

**Amendment No. 2 to  
Funding Agreement with  
Carmel Hospital Development, LLC for the  
Villas de Carmelo  
Environmental Impact Report**

This Amendment No. 2 to FUNDING AGREEMENT, (hereinafter, "Amendment No. 2"), is made and entered, by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "COUNTY"), and Carmel Hospital Development, LLC (hereinafter, "PROJECT APPLICANT").

This Amendment No. 2 further amends the FUNDING AGREEMENT entered into with PROJECT APPLICANT on July 11, 2008 (hereinafter, "AGREEMENT"), and amended by the parties on February 24, 2009 (hereinafter, "Amendment No. 1") as follows:

1. Section 1 of AGREEMENT is amended to include:

1. Deposits to Fund Professional Services Agreement and County Surcharge.

c. PROJECT APPLICANT shall make a third deposit in the amount equal to \$36,995.00 to the base amount of Amendment No. 2 to the Professional Services Agreement between COUNTY and CONTRACTOR for additional services related to the completion of the EIR, and in an amount equal to \$6,289.00 to the County Surcharge (based on seventeen percent (17%) of the base amount of Amendment No. 2). This totals \$43,284.00 and includes:

\$36,995.00     Increase to Base Amount of Professional Services Agreement; and

\$ 6,289.00     Increase to County Surcharge (based on 17% of CONTRACTOR'S budget under Amendment No. 2).

PROJECT APPLICANT shall deposit \$43,284.00 with COUNTY upon approval of Amendment No. 2 by the County of Monterey Board of Supervisors.

PROJECT APPLICANT'S deposit of \$43,284.00 with COUNTY shall be a condition precedent to COUNTY'S obligation under this AGREEMENT.

2. Section 2 of AGREEMENT is amended to read as follows:

2. Fifteen Percent (15%) Project Contingency.

An additional fifteen percent to CONTRACTOR'S budget shall be included in the Professional Services Agreement between COUNTY and CONTRACTOR to cover contingencies. This 15% Project Contingency is increased by \$5,549.00, for a total amount not to exceed \$47,749.00, and is subject to the procedures in *Section 3, Transfer from Project Contingency Account*, specified in Exhibits "A" and "A-1", *Scope of Services/Payment Provisions, for the Villas de Carmelo EIR*, of the Professional Services Agreement between COUNTY and CONTRACTOR, included in Exhibits "1" and "1A", and incorporated herein by reference.

3. Section 3 of AGREEMENT is amended to read as follows:

3. Maximum Budget Under AGREEMENT. The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is increased by \$48,833.00 for a total amount not to exceed \$473,335.00.

CONTRACTOR'S Budget:	\$318,330.00
COUNTY Surcharge (deposited based on Time and Materials):	\$ 53,140.00
COUNTY Surcharge (deposited based on percentage of CONTRACTOR'S Budget:	\$ 54,116.00
Project Contingency:	\$ 47,749.00
<u>Maximum Charge Under AGREEMENT:</u>	<u>\$473,335.00</u>

Credit for funds on deposit with COUNTY: (\$ 33,370.00)

4. Section 5 of AGREEMENT is amended to read as follows:

5. Payment(s) to CONTRACTOR and COUNTY.

a. CONTRACTOR

CONTRACTOR'S invoices shall be paid from funds deposited by PROJECT APPLICANT, and shall be paid in accordance with the terms of *Section 2, Invoice Detail*, of Exhibits "A" and "A-1" of the Professional Services Agreement with CONTRACTOR, included in Exhibits "1" and "1A" of this AGREEMENT. Should AGREEMENT be terminated prior to December 31, 2009, any unearned balance of the \$318,330.00 deposited by PROJECT APPLICANT to fund the base contract of CONTRACTOR shall be returned to PROJECT APPLICANT within sixty days of receipt of notice of termination by COUNTY.

b. County Surcharge

A maximum County surcharge of seventeen percent (17%) of CONTRACTOR'S base budget in an amount increased by \$6,289.00, for a total amount not to exceed \$54,116.00, and all charges assessed on an hourly basis for COUNTY staff time, in an amount not to exceed \$53,140.00, shall apply to this AGREEMENT. This covers the EIR Consultant selection process, COUNTY project management and contract administration.

