See page 5.145.2 - map 7/8/15

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

*Please correct page 5
managing member
must sign for LLC.*

map 6/30/15

PROJECT APPLICANT*

Haute Properties, LLC

By: _____

(Signature)

Its: _____

Kim Solano, Owner

(Print Name and Title)

Date: _____

(See page 5.2)

map
7/8/15

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

Page 5 of 12

map 7/8/15

Amendment No. 6 to Funding Agreement
Moss Landing Community Plan Update EIR Participants

Moss Landing Community Plan Update EIR
RMA - Planning

Term: May 4, 2010 - May 31, 2017

Not to Exceed: \$334,466.50

Not to Exceed (Overall Amount): 473,588.00

PROJECT APPLICANT*

Haute Properties, LLC

By:

Kim Solano
(Signature)

Its:

Kim Solano, Owner, Managing Member
(Print Name and Title)

Date:

6/10/15

KS
Project Applicant's Initials

7/1/15
Date

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MS
7/8/15

Amendment No. 6 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA - Planning
Term: May 4, 2010 - May 31, 2017
Not to Exceed: \$334,466.50
Not to Exceed (Overall Amount): 473,588.00

PROJECT APPLICANT*

Monterey Bay Aquarium Research Institute

By: 
(Signature)

Its: Chris Scholin, President & CEO
(Print Name and Title)

Date: June 9, 2015

By: 
(Signature)

Its: C. Michael Pinto, CFO
(Print Name and Title)

Date: 6/9/15

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PROJECT APPLICANT*

Haute Properties, LLC

By: _____
(Signature)

Its: _____
Kim Solano, Owner
(Print Name and Title)

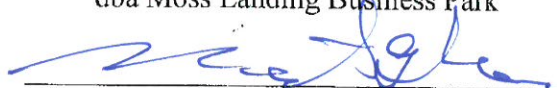
Date: _____

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PROJECT APPLICANT*

Moss Landing Commercial Park, LLC
dba Moss Landing Business Park

By:


(Signature)

Its:

Nader Agha, Managing Partner / Member
(Print Name and Title)

Date:

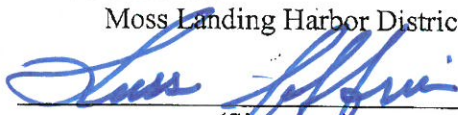
6-26-15

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PROJECT APPLICANT*

Moss Landing Harbor District

By:


(Signature)

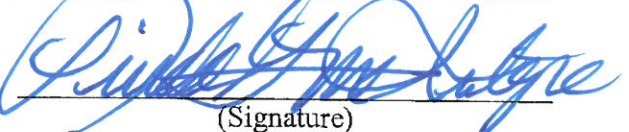
Its:

Russ Jeffries, Board President
(Print Name and Title)

Date:

6-24-15

By:


(Signature)

Its:

Linda G. McIntyre, Board Secretary
(Print Name and Title)

Date:

6-24-15

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PROJECT APPLICANT*

By: Quin Delta, LLC
(Signature)

Its: John Gregg, Manager
(Print Name and Title)

Date: 6/22/15

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PROJECT APPLICANT*

San Jose State University Research Foundation

By:

Pamela C Stacks

(Signature)

Its:

Pamela C. Stacks, Vice President, SJSURF

(Print Name and Title)

Date:

June 11, 2015

By:

Pamela C Stacks

(Signature)

Its:

Pamela C. Stacks, Interim COO
and Secretary of the Board, SJSURF

(Print Name and Title)

Date:

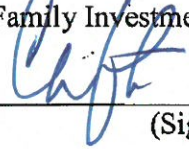
June 11, 2015

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PROJECT APPLICANT*

Keith Family Investments, LLC and/or assignee

By:


(Signature)

Its:

Chris Keith, Managing Partner

(Print Name and Title)

Date:

6/9/15

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PROJECT APPLICANT*

By: Phil DiGirolamo
(Signature)

Its: Phil DiGirolamo, Owner
(Print Name and Title)

Date: June 16, 2015

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

PROJECT APPLICANT*

Keith Family Investments, LLC and/or assignee

By: _____

(Signature)

Its: _____

Chris Keith, Managing Partner

(Print Name and Title)

Date: _____

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EXHIBIT 1A

**AMENDMENT NO. 6 TO THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
EMC PLANNING GROUP, INC.
AND THE COUNTY OF MONTEREY
FOR THE
MOSS LANDING COMMUNITY PLAN UPDATE
ENVIRONMENTAL IMPACT REPORT**

