

**AMENDMENT NO. 1
TO FUNDING AGREEMENT
BETWEEN COUNTY OF MONTEREY AND
VARIOUS PROJECT APPLICANTS
FOR THE MOSS LANDING COMMUNITY PLAN UPDATE
ENVIRONMENTAL IMPACT REPORT**

THIS AMENDMENT NO. 1 to the Funding Agreement between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Elkhorn Slough Foundation; Hamlin 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 County and PROJECT APPLICANTS are referred to as the "parties").

WHEREAS, PROJECT APPLICANTS entered into a Funding Agreement with County on February 9, 2011 (hereinafter, "Agreement"); and

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; and

WHEREAS, the Agreement term began on May 4, 2010 but authorization to proceed was not provided to the CONTRACTOR until February 2011 due to delays in obtaining approval of the Agreement by PROJECT APPLICANTS; and

WHEREAS, the Moss Landing Community Plan Update EIR has not been completed and additional time is required to account for time expended for approval of the Agreement during the initial term of the Agreement; and

WHEREAS, the parties wish to amend the Agreement to extend the term to May 31, 2012 with no associated dollar amount increase to continue to allow funding by the PROJECT APPLICANTS to the County for costs incurred by CONTRACTOR and County Departments to continue to provide tasks associated with the completion of the Moss Landing Community Plan Update EIR.

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

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

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, 2012, any unearned balance of the \$242,236.70 deposited by PROJECT APPLICANTS to fund the base contract of CONTRACTOR shall be returned to PROJECT APPLICANTS within sixty days of receipt of notice of termination by COUNTY in proportion to the percentage of funds contributed by each PROJECT APPLICANT.

2. Amend the second sentence of Paragraph 6. a., "Funding Procedures for CONTRACTOR'S Base Budget, Project Contingency, and COUNTY Deposit", to read as follows:

This first deposit shall be made with COUNTY Planning Department upon approval of this AGREEMENT by the Monterey County Board of Supervisors, scheduled on January 11, 2011.

3. Amend the second sentence of Paragraph 6. b., "Funding Procedures for CONTRACTOR'S Base Budget, Project Contingency, and COUNTY Deposit", to read as follows:

This second deposit shall be made with COUNTY Planning Department prior to the issuance of the Draft EIR, currently scheduled for August 1, 2011.

4. Amend the second sentence of Paragraph 6. c., "Funding Procedures for CONTRACTOR'S Base Budget, Project Contingency, and COUNTY Deposit", to read as follows:

This third deposit shall be made with COUNTY Planning Department prior to the issuance of the Final EIR, currently scheduled for October 1, 2011.

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

AGREEMENT shall become effective May 4, 2010 and continue through May 31, 2012, unless terminated pursuant to Paragraph 10 or amended pursuant to Paragraph 14 of AGREEMENT.

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

AGREEMENT shall terminate on May 31, 2012, but may be terminated earlier by PROJECT APPLICANTS or COUNTY, by giving thirty (30) days' written notice to the other.

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

8. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

IN WITNESS WHEREOF, the PROJECT APPLICANTS and County hereto have executed this Amendment No. 1 to the Funding Agreement as of the day and year written below:

THE COUNTY OF MONTEREY

By: 
Director of Planning

Date: 5/31/11


PROJECT APPLICANT*

Elkhorn Slough Foundation

By: 
(Signature)

Its: Steven J. Dennis, Vice President
(Print Name and Title)

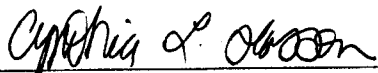
Date: May 27, 2011

By: 
(Signature)

Its: Steven F. Green, Secretary
(Print Name and Title)

Date: MAY 24, 2011

Approved as to Form and Legality
Office of the County Counsel

By: 
Deputy County Counsel

Date: 5-31-11

*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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA - Planning Department
Term: May 4, 2010 - May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

