

**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

By: *Mr. Mro*
Director of Planning

Date: 7/28/09

Approved as to Form

By: *Cynthia L. Olson*
Deputy County Counsel

Date: 6-12-09

Approved as to Fiscal Provisions

By: *[Signature]*
Auditor/Controller

Date: 6-16-09

Approved as to Indemnity, Insurance Provisions

By: _____
Risk Management

Date: _____

CONTRACTOR*

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

By: *Denise Duffy*
(Signature of Chair, President or Vice President)

Its: Denise Duffy, President
(Name and Title)

Date: 6/5/09

By: *Denise Duffy*
(Signature of Secretary, Asst. Secretary, CFO or Assistant Treasurer)

Its: Denise Duffy, Secretary
(Name and Title)

Date: 6/5/09

*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^{1 2)}

(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.³

Task Description	Task Total
Rate ⁽¹⁾	
(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

¹ See EIR scope of Work, 2008.

² **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.

³ 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, 2nd 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.

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

DESCRIPTIONS (Continued from Page 1)

agents and employees are named as additional insured per endt. attached.

Architects and Engineers Extender Additional Insured Language*

The following policy language is from Employers Fire Insurance Company Business Owners Liability Coverage Form G15911 03 05:

Form G15911 03 05 Amends the **Commercial General Liability Coverage Form**:

1. The following are added to **Section II – Who is an insured**:

a. **Person or organization required by Written Contract**

Any person or organization that you agree to add as additional insured under this General Liability coverage Part in a written contract or agreement that is made before, and in effect when, the "bodily injury" or "property damage" occurs or the offense that causes the "personal and advertising injury" is first committed, but only with respect to that person's or organization's liability arising out of your non-professional work for that person or organization.

However such person or organization is not an additional insured with respect to any:

- (1) "Bodily Injury", "property damage", or "personal and advertising injury" that does not arise out of:
 - (a) Your Negligence; or
 - (b) The negligence of another person or organization for whom you are liable;
- (2) "Bodily injury", "property damage" or "personal and advertising injury" for which such person or organization has assumed liability in a contract or agreement, except for liability for damages that such person or organization would have in the absence of the contract or agreement;
- (3) "Property Damage" to:
 - (a) Property owned, used or occupied by or loaned or rented to, such person or organization; or
 - (b) Property over which such person or organization is for any purpose exercising physical control;
- (4) All Professional liability as an architect or engineer arising out of any construction agreement or activities under which any insured or anyone acting on any insured's behalf provides or provided service, advice, expertise or work. Construction includes, but is not limited to, the plan, conception, design, build, construct, assembly, development, safety, erection formation, reconstruct, repair, or in any improvement made to real property. Construction also includes the hiring, supervision or management of these activities.

However, this exclusion does not apply to liability arising out of an insured's presence at a jobsite that was not caused by professional activities listed in the above paragraph.

Primary & Non-Contributory: This insurance will be considered primary to, and non-contributory with any other insurance issued directly to a person or organization added as an additional insured.

Per Project Aggregate: Section III Limits of Insurance is amended by adding the following: The General Aggregate Limit under Section III-Limits of Insurance applies separately to each of "your projects" or each location listed in the location information in the common policy declarations.

Separation of Insureds: Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the First Named Insured, this insured applies:

- a. As if each Named insured were the only Named Insured; and
- b. Separately to each insured against whom a claim is made or "suit" is brought.

Waiver of Subrogation: Transfer of Rights of Recovery Against Other to Us in Section IV – Commercial General Liability Conditions:

However, we waive the right of recovery and proceeds we may have against any person or organization that is added as an additional insured under I.1.a

- a. Because of payments we make for "bodily injury", "property damage" or "personal and advertising injury" arising out of "your work" in ongoing operations include or included in the "products-completed operations hazard" and
- b. Performed under a written contract or agreement that is made before, and in effect when, the "bodily injury" or "property damage" occurs or the offense that causes the "personal and advertising injury" is committed; and
- c. You specifically agree in such written contract or agreement to waive those rights of recovery and proceeds for such person or organization.

Named Insured: **DENISE DUFFY & ASSOCIATES**

Policy No.: **FF1U39722**