

Attachment C

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**AMENDMENT NO. 2
TO FUNDING AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
THE PEBBLE BEACH COMPANY**

THIS AMENDMENT NO. 2 to the Funding Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and The Pebble Beach Company (hereinafter, "PROJECT APPLICANT") is hereby entered into between the County and the PROJECT APPLICANT (collectively, the "Parties") and effective as of the last date opposite the respective signatures below.

WHEREAS, PROJECT APPLICANT has applied to the County for approval of various development permits for The Pebble Beach Company's Inclusionary Housing (hereinafter, "Project") requiring an Environmental Impact Report (hereinafter, "EIR"); and

WHEREAS, PROJECT APPLICANT entered into a Funding Agreement with County on July 29, 2014 (hereinafter, "Agreement") to provide funding for an EIR for the Project through June 30, 2016 for an amount not to exceed \$239,684.75; and

WHEREAS, Agreement was amended by the Parties on July 9, 2015 (hereinafter, "Amendment No. 1", including Exhibit 1A, Amendment No. 1 to the Professional Services Agreement) to reallocate funding with no increase in the Agreement's not to exceed amount; and

WHEREAS, County engaged ICF Jones & Stokes, Inc. (hereinafter, "Contractor") to prepare the EIR for the Project; and

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

WHEREAS, due to unforeseen additional services associated with the Contractor's completion of Task 6.2, Administrative Draft EIR, Task 6.4, Administrative Final EIR, and Task 6.5, Final EIR and Mitigation Monitoring and Reporting Program, of the Agreement, the Parties wish to increase the cost and scope of these tasks to complete the Final EIR for the Project; and

WHEREAS, additional time and funding are required to allow the CONTRACTOR to continue to provide services for the Project for an additional six (6) month period; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for an additional six (6) months to December 31, 2016 and increase the amount by \$46,694.87 for a total amount not to exceed \$286,379.62 to allow funding by the PROJECT APPLICANT to the County for costs incurred by the Contractor and County departments to continue to provide tasks identified in the Agreement and as amended by this Amendment No. 2.

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

1. Amend the second sentence of Paragraph B of "RECITALS", to read as follows:

CONTRACTOR shall perform the Scope of Work specified in the Professional Services Agreement, hereinafter, "PSA", between County and CONTRACTOR, attached to this AGREEMENT as Exhibits "1", "1A" and "1B", and incorporated herein by reference.

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

County and PROJECT APPLICANT hereby agree that County shall engage CONTRACTOR to provide the services set forth in Exhibits "1", "1A" and "1B" of this AGREEMENT.

3. Amend Paragraph 1, "Deposits to Fund PSA and County Fee for Contract Administration", to add the following:

PROJECT APPLICANT shall make a second deposit in the amount equal to the increase to the CONTRACTOR's Base Budget. This amount totals \$46,694.87.

PROJECT APPLICANT shall deposit a total amount of \$46,694.87 with County Resource Management Agency – Planning upon approval of Amendment No. 2 of this AGREEMENT by the County of Monterey Board of Supervisors, acting on behalf of the County, currently scheduled for April 19, 2016.

PROJECT APPLICANT's deposit of \$46,694.87 with County shall be a condition precedent to County's obligation under this AGREEMENT.

4. Amend Paragraph 3, "Maximum Budget Under AGREEMENT", to read as follows:

The maximum amount which may be charged to PROJECT APPLICANT under this AGREEMENT is \$286,379.62.

CONTRACTOR's Base Budget:	\$ 252,359.87
County Contract Administration Fee (non-refundable):	\$ 3,170.00
Project Contingency:	\$ 30,849.75

<u>Maximum Charge Under AGREEMENT:</u>	<u>\$ 286,379.62</u>
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5. Amend the first sentence of Paragraph 4 to read as follows:

Within thirty (30) days after the end of each quarter, County shall provide quarterly progress reports to the PROJECT APPLICANT showing CONTRACTOR's charges from the prior quarter associated with completion of task(s) as specified in "Exhibits A, A-1 and A-2" of the PSA (Scope of Services/Payment Provisions for the PROJECT).

