

Attachment D

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Monterey County Board of Supervisors

Board Order

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1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor John M. Phillips to:

Agreement No.: A – 12978, Amendment No. 1

- a. Approve *First Extension to Memorandum of Agreement Regarding Habitat Management Of Portions Of The Parker Flats Reserve At The Former Fort Ord, California* (First Extension) with UCP East Garrison, LLC to authorize utilization of fund balance of \$20,934 plus accrued interest provided by UCP to continue California Tiger Salamander habitat management on County-owned property on the former Fort Ord and to renew and extend the Memorandum of Agreement as modified retroactive to February 3, 2020 until June 30, 2021 or until the fund balance is expended, whichever is earlier;
- b. Authorize the Chair of the Board of Supervisors to execute the First Extension;
- c. Approve Amendment No. 1 to Agreement No. A-12978 with Denise Duffy & Associates, Inc. to continue to provide consulting services for interim mitigation monitoring for California Tiger Salamander Habitat on County-owned property on the former Fort Ord, to increase the not-to-exceed amount by \$1,700 for a total amount not to exceed \$105,650 and extend the term for a revised term from November 10, 2015 to June 30, 2021; and
- d. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute Amendment No. 1 to Agreement No. A-12978.

PASSED AND ADOPTED on this 28th day of July 2020, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

(Government Code 54953)

I, Valerie Ralph, 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 of Minute Book 82 for the meeting July 28, 2020.

Dated: July 28, 2020
File ID: A 20-303
Agenda Item No.: 66

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California

Joel G. Pablo, Deputy

**FIRST EXTENSION TO MEMORANDUM OF AGREEMENT
REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE PARKER FLATS
RESERVE AT THE FORMER FORT ORD, CALIFORNIA**

This FIRST EXTENSION TO MEMORANDUM OF AGREEMENT REGARDING HABITAT MANAGEMENT OF PORTIONS OF THE PARKER FLATS RESERVE AT THE FORMER FORT ORD, CALIFORNIA (“Extension”) is entered as of this July 28, 2020 by and between THE COUNTY OF MONTEREY, a political subdivision of the State of California (“County”), and UCP East Garrison, LLC, a Delaware limited liability company (“Developer”) (collectively “the Parties”), with reference to the following facts:

A. County, Developer and the Fort Ord Reuse Authority (“FORA”) entered into that certain Memorandum of Agreement Regarding Habitat Management of Portions of the Parker Flats Reserve at the Former Fort Ord, California with an Effective Date of February 2, 2015 (the “Agreement”). Except as otherwise defined herein, all capitalized terms shall have the meaning set forth in the Agreement.

B. The Agreement provided for preservation and management of 134 acres of parcel E.19.a.4 (“the CTS Preservation and Habitat Restoration Area”) for its value as habitat for California Tiger Salamander (CTS), with County to perform habitat management on an interim basis with \$104,155 in funding provided by Developer until the earlier of a period of five years or until a Habitat Conservation Plan for the former Fort Ord were adopted and respective incidental take permits (Fort Ord HCP ITPs) were issued by USFWS and CDFW.

C. FORA dissolved by operation of law on June 30, 2020 and, therefore, has ceased to be a party to the Agreement by operation of law.

D. Section I.C.1.b of the Agreement states, “The term of this Agreement (the ‘Term’) shall commence upon the Effective Date and continue for a period of five (5) years, unless (and then only to the extent) such date is extended pursuant to Section I.C.1.c.”

E. Section I.C.1.c of the Agreement allows the parties to extend the Term if USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the Effective Date.

F. Because a Fort Ord Habitat Conservation Plan was not adopted and the Fort Ord HCP ITPs were not issued prior to the dissolution of FORA, the Parties desire to extend the Term until June 30, 2021 to enable the County to complete the fifth year of monitoring and to continue managing habitat under the terms of the Agreement with the funds remaining under the Agreement while the County plans for managing habitat on County-owned property within the former Fort Ord in accordance with the Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord (dated 1997), as modified by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification (the “Land Swap Agreement”).

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

1. Extension. County and Developer hereby agree to renew the Agreement retroactive to February 3, 2020 on the terms herein and extend the Term of the Agreement to June 30, 2021 or until the funds within the Interim Management Fund are expended, whichever is first.

2. Status of Interim Management Fund. The parties confirm that the Interim Management Fund currently holds approximately \$20,934.00. County shall be permitted to use such remaining funds plus any interest earned thereon to manage the CTS Preservation and Habitat Restoration Area for the remainder of the Term, as extended, in accordance with the Agreement and to pay for County staff time associated with County's oversight of this management. The parties agree that Developer shall have no obligation to provide any additional funds to replenish the Interim Management Fund, unless the parties agree otherwise mutually in writing.

3. No Change to Remainder of Agreement. All other terms and provisions of the Agreement shall remain in full force and effect during the Term of this Agreement as extended except that: a) the Fort Ord Reuse Authority is dissolved and therefore is no longer a party to the Agreement and its obligations under the Agreement are extinguished; and b) the Parties hereto acknowledge that, although the County accepted the Conservation Easement referenced in the Agreement, the easement has not been recorded, and Parties are exploring the viability of a deed restriction rather than conservation easement for preservation of the CTS Preservation and Habitat Restoration Area.

4. Counterparts. This Extension may be executed in counterparts which, when taken together, will constitute one and the same agreement.

5. Entire Agreement; Conflict; Extensions. This Extension constitutes the entire agreement between the Parties with respect to the matters set forth herein. In the event of any conflict between the provisions of this Extension and the provisions of the Agreement, the provisions of this Extension shall control. No other extension or modification to the Agreement will be effective unless contained in a writing signed by both parties.

6. Severability. Should any provision of this Extension be deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions of this Extension shall in no way be affected and shall remain in full force. The Parties also agree that any such provision deemed unenforceable shall be replaced automatically with an enforceable provision as close as possible, in meaning and effect, to that deemed unenforceable.


[signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Extension to be executed as of the day and year first above written.

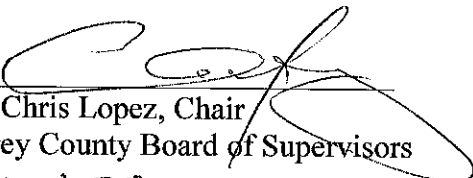
DEVELOPER:

UCP EAST GARRISON, LLC, a Delaware limited liability company

By: UCP, LLC, a Delaware Limited Liability Company, its sole member

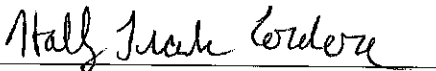
By: 
Name: Nicholas Arenson
Title: Division President

COUNTY OF MONTEREY

By: 
Chris Lopez, Chair
Monterey County Board of Supervisors
JULY 28, 2020

APPROVED AS TO FORM

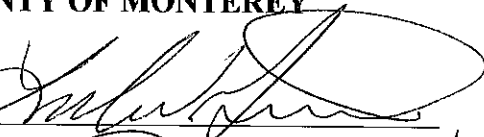
UCP EAST GARRISON, LLC

By: 

Name: Holly Traube Cordova

Title: Regional Legal Counsel

COUNTY OF MONTEREY

By: 

Name: Leslie J. Girard

Title: County Counsel
JULY 28, 2020