A seventeen percent (17%) surcharge shall be assessed to each invoice submitted by CONTRACTOR and be distributed to the following COUNTY departments:

Public Works Department	5%	\$15,917.00
Environmental Health Department	7%	\$22,282.00
Water Resources Agency	5%	\$15,917.00

This portion of the County surcharge shall not exceed \$54,116.00.

Surcharge based on time and materials charges shall be assessed on an hourly basis for COUNTY staff time related to THE PROJECT. A budget for these charges is allocated to the following COUNTY departments:

Planning Department	\$50,000.00
County Counsel	\$ 3,140.00

This portion of the County surcharge shall not exceed \$53,140.00.

Total County surcharge allocated for THE PROJECT is \$107,256.00. Any unused portion of this surcharge is refundable.

c. Project Contingency

An additional fifteen percent (15%) of CONTRACTOR'S base budget, increased by \$5,549.00, for a total amount not to exceed \$47,749.00, covers potential contingencies, and transfer of any Project Contingency funds into the base budget shall require the approval of both COUNTY and PROJECT APPLICANT, pursuant to *Section 3, Transfer from Project Contingency Account*, of Exhibits "A" and "A-1" of the Professional Services Agreement between CONTRACTOR and COUNTY, included herein as Exhibits "1" and "1A". Within five (5) working days of receipt of a request from COUNTY, PROJECT APPLICANT shall approve or disapprove the Request for Transfer from Project Contingency and, if approved, at the same time submit a check to the COUNTY for the amount requested.

If PROJECT APPLICANT takes more than five (5) working days to respond to a Request for Transfer from Project Contingency, additional costs may accrue to CONTRACTOR, which may result in another Request for Transfer from Project Contingency.

5. Section 8 of AGREEMENT is amended to read as follows:

8. Term. AGREEMENT shall become effective June 3, 2008 and continue through December 31, 2009, unless terminated pursuant to Section 9 of AGREEMENT.

6. First sentence of Section 9 of AGREEMENT is amended to read as follows:

9. Termination. AGREEMENT shall terminate on December 31, 2009, but may be terminated earlier by PROJECT APPLICANT or COUNTY, by giving thirty (30) days' written notice to the other.

7. Subject to the foregoing, all other terms and conditions of AGREEMENT, as amended by Amendment No. 1, shall remain in full force and effect.

8. If there is any conflict or inconsistency between the provisions of AGREEMENT, Amendment No. 1 or Amendment No. 2, the provisions of Amendment No. 2 shall govern.

IN WITNESS WHEREOF, the parties hereby execute this Amendment No. 2 as follows:

THE COUNTY OF MONTEREY

By: \_\_\_\_\_  
Mike Novo, AICP  
Director of Planning

Date: \_\_\_\_\_

PROJECT APPLICANT\*  
CARMEL HOSPITAL DEVELOPMENT, LLC

By: \_\_\_\_\_  
(Signature of Chair, President or Vice President)  
Joseph R. Scuderi  
Its: \_\_\_\_\_  
Manager  
(Name and Title)

Date: June 30, 2009

By: \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO or Assistant  
Treasurer) William Holstein  
Its: \_\_\_\_\_  
Manager  
(Name and Title)

Date: June 30, 2009

Approved as to Form

By: Cynthia J. Glass  
Deputy County Counsel

Date: 7-8-09

\*INSTRUCTIONS: IF 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 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.

# **EXHIBIT 1A**

**AMENDMENT NO. 2 TO THE  
PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
DENISE DUFFY & ASSOCIATES, INC.  
AND THE COUNTY OF MONTEREY  
FOR THE  
VILLAS DE CARMELO  
ENVIRONMENTAL IMPACT REPORT**

**Amendment No. 2 to  
County of Monterey Agreement for Professional Services with  
Denise Duffy & Associates, Inc. for the  
Environmental Impact Report for the Villas de Carmelo**

This Amendment No. 2 to County of Monterey Agreement for Professional Services (hereinafter, "Amendment No. 2") is made and entered, by and between the County of Monterey, a political subdivision of the State of California (hereinafter, "COUNTY"), and Denise Duffy & Associates, Inc. (hereinafter, "CONTRACTOR").