6. Amend the first sentence of Paragraph 5, "Engagement of CONTRACTOR", to read as follows:

This AGREEMENT is based on County engaging CONTRACTOR in accordance with the PSA between County and CONTRACTOR, attached hereto and incorporated by this reference as Exhibits "1", "1A" and "1B".

7. Amend Section a., "CONTRACTOR", of Paragraph 6, "Payments to CONTRACTOR and County", to read as follows:

- a. CONTRACTOR

CONTRACTOR's invoices shall be paid from Base Budget funds deposited by PROJECT APPLICANT in the amount of \$252,359.87.

Should this AGREEMENT be terminated prior to December 31, 2016, any unearned balance of the Base Budget deposited by PROJECT APPLICANT to fund the PSA's Base Budget amount shall be returned to PROJECT APPLICANT within sixty (60) days of receipt of notice of termination by County.

8. Amend Paragraph 8, "Term", to read as follows:

AGREEMENT shall become effective July 23, 2014 and continue through December 31, 2016, unless terminated pursuant to Paragraph 9 or amended pursuant to Paragraph 13 of AGREEMENT.

9. Amend the first sentence of Paragraph 9, "Termination", to read as follows:

AGREEMENT shall terminate on December 31, 2016, but may be terminated earlier by PROJECT APPLICANT or County, by giving thirty (30) days' written notice to the other.

10. All other terms and conditions of the Agreement remain unchanged and in full force.
11. This Amendment No. 2 shall be attached to Agreement and incorporated therein as if fully set forth in the Agreement.
12. The recitals to this Amendment No. 2 are incorporated into the Agreement and this Amendment No. 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

By: _____
Acting Director of Planning

Date: _____

THE PEBBLE BEACH COMPANY*

By: _____
(Signature of Chair, President or Vice President)
David L. Stivers

Its: Executive Vice President and CAO
(Printed Name and Title)

Date: March 29, 2016

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

David A. Heuck
Its: Executive Vice President and CFO
(Printed Name and Title)

Date: March 29, 2016

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

By: _____
Mary Grace Perry
Deputy County Counsel

Date: 4-14-16

*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 above together with the signatures of two specified officers. If PROJECT APPLICANT 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 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.

EXHIBIT 1B

**AMENDMENT NO. 2 TO THE
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
ICF JONES & STOKES, INC.
AND THE COUNTY OF MONTEREY
FOR
THE PEBBLE BEACH COMPANY'S
INCLUSIONARY HOUSING
ENVIRONMENTAL IMPACT REPORT**

**AMENDMENT NO. 2
TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
ICF JONES & STOKES, INC.**

THIS AMENDMENT NO. 2 to the Professional Services Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and ICF Jones & Stokes, 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 July 29, 2014 (hereinafter, "Agreement") to provide an Environmental Impact Report (EIR) for The Pebble Beach Company's Inclusionary Housing (hereinafter, "Project") through June 30, 2016 for an amount not to exceed \$236,514.75; and

WHEREAS, Agreement was amended by the Parties on July 9, 2015 (hereinafter, "Amendment No. 1", including Exhibit A-1 – Scope of Services/Payment Provisions) to reallocate funding with no increase in the Agreement's not to exceed amount; and

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

WHEREAS, due to unforeseen additional services associated with the completion of Task 6.2, Administrative Draft EIR, Task 6.4, Administrative Final EIR, and Task 6.5, Final EIR and Mitigation Monitoring and Reporting Program, of the Agreement, the Parties wish to increase the cost and scope of these tasks to complete the Final EIR for the Project; and

WHEREAS, additional time and funding are required to allow the CONTRACTOR to continue to provide services for the Project for an additional six (6) month period; and

WHEREAS, the Parties wish to further amend the Agreement to extend the term for an additional six (6) months to December 31, 2016 and increase the amount by \$46,694.87 for a total amount not to exceed \$283,209.62 to allow CONTRACTOR to continue to provide tasks identified in the Agreement and as amended by this Amendment No. 2.

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, A-1 and A-2 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, A-1 and A-2, 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 \$283,209.62

3. Amend the first sentence of Paragraph 3, "Term of Agreement", to read as follows:

The term of this Agreement is from July 23, 2014 to December 31, 2016, unless sooner terminated pursuant to the terms of this Agreement.