**AMENDMENT NO. 6
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
EMC PLANNING GROUP, INC.**

THIS AMENDMENT NO. 6 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and EMC Planning Group, 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 February 9, 2011 (hereinafter, "Agreement"); and

WHEREAS, Agreement was amended by the Parties on May 31, 2011 (hereinafter, "Amendment No. 1"), June 5, 2012 (hereinafter, "Amendment No. 2"), May 29, 2013 (hereinafter, "Amendment No. 3"), June 2, 2014 (hereinafter, "Amendment No. 4"), and May 26, 2015 (hereinafter, "Amendment No. 5"); and

WHEREAS, the Environmental Impact Report (EIR) has not been completed for the Moss Landing Community Plan Update (hereinafter, "PROJECT"); and

WHEREAS, County has identified a need to complete a County-funded Corridor Traffic Study in the Moss Landing Area to better understand options for implementation of the Moss Landing Community Plan Update; and

WHEREAS, County has identified a need to revise the impact analysis to be contained in the EIR to account for a revised project description; and

WHEREAS, due to the CONTRACTOR's detailed knowledge and work history with the PROJECT and as a cost savings measure, County will further engage CONTRACTOR to complete the Corridor Traffic Study as well as the revised impact analysis for the Moss Landing Project; and

WHEREAS, data collected by the CONTRACTOR for the completion of the Corridor Traffic Study may, as time allows, be incorporated into the Final EIR for the PROJECT; and

WHEREAS, the Corridor Traffic Study and the revised impact analysis for the Draft EIR will be funded by the County; and

WHEREAS, the Parties wish to further amend the Agreement to increase the amount by \$69,448.00 to complete the Corridor Traffic Study and revise the impact analysis for the Draft EIR for completion of the PROJECT as identified in the Agreement 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 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 \$369,448.00.

3. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-1, Scope of Services/Payment Provisions".
4. All other terms and conditions of the Agreement remain unchanged and in full force.
5. This Amendment No. 6 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
6. The recitals to this Amendment No. 6 are incorporated into the Agreement and this Amendment No. 6.

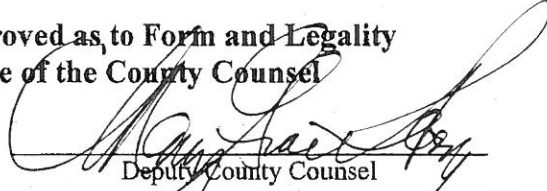
IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 6 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: 
Director of Planning

Date: 7/3/15

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

By: 
Deputy County Counsel

Date: 6-30-15

Approved as to Fiscal Provisions

By: 
~~CHIEF~~ **DEPUTY** Auditor/Controller

Date: 6/16/15

Approved as to Indemnity and Insurance Provisions

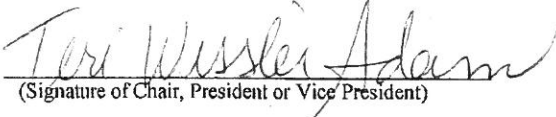
By: _____
Risk Management

Date: _____

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CONTRACTOR*

EMC Planning Group, Inc.
Contractor's Business Name

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

Its: Teri Wissler Adam, Vice President
(Print Name and Title)

Date: June 9, 2015

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

Its: Teri Wissler Adam, Secretary
(Print Name and Title)

Date: June 9, 2015

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

**To Agreement by and between
County of Monterey, Resource Management Agency – Planning,
hereinafter referred to as “County”
and
EMC Planning Group, Inc., hereinafter referred to as “CONTRACTOR”**

A. SCOPE OF SERVICES

CONTRACTOR will provide a Corridor Traffic Study and a revised impact analysis for the Moss Landing Community Plan Update Environmental Impact Report (EIR) to reflect changes in build-out capacity of the Community Plan.

- A.1** CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth below:

Weekend Traffic Counts:

Conduct one (1) day of weekend peak period traffic counts (11:00 a.m. to 3:00 p.m.) to support possible analysis of weekend traffic in Moss Landing. Advise whether an analysis of weekend traffic is justified for the Moss Landing Community Plan Update EIR.

Cost: \$2,500

Weekend Traffic Analysis (Optional Task):

After weekend traffic counts are concluded, a need to analyze weekend traffic for the Moss Landing Community Plan Update EIR may be required. Once a determination of the need for the analysis is made, CONTRACTOR shall prepare the analysis of weekend traffic to be included in the Moss Landing Community Plan Update EIR being prepared to support the adoption of the Moss Landing Community Plan.