This Amendment No. 2 further amends the AGREEMENT FOR PROFESSIONAL SERVICES entered into with CONTRACTOR on July 11, 2008 (hereinafter, "AGREEMENT"), and amended by the parties on February 24, 2009 (hereinafter, "Amendment No. 1") as follows:

1. Amend Section 2 of AGREEMENT, "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 be increased by \$42,544.00, for a total amount not to exceed the sum of \$366,079.00.

2. Amend first sentence of Section 3 of AGREEMENT, "Term of Agreement", to read as follows:

The term of this Agreement is from June 3, 2008 to December 31, 2009, unless sooner terminated pursuant to the terms of this Agreement.

3. Amend Section 4 of AGREEMENT, "Additional Provisions/Exhibits", to read as follows:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A     Scope of Services/Payment Provisions**  
**Exhibit A-1   Scope of Services/Payment Provisions**

4. Except as provided herein, all other terms and conditions of AGREEMENT, as amended by Amendment No. 1, shall remain in full force and effect.
5. If there is any conflict or inconsistency between the provisions of AGREEMENT, Amendment No. 1 or Amendment No. 2, the provisions of Amendment No. 2 shall govern.

IN WITNESS WHEREOF, the parties hereby execute this Amendment No. 2 as follows:

**COUNTY OF MONTEREY**

**CONTRACTOR\***

By: \_\_\_\_\_  
Director of Planning

Denise Duffy & Associates, Inc.  
Contractor's Business Name

Date: \_\_\_\_\_

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

Its: \_\_\_\_\_  
(Name and Title)

Date: \_\_\_\_\_

**Approved as to Form**

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

By: \_\_\_\_\_  
Deputy County Counsel

Its: \_\_\_\_\_  
(Name and Title)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved as to Fiscal Provisions**

By: \_\_\_\_\_  
Auditor/Controller

Date: \_\_\_\_\_

**Approved as to Indemnity, Insurance Provisions**

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

\*INSTRUCTIONS: IF CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the 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.

## EXHIBIT A-1 – SCOPE OF SERVICES / PAYMENT PROVISIONS



Denise Duffy & Associates, Inc.  
Proposal for Planning Services for Villas de Carmelo EIR  
Additional Tasks May 13, 2009

DD&A originally submitted a scope of work for planning services in April 2008 with the original EIR scope of services. The Scope of Services was resubmitted on January 29, 2009. Based on our communications with County staff, we are hereby resubmitting this May 2009 revised scope and budget for consideration and processing.

**Additional Tasks Requested by the County.** The County has requested planning assistance for tasks related to the Villas de Carmelo Project. These tasks are outlined below and are in addition to tasks identified and contracted in the EIR scope of work. Tasks include staff planning assistance with hearings, including preparation of draft staff reports and project findings, compiling conditions of approval, and providing hearing assistance for processing the project.

These tasks include:

**(1) Project Initiation for Planning Services.** DD&A shall initiate this project with a project meeting to include discussion of schedule, project milestones, and review of staff planning procedures to facilitate communication between County departments during the hearing phase of the project. DD&A will coordinate with the County's webmaster for posting of project-related information. This task assumes one meeting/conference call with the County and applicant.

Work Product: Draft Schedule

**(2) Review Staff Reports Templates and Compilation of Applicable Conditions of Approval for Project.** DD&A will review and compile applicable County templates for staff reports in order to conduct tasks below. This task includes compilation of standard and project conditions from County Departments. This task assumes one conference call with the County and calls with each pertinent County Department to discuss project conditions. It is assumed that the County planner will assist with provision of conditions from other departments.

Work Product: Draft Standard Conditions

**(3) Preparation of Public Notices for Public Hearings and CEQA Action.** DD&A using approved templates for County notices, will prepare the hearing notices in draft form for review and approval for use by the County for public notices for each of the three hearings proposed. At the direction of the County, DD&A staff will coordinate posting the site also.