4. Amend Paragraph 4, "Additional Provisions/Exhibits", by adding "Exhibit A-2, Scope of Services/Payment Provisions".

5. The "Project Schedule" referenced in the Agreement, Exhibit A – Scope of Services/Payment Provisions, is hereby amended to extend through December 31, 2016, to conform to the amended term of the Agreement.

6. All other terms and conditions of the Agreement remain unchanged and in full force.

7. This Amendment No. 2 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

8. The recitals to this Amendment No. 2 are incorporated into the Agreement and this Amendment No. 2.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 2 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

COUNTY OF MONTEREY

CONTRACTOR*

By: _____
Director of Planning

ICF Jones & Stokes, Inc.
Contractor's Business Name

Date: _____

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

Its: _____
(Print Name and Title)

Date: _____

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

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

By: _____
Mary Grace Perry
Deputy County Counsel

Its: _____
(Print Name and Title)

Date: _____

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

Approved as to Indemnity and 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-2 - SCOPE OF SERVICES/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as "County"
and
ICF Jones & Stokes, Inc., hereinafter referred to as "CONTRACTOR"

A. SCOPE OF SERVICES

A.1 CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work to complete the Environmental Impact Report (EIR) for The Pebble Beach Company's Inclusionary Housing Development (hereinafter, "Project"), as set forth below:

Task 6.2 Administrative Draft EIR

CONTRACTOR shall provide additional Draft EIR reproduction costs and delivery costs in an increased amount of \$2,880.87.

Task 6.4 Administrative Final EIR

CONTRACTOR originally anticipated that there would be a moderate effort in responding to comments and preparing the Administrative Final EIR. Comments were more extensive than anticipated by the CONTRACTOR.

CONTRACTOR shall provide the required additional effort to address comments regarding the Aesthetics, Biology, Hazardous Materials, and Land Use Impact Analysis and the Alternatives Analysis, and coordinate effort to prepare the Administrative Final EIR to ensure that a thorough effort is made to respond to comments and provide a legally defensible document to the County. The cost for this additional effort is increased in the amount of \$35,340.00

Task 6.5 Final EIR and Mitigation Monitoring and Reporting Program (MMRP)

CONTRACTOR submitted the Administrative Final EIR to the County. Further comments and work were identified for the completion of the Final EIR. CONTRACTOR shall provide the following services:

1. Address additional County comments on the Screencheck EIR;
2. Revise the Water Demand Table as requested by the County;
3. Revise the Greenhouse Gas Thresholds and Significance Determination per the Newhall Ranch Case (Supreme Court of California, S217763, filed 11/30/15);
4. Re-stack the document and prepare an additional Screencheck EIR (electronic copies of revised pages only);
5. Incorporate any final revisions to the Final EIR; and
6. Reproduce and distribute the Public Final EIR (Cost for reproduction and delivery is based on the actual costs of reproducing Volumes 1 and 2 of the Draft EIR, and the estimated cost for reproducing Volume 3 of the Draft EIR.

EXHIBIT A-2 - SCOPE OF SERVICES/PAYMENT PROVISIONS

The cost for this additional effort is increased in the amount of \$8,474.00 (\$6,860.00 for labor, \$1,514.00 for reproduction and \$100.00 for delivery).

B. PAYMENT PROVISIONS

B.1 COMPENSATION/ PAYMENT

County shall pay an increased amount of \$46,694.87 for a total amount not to exceed \$283,209.62 for the performance of all things necessary for or incidental to the performance of work as set forth in the Scope of Services. CONTRACTOR'S compensation for services rendered shall be based on the following rates and in accordance with "Table 1, Cost of Additional Effort for Final EIR – The Pebble Beach Inclusionary Housing EIR" (attached).

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.

B.2 CONTRACTOR'S BILLING PROCEDURES

NOTE: Payment shall be based upon satisfactory acceptance of each deliverable.

Invoices under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 6., "Payment Conditions", of the Agreement. All invoices shall reference the Project name and an original hardcopy shall be sent to the following:

County of Monterey
Resource Management Agency (RMA) – Finance Division
168 West Alisal Street, 2nd Floor
Salinas, California 93901

Any questions pertaining to invoices under this Agreement shall be directed to the RMA Finance Division at (831) 755-4800.

