

# Attachment C

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## Monterey County Board of Supervisors

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066  
www.co.monterey.ca.us

### Board Order

A motion was made by Supervisor Luis A. Alejo, seconded by Supervisor John M. Phillips to:

**Agreement No.: A – 12978, Amendment No. 1**

- a. Approve *First Extension to Memorandum of Agreement Regarding Habitat Management Of Portions Of The Parker Flats Reserve At The Former Fort Ord, California* (First Extension) with UCP East Garrison, LLC to authorize utilization of fund balance of \$20,934 plus accrued interest provided by UCP to continue California Tiger Salamander habitat management on County-owned property on the former Fort Ord and to renew and extend the Memorandum of Agreement as modified retroactive to February 3, 2020 until June 30, 2021 or until the fund balance is expended, whichever is earlier;
- b. Authorize the Chair of the Board of Supervisors to execute the First Extension;
- c. Approve Amendment No. 1 to Agreement No. A-12978 with Denise Duffy & Associates, Inc. to continue to provide consulting services for interim mitigation monitoring for California Tiger Salamander Habitat on County-owned property on the former Fort Ord, to increase the not-to-exceed amount by \$1,700 for a total amount not to exceed \$105,650 and extend the term for a revised term from November 10, 2015 to June 30, 2021; and
- d. Authorize the Contracts/Purchasing Officer or Contracts/Purchasing Supervisor to execute Amendment No. 1 to Agreement No. A-12978.

PASSED AND ADOPTED on this 28<sup>th</sup> day of July 2020, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Parker and Adams

NOES: None

ABSENT: None

(Government Code 54953)

I, Valerie Ralph, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 82 for the meeting July 28, 2020.

Dated: July 28, 2020  
File ID: A 20-303  
Agenda Item No.: 66

Valerie Ralph, Clerk of the Board of Supervisors  
County of Monterey, State of California

Joel G. Pablo, Deputy

**FIRST EXTENSION TO MEMORANDUM OF AGREEMENT  
REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE PARKER FLATS  
RESERVE AT THE FORMER FORT ORD, CALIFORNIA**

This FIRST EXTENSION TO MEMORANDUM OF AGREEMENT REGARDING HABITAT MANAGEMENT OF PORTIONS OF THE PARKER FLATS RESERVE AT THE FORMER FORT ORD, CALIFORNIA (“Extension”) is entered as of this July 28, 2020 by and between THE COUNTY OF MONTEREY, a political subdivision of the State of California (“County”), and UCP East Garrison, LLC, a Delaware limited liability company (“Developer”) (collectively “the Parties”), with reference to the following facts:

A. County, Developer and the Fort Ord Reuse Authority (“FORA”) entered into that certain Memorandum of Agreement Regarding Habitat Management of Portions of the Parker Flats Reserve at the Former Fort Ord, California with an Effective Date of February 2, 2015 (the “Agreement”). Except as otherwise defined herein, all capitalized terms shall have the meaning set forth in the Agreement.

B. The Agreement provided for preservation and management of 134 acres of parcel E.19.a.4 (“the CTS Preservation and Habitat Restoration Area”) for its value as habitat for California Tiger Salamander (CTS), with County to perform habitat management on an interim basis with \$104,155 in funding provided by Developer until the earlier of a period of five years or until a Habitat Conservation Plan for the former Fort Ord were adopted and respective incidental take permits (Fort Ord HCP ITPs) were issued by USFWS and CDFW.

C. FORA dissolved by operation of law on June 30, 2020 and, therefore, has ceased to be a party to the Agreement by operation of law.

D. Section I.C.1.b of the Agreement states, “The term of this Agreement (the ‘Term’) shall commence upon the Effective Date and continue for a period of five (5) years, unless (and then only to the extent) such date is extended pursuant to Section I.C.1.c.”

E. Section I.C.1.c of the Agreement allows the parties to extend the Term if USFWS or CDFW has not issued all of the Fort Ord HCP ITPs on or before five (5) years from the Effective Date.

F. Because a Fort Ord Habitat Conservation Plan was not adopted and the Fort Ord HCP ITPs were not issued prior to the dissolution of FORA, the Parties desire to extend the Term until June 30, 2021 to enable the County to complete the fifth year of monitoring and to continue managing habitat under the terms of the Agreement with the funds remaining under the Agreement while the County plans for managing habitat on County-owned property within the former Fort Ord in accordance with the Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord (dated 1997), as modified by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification (the “Land Swap Agreement”).

NOW, THEREFORE, it is mutually agreed by and between the undersigned Parties as follows:

1. Extension. County and Developer hereby agree to renew the Agreement retroactive to February 3, 2020 on the terms herein and extend the Term of the Agreement to June 30, 2021 or until the funds within the Interim Management Fund are expended, whichever is first.