Hamlin Properties, LLC

✓ By: Nathan A. Sawyer
(Signature)

Its: Nathan A. Sawyer, Member
(Print Name and Title)

✓ Date: 5/26/11

By: Kim Solano
(Signature)

Its: Kim Solano, Member
(Print Name and Title)

Date: 5/26/11

*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for 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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

Monterey Bay Aquarium Research Institute

By: CS

(Signature)

Its: Chris Scholin
President / CEO

(Print Name and Title)

Date: 5/23/11

By: JR
(Signature)

Its: JAMES R. REINKOFF (ASST. CEO)
(Print Name and Title)

Date: 5/23/11

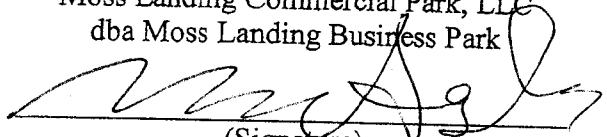
*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for in the Agreement together with the signatures of two specified officers. If APPLICANT is a partnership, the name of the partnership shall be set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

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA - Planning Department
Term: May 4, 2010 - May 31, 2012
Not to Exceed: \$334,466.50

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:

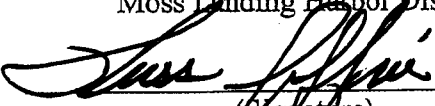
5-31-11

*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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA - Planning Department
Term: May 4, 2010 - May 31, 2012
Not to Exceed: \$334,466.50

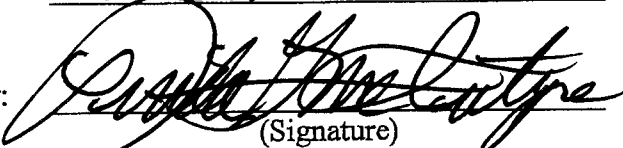
PROJECT APPLICANT*

Moss Landing Harbor District

By: 
(Signature)

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

Date: 5-23-11

By: 
(Signature)

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

Date: 5-23-11

*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for 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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

Quin Delta, LLC

By: _____



(Signature)

Its: _____

John Gregg, Manager

(Print Name and Title)

Date: _____

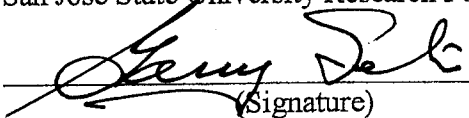
5/25/2011

*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for 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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

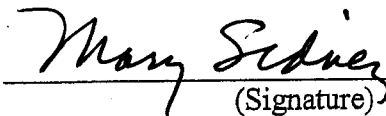
San Jose State University Research Foundation

By: 
(Signature)

Its: ~~Don Kassing~~, President and Board Chair
SJSURF

(Print Name and Title)

Date: 5-26-11

By: 
(Signature)

Its: Mary Sidney, COO and Secretary of the
Board SJSURF

(Print Name and Title)

Date: 5-26-11

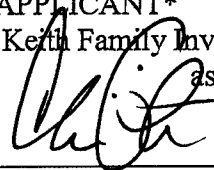
*INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for in the Agreement together with the signatures of two specified officers. If APPLICANT is a partnership, the name of the partnership shall be set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

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA - Planning Department
Term: May 4, 2010 - May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

Keith Family Investments, LLC and/or
assignee

By: _____



(Signature)

Its: _____

Chris Keith, Managing Partner

(Print Name and Title)

Date: _____

5/19/11

*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.

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50

PROJECT APPLICANT*

By: Phil DiGirolamo
(Signature)

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

Date: 5/21/11

***INSTRUCTIONS: IF APPLICANT is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set for 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.**

Amendment No. 1 to Funding Agreement
Moss Landing Community Plan Update EIR Participants
Moss Landing Community Plan Update EIR
RMA – Planning Department
Term: May 4, 2010 – May 31, 2012
Not to Exceed: \$334,466.50