County may, in its sole discretion, terminate the Agreement or withhold payments claimed by CONTRACTOR for services rendered if CONTRACTOR fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by County.

County shall not pay any claims for payment for services submitted more than twelve (12) months after the calendar month in which the services were completed.

DISALLOWED COSTS: CONTRACTOR is responsible for any audit exceptions or disallowed costs incurred by its own organization or that of its subcontractors.

EXHIBIT A-2 - SCOPE OF SERVICES/PAYMENT PROVISIONS

Table 1. Cost of Additional Effort for Final EIR - The Pebble Beach Inclusionary Housing EIR

Employee Name	Consulting Staff												Direct Costs	Task Expenses	Total Price		
	Walter R. Gibson	William K. A. Straights	Andre E. Smith	Scott J. Hunter	S. Hunter	R. Hunter	T. Hunter	R. Hunter	D. Hunter	M. Hunter	P. Hunter	R. Hunter					
Project Manager	18	18	20	20	20	20	20	20	20	20	20	20	20	20	20	20	20
Senior Analyst	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24
Analyst	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24	24
Subtotal	66	66	68	68	68	68	68	68	68	68	68	68	68	68	68	68	68
Direct Expenses																	
Total Price																	

Ministry_PRC_Table_05_Additional_Pay_Provisions

Appendix 3 (Table 1)

Don't Place Payments 459 PRC

EXHIBIT A-2 - SCOPE OF SERVICES/PAYMENT PROVISIONS

PAYMENT PROVISIONS

Invoices for work products / deliverables under the AGREEMENT shall be submitted monthly (by the tenth day of the month) on a time and materials basis for a "not to exceed" amount as listed below. The invoice should identify the document or work product being delivered. All invoices shall include the following:

1. Invoice Coversheet

ICF Jones & Stokes, Inc.
The Pebble Beach Company's Inclusionary Housing Environmental Impact Report

Date: _____ Invoice No. _____

Agreement Term: July 23, 2014 - June 30, 2016
Agreement Amount: \$236,514.75 (\$205,665.00 base budget plus \$30,849.75 project contingency)
Amendment No. 1: \$ 0.00 (Reallocation of Funds)
Amendment No. 2: \$46,694.87 (\$46,694.87 base budget plus \$0.00 project contingency)
Extend Term to December 31, 2016

This Invoice:

Table with 4 columns: Task, Amount, Description, and a blank column for signature/initials. Rows include Task 6.2 (\$2,880.87 Administrative Draft EIR), Task 6.4 (\$35,340.00 Administrative Final EIR), Task 6.5 (\$8,474.00 Final EIR and MMRP), and a TOTAL INCREASE AMOUNT of \$46,694.87.

Remaining Balance \$ _____

Approved as to Work/Payment: _____ Date _____
Joseph Sidor, Associate Planner

2. Invoice Detail

Each invoice for work products / deliverables shall indicate one hundred percent (100%) completion of the task and include the invoice amount in association with the actual work products / deliverables performed and shall be within the "Not to Exceed" budget amount allocated for said work products / deliverables.

Each invoice for services performed shall indicate the hours worked by task and by staff member, with the corresponding billing rates. Payment of these services will be based on the documentation provided by the CONTRACTOR and shall be within the "Not to Exceed" budget amount allocated for the service or services performed.

Subconsultant services must be invoiced based on the Subconsultant fee and the allowable overhead cost.

EXHIBIT A-2 - SCOPE OF SERVICES/PAYMENT PROVISIONS

The Project Planner may request documentation of the number of hours worked by task and by staff member, with the corresponding billing rates and/or the Subconsultant costs. The information will be used to complete the file and to ensure proper payment for work products / deliverables / services.

3. **Transfer from Project Contingency Account**

Transfer of funding from the Project Contingency Account (no increase to the original contingency amount of \$30,849.75) 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 (5) 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 the Director's absence, designee. Within ten (10) working days thereafter, the Director of Planning or designee will approve, deny, or approve a revised version of the recommendation received from CONTRACTOR, and will send a written decision to the Project Applicant, and CONTRACTOR.

Unless the recommended transfer is denied by the Director or designee, the Director of Planning or designee will ask the Project Applicant to make a decision within five (5) 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 designee, 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.

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