Work Products: Draft and Final Notices for Subdivision Hearing, PC Hearing, and Hearing at Board of Supervisors



## EXHIBIT A-1 – SCOPE OF SERVICES / PAYMENT PROVISIONS

### (4) Preparation of Draft Staff Report for Use by Hearing Bodies.

Staff Reports: DD&A will prepare and submit a draft staff report and, based upon one set of comments from the County, prepare a final staff report for use by Monterey County Planning Department to present at one hearing each of the following hearing bodies: Subdivision Committee, Planning Commission, and Board of Supervisors.

Work Products: Draft and Final Staff Report for one hearing at each of the following hearing bodies: Subdivision Hearing, PC Hearing, and Hearing at Board of Supervisors. Assumes one draft and one final staff report work product.

CEQA Findings: In addition, DD&A will prepare and submit a draft set of CEQA Findings and a draft CEQA Resolution for review and use by the County. DD&A will revise the findings based upon one set of comments from the County and prepare one final set of findings for use by Monterey County Planning Department. The findings will be based upon the analyses provided in the Final EIR pursuant to requirements of CEQA.

Work Products: Findings. Assumes one draft and one final work product.

Project Findings: DD&A will prepare one set of recommended Findings and Evidence for Consideration of Approval of the Project for consideration by the hearing bodies.

Work Products: Findings. Assumes one draft and one final work product.

Conditions of Approval: DD&A will coordinate, compile, and edit a set of project conditions provided by County Departments and other agencies and work with the Planning and Building Department to convert EIR mitigation measures into project conditions of approval. For this task, DD&A assumes that the Planning Department shall forward conditions from County Departments to DD&A.

Work Products: Conditions. Assumes one draft and one final work product.

(5) Meetings and Hearings. In addition to the meetings identified in the EIR scope of work under a separate contract process, DD&A will attend, present, and provide meeting materials for the following hearings and County conferences/meetings: one for project conditions; one for findings; and one each prior to the hearing at the Subdivision Committee, Planning Commission, and Board of Supervisors. This scope of work assumes six meetings or conference calls relative to preparation of the tasks identified above. In addition, this scope includes attendance at an additional hearing. (The scope of work for the EIR includes one Planning Commission Meeting and one Board of Supervisors hearing attendance; this scope includes an additional hearing attendance at the Subdivision committee level.) Additional meetings or hearing attendance will be

## EXHIBIT A-1 – SCOPE OF SERVICES / PAYMENT PROVISIONS

billed at a time and materials basis against the contingency for the project. (See the EIR scope of work<sup>1 2)</sup>

**(6) Materials.** DD&A will prepare a Powerpoint presentation in the typical format for hearings at the initiation of the County hearing process. This presentation will be reviewed and approved by the County planning staff and used for the three hearing bodies.

**Additional Tasks Requested by the County.** To complement tasks outlined in the scope of work, additional assistance and project management support may be required in order to maintain an acceptable project processing schedule. DD&A will be available for additional services and meetings on a time-and-materials basis and upon request.<sup>3</sup>

Task Description	Task Total
Rate <sup>(1)</sup>	
(1) Project Initiation	\$970
(2) Staff Reports, Condition Correspondence & Public Notices	\$1,780
(3) Draft Findings/ Condition Language	\$9,870
(4) Prepare Final Project Staff Reports and CEQA Resolutions	\$16,550
(5) Coordination, Conference Calls and Meetings. Additional Hearing	\$5,210
(6) Preparation of Presentations and Materials	\$2,365
Expenses (phone, fax, reproduction, mileage, courier)	\$250
Total cost (labor & expenses)	\$ 36,995

<sup>1</sup> See EIR scope of Work, 2008.