****Optional services described above shall not be provided unless authorized in writing by the County's Project Planner prior to optional services being provided.****

Cost: \$4,500

Traffic Report:

Prepare a Corridor Traffic Study for the portion of State Route 1 from Jetty Road to just south of Potrero Road, and update the traffic impact analysis related to the Community Plan build-out, and to separate out Phase III projects from the Existing Plus Monterey Bay Aquarium Research Institute (MBARI) scenario.

Cost: \$50,000

Noise Report:

Review of revised traffic report, re-calculation of traffic noise exposures, and revision of report.

Cost: \$1,000

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Water Supply:

Review the County's revised water use numbers and update the prior work product as a water supply evaluation.

Cost: \$2,760

CalEEMod Air Quality and Greenhouse Gas Emission Modeling:

Update CalEEMod computer modeling. New Community Plan development assumptions will be entered in the CalEEMod air and greenhouse gas emissions modeling program and provide new emission data generated as a .pdf file for County use. The MBARI model run will be revised to remove Phase III components, consistent with the traffic report. This work will be conducted by CONTRACTOR.

Cost: \$2,500

Sub-Consultant Overhead:

A five percent (5%) sub-consultant overhead will be charged to administer contracts, coordinate work, review work products, and for communication with sub-consultants.

Cost: \$2,688

Excess Administrative Costs through May 31, 2017:

Additional administrative costs will be accrued and are expected to be incurred through May 31, 2017 in accordance with the Agreement.

Cost: \$3,500

A.2 CONTRACTOR shall produce the following deliverables as indicated below:

Report Preparation:

For all tasks involving revised reports or data, CONTRACTOR will provide the revised reports and/or data outputs in electronic format (.pdf and/or Microsoft Word) to the County to allow the County to make revision to the proof Draft EIR. All information will be forwarded to the following individual:

Martin Carver, AICP
Management Specialist
County of Monterey, Resource Management Agency – Planning
168 West Alisal Street, 2nd Floor
Salinas, CA 93901
Email: carverm@co.monterey.ca.us
Telephone: (831) 796-6049

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$69,448 for the performance of all things necessary for or incidental to the performance of work as set forth in Exhibit A-1, Scope of Services/Payment Provisions. CONTRACTOR's compensation for services rendered shall be based on the following costs:

Cost	
Task	Task Total
Weekend Traffic Counts	\$ 2,500
Weekend Traffic Analysis (Optional)	\$ 4,500
Traffic Report	\$ 50,000
Noise Report	\$ 1,000
Water Supply	\$ 2,760
CalEEMod Air Quality and Greenhouse Gas Emission Modeling	\$ 2,500
Sub-Consultant Overhead	\$ 2,688
Excess Administrative Costs	\$ 3,500
Grand Total:	\$ 69,448

There shall be no travel reimbursement allowed during this Agreement.

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.

EXHIBIT A-1 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Invoices for work products / deliverables under the Agreement shall be submitted when the work product is complete, shall identify the document or work product being delivered and shall include the following:

1. Invoice Coversheet

EMC Planning Group, Inc.

Moss Landing Community Plan Update Environmental Impact Report

Date: _____

Invoice No. _____

Original Agreement Term: May 4, 2010 to May 31, 2011

Original Agreement Amount: \$ 300,000.00 (\$254,986.00 base budget plus \$45,014.00 project contingency)

Amendment No. 1: Term Extension to May 31, 2012

Amendment No. 2: Term Extension to May 31, 2013

Amendment No. 3: Term Extension to May 31, 2014

Amendment No. 4: Term Extension to May 31, 2015

Amendment No. 5: Term Extension to May 31, 2017

This Invoice:	\$ 2,500.00	Weekend Traffic Counts	_____
	\$ 4,500.00	Weekend Traffic Analysis (Optional)	_____
	\$ 50,000.00	Traffic Report	_____
	\$ 1,000.00	Noise Report	_____
	\$ 2,760.00	Water Supply	_____
	\$ 2,500.00	CalEEMod Air Quality and Greenhouse Gas Emission Modeling	_____
	\$ 2,688.00	Sub-Consultant Overhead	_____
	\$ 3,500.00	Excess Administrative Costs	_____
Total:			\$69,448.00

Remaining Balance \$ _____

Approved as to Work/Payment: _____ Date: _____
Martin Carver, Management Specialist

All Invoices Are To Be Sent To:

Diana Lemos, Account Clerk

County of Monterey Resource Management Agency - Planning

168 West 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.