

**AMENDMENT NO. 9
TO FUNDING AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
VARIOUS PROJECT APPLICANTS
FOR THE MOSS LANDING COMMUNITY PLAN UPDATE
ENVIRONMENTAL IMPACT REPORT**

THIS AMENDMENT NO. 9 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, 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, PROJECT APPLICANTS entered into a Funding Agreement with County on February 9, 2011 (hereinafter, "Agreement") to provide funding for an EIR for the Project through May 31, 2011 for an amount not to exceed \$334,466.50; and

WHEREAS, Agreement was amended by the Parties on May 31, 2011 (hereinafter, "Amendment No. 1") to extend the term for one (1) additional year through May 31, 2012 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on June 4, 2012 (hereinafter, "Amendment No. 2") to extend the term for one (1) additional year through May 31, 2013 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on May 29, 2013 (hereinafter, "Amendment No. 3") to extend the term for one (1) additional year through May 31, 2014 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on June 2, 2014 (hereinafter, "Amendment No. 4") to extend the term for one (1) additional year through May 31, 2015 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on May 26, 2015 (hereinafter, "Amendment No. 5") to extend the term for two (2) additional years through May 31, 2017 with no increase in the not to exceed amount, and made a change in name only replacing Hamlin Properties, LLC with Haute Properties, LLC; and

WHEREAS, Agreement was amended by the Parties on July 31, 2015 (hereinafter, "Amendment No. 6", including 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) to increase the amount of the Contractor's Base Budget by \$69,448.00 (County funded amount) which resulted in a total of the Maximum Budget Under Agreement not to exceed amount of \$473,588.00 with no extension to the term; and

WHEREAS, Agreement was amended by the Parties on May 23, 2017 (hereinafter, "Amendment No. 7") to extend the term for one (1) additional year through May 31, 2018 with no increase in the not to exceed amount; and

WHEREAS, Agreement was amended by the Parties on December 11, 2017 (hereinafter, "Amendment No. 8", including Exhibit 1B, Amendment No. 8 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) to extend the term for four (4) additional months through September 30, 2018 and to increase the amount of the Contractor's Base Budget by \$91,500.00 (County funded amount) which resulted in a total of the Maximum Budget Under Agreement not to exceed amount of \$565,088.00; and

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

WHEREAS, additional time is required to allow County staff to revise the Moss Landing Community Plan and to allow Contractor to continue to provide services for completion of the EIR for the Project; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for twenty (20) additional months to May 31, 2020 with no associated dollar amount increase to allow funding for costs incurred by Contractor to continue to provide services identified in the Agreement and as amended by this Amendment No. 9.

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

1. Amend the second sentence of the second paragraph of Paragraph 3, "**CONTRACTOR – CONTRACTOR'S Base Budget**", to read as follows:

Should AGREEMENT be terminated prior to May 31, 2020, any unearned balance of the \$242,236.70 deposited by the PROJECT APPLICANTS to fund the base Professional Services Agreement of CONTRACTOR shall be returned to PROJECT APPLICANTS within sixty (60) days of receipt of notice of termination by COUNTY in proportion to the percentage of funds contributed by each PROJECT APPLICANT.

2. Amend Paragraph 9, "**Term**", to read as follows:

AGREEMENT shall become effective May 4, 2010 and continue through May 31, 2020, unless terminated pursuant to Paragraph 10 or amended pursuant to Paragraph 14 of AGREEMENT.

3. Amend Paragraph 10, "**Termination**", to read as follows:

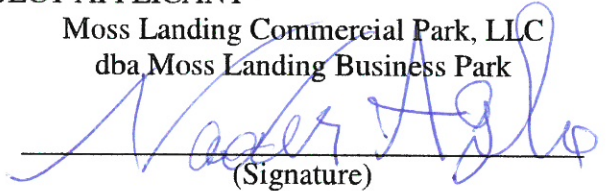
AGREEMENT shall terminate on May 31, 2020, but may be terminated earlier by PROJECT APPLICANTS or COUNTY, by giving thirty (30) days' written notice to the other.

4. All other terms and conditions of the Agreement remain unchanged and in full force.
5. This Amendment No. 9 and all previous amendments shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
6. The recitals to this Amendment No. 9 are incorporated into the Agreement and this Amendment No. 9.

PROJECT APPLICANT*

Moss Landing Commercial Park, LLC
dba Moss Landing Business Park

By: _____


(Signature)

Its: _____

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

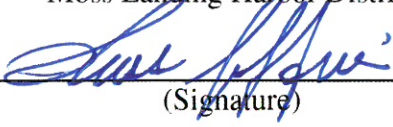
Date: _____

8/27/18

*INSTRUCTIONS: IF PROJECT APPLICANT 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 PROJECT APPLICANT 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 PROJECT APPLICANT 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 PROJECT APPLICANT 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.

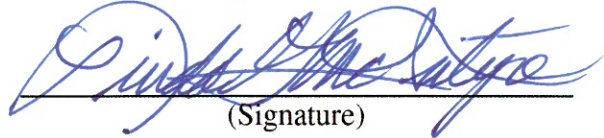
PROJECT APPLICANT*

Moss Landing Harbor District

By: 
(Signature)

Its: Russ Jeffries, Board President
(Print Name and Title)

Date: 9/30/2018

By: 
(Signature)

Its: Linda G. McIntyre, Deputy Secretary
(Print Name and Title)

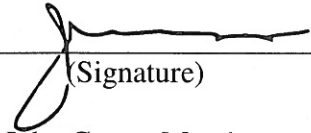
Date: 9.27.18

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PROJECT APPLICANT*

Quin Delta, LLC

By: _____



(Signature)

Its: _____

John Gregg, Member

(Print Name and Title)

Date: _____

9/27/2018

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PROJECT APPLICANT*

San Jose State University Research Foundation

By: Pamela C Stacks
(Signature)

Its: Pamela C. Stacks, AVP of Research, SJSU &
Vice President of the Board, SJSURF
(Print Name and Title)

Date: 9/12/18

By: Rajesh Prasad
(Signature)

Its: Rajesh Prasad,
RP - Interim Executive Director & Secretary of the
9/12/18 Board, SJSURF
(Print Name and Title)

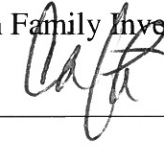
Date: 9/12/18

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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:

8/21/18.

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PROJECT APPLICANT*

By: Phil DiGirolamo
(Signature)

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

Date: 8/21/18

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