<sup>2</sup> Task for Meetings

The EIR contract scope and cost estimate includes attendance at "one kickoff meeting; one public scoping meeting; one progress meeting during Administrative Draft EIR preparation; and two meetings to address County staff comments on the Administrative Draft EIR". These meetings have been completed. No further meetings for the EIR remain in the EIR contract. The scope of work for the EIR includes two hearings: one Planning Commission and one Board of Supervisors. The scope further states that "DD&A will be available for additional meetings on a time-and-materials basis." Meetings and hearing time identified herein are in addition to the EIR contract as noted above and include time for preparation of presentation materials.

<sup>3</sup> Assumptions for this contract: Additional work products beyond those identified will be billed under additional services at DD&A billing rates. The work products identified (presentation, staff report, findings and conditions) will be reviewed and approved by the County planning staff and used for the three hearing bodies. Once accepted by the County, this contract assumes that these will not require substantial changes. Additional responses to comments or response to correspondence received after the close of the public review period on the EIR is not included in the above tasks and would be considered upon request as an additional service.

## EXHIBIT A-1- SCOPE OF SERVICES/PAYMENT PROVISIONS

### PAYMENT PROVISIONS

Invoices for services performed under the AGREEMENT shall be submitted monthly (by the tenth day of the month) and shall include the following:

1. **Invoice Coversheet**

*Denise Duffy & Associates, Inc.*  
*Environmental Impact Report for the Villas de Carmelo*

Date: \_\_\_\_\_

Invoice No. \_\_\_\_\_

Agreement Term: June 3, 2008 to December 31, 2009

Agreement Amount: \$ 323,535.00 (\$281,335.00 base budget plus \$42,200.00 project contingency)

Amendment No. 1: Extension of Term Only to August 31, 2009

Amendment No. 2: \$42,544.00 (\$36,995.00 base budget plus \$5,549.00 project contingency)

Total Agreement  
Amount: \$366,079.00 (\$318,330.00 base budget plus \$47,749.00 project contingency)

Prior Invoices: \$ \_\_\_\_\_  
(Under this Agreement)

This Invoice: \$ \_\_\_\_\_

Remaining Balance \$ \_\_\_\_\_

Approved as to Work/Payment: \_\_\_\_\_  
Elizabeth Gonzales, Associate Planner

\_\_\_\_\_  
Date

**All Invoices Are To Be Sent To:**  
Jaime Martinez, Accounting Technician  
County of Monterey Resource Management Agency - Planning Department  
168 W. Alisal Street, 2<sup>nd</sup> Floor, Salinas, CA 93901  
Telephone: (831) 755-4829

## EXHIBIT A-1- SCOPE OF SERVICES/PAYMENT PROVISIONS

### 2. Invoice Detail

Each invoice shall indicate the hours worked by task and by staff member, with the corresponding billing rates.

### 3. Transfer from Project Contingency Account

Transfer of funding from the Project Contingency Account (increase total contingency by \$5,549.00 for a total not to exceed \$47,749.00) requires the prior written approval of the Director of Planning and the Project Applicant.

A recommendation for such a transfer shall be presented in writing by CONTRACTOR to the Project Planner, with a duplicate original delivered to the Contract Administrator, at the earliest possible date. The recommendation shall include:

- The dollar amount;
- The anticipated date the funded work would begin;
- The duration of the work;
- The entity (CONTRACTOR or subconsultant) to whom the funds would be transferred/allocated; and
- The justification for the expenditure.

Within five working days of receipt of the recommendation, the Project Planner and Contract Administrator will have contacted CONTRACTOR to discuss its recommendation and will have made a recommendation to the Director of Planning, or in his absence, the Assistant Director. Within ten working days thereafter, the Director of Planning or the Assistant Director will approve, deny, or approve a revised version of the recommendation received from CONTRACTOR, and will send her decision in writing to the Project Applicant, and CONTRACTOR.

Unless he denies the recommended transfer, the Director or Assistant Director of Planning will ask the Project Applicant to make a decision within five working days regarding the recommended transfer from the Project Contingency Account. If necessary, reasonable efforts will be made to reach a compromise.

Upon receipt of the Project Applicant's written approval by the Director of Planning or the Assistant Director, the funding transfer will be made. At the same time, a letter authorizing the work funded by the approved transfer will be sent to CONTRACTOR.