2. Status of Interim Management Fund. The parties confirm that the Interim Management Fund currently holds approximately \$20,934.00. County shall be permitted to use such remaining funds plus any interest earned thereon to manage the CTS Preservation and Habitat Restoration Area for the remainder of the Term, as extended, in accordance with the Agreement and to pay for County staff time associated with County's oversight of this management. The parties agree that Developer shall have no obligation to provide any additional funds to replenish the Interim Management Fund, unless the parties agree otherwise mutually in writing.

3. No Change to Remainder of Agreement. All other terms and provisions of the Agreement shall remain in full force and effect during the Term of this Agreement as extended except that: a) the Fort Ord Reuse Authority is dissolved and therefore is no longer a party to the Agreement and its obligations under the Agreement are extinguished; and b) the Parties hereto acknowledge that, although the County accepted the Conservation Easement referenced in the Agreement, the easement has not been recorded, and Parties are exploring the viability of a deed restriction rather than conservation easement for preservation of the CTS Preservation and Habitat Restoration Area.

4. Counterparts. This Extension may be executed in counterparts which, when taken together, will constitute one and the same agreement.

5. Entire Agreement; Conflict; Extensions. This Extension constitutes the entire agreement between the Parties with respect to the matters set forth herein. In the event of any conflict between the provisions of this Extension and the provisions of the Agreement, the provisions of this Extension shall control. No other extension or modification to the Agreement will be effective unless contained in a writing signed by both parties.

6. Severability. Should any provision of this Extension be deemed by a court of competent jurisdiction to be unenforceable under applicable law, the remaining provisions of this Extension shall in no way be affected and shall remain in full force. The Parties also agree that any such provision deemed unenforceable shall be replaced automatically with an enforceable provision as close as possible, in meaning and effect, to that deemed unenforceable.


[signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Extension to be executed as of the day and year first above written.

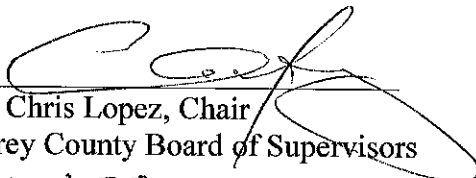
**DEVELOPER:**

UCP EAST GARRISON, LLC, a Delaware limited liability company

By: UCP, LLC, a Delaware Limited Liability Company, its sole member

By:   
Name: Nicholas Arenson  
Title: Division President

**COUNTY OF MONTEREY**

By:   
Chris Lopez, Chair  
Monterey County Board of Supervisors  
JULY 28, 2020

**APPROVED AS TO FORM**

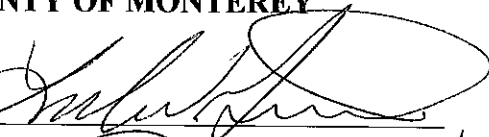
UCP EAST GARRISON, LLC

By: 

Name: Holly Traube Cordova

Title: Regional Legal Counsel

**COUNTY OF MONTEREY**

By: 

Name: Leslie J. Girard

Title: County Counsel  
JULY 28, 2020

**AMENDMENT NO. 1  
TO AGREEMENT  
BETWEEN COUNTY OF MONTEREY AND  
DENISE DUFFY & ASSOCIATES, INC.**

**THIS AMENDMENT NO. 1** to Agreement No. A-12978 between the County of Monterey, a political subdivision of the State of California (hereinafter, "County") and Denise Duffy & Associates, 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**, on January 27, 2015, the Board of Supervisors approved a Memorandum of Agreement among the County, Fort Ord Reuse Authority (FORA), and UCP East Garrison LLC (UCP) to fund and implement interim habitat management for California Tiger Salamander (CTS) on approximately 134 acres of County-owned property on the former Fort Ord. The term of the MOA was until an Installation-Wide Multispecies Habitat Conservation Plan (HCP) was adopted by FORA and the wildlife agencies issued incidental take permits based on the HCP or for five (5) years from the effective date of February 2, 2015; and

**WHEREAS**, CONTRACTOR entered into Agreement No. A-12978 with County on November 10, 2015 (hereinafter, "Agreement") to maintain suitable upland habitat for CTS on the 134-acre County-owned property on the former Fort Ord (hereinafter, "services") through and including August 1, 2020 for an amount not to exceed \$103,950; and

**WHEREAS**, CONTRACTOR has provided services to date as required by County; and

**WHEREAS**, FORA dissolved by operation of law on June 30, 2020, and FORA did not adopt the basewide HCP. However, approximately \$20,934 remains in the Interim Habitat Management Fund endowed by UCP for the purpose of managing the CTS habitat on the 134-acre area; and

**WHEREAS**, UCP has agreed, via the *First Extension to Memorandum of Agreement Regarding Habitat Management Of Portions Of The Parker Flats Reserve At The Former Fort Ord, California* (hereinafter, "First Extension") to be considered by the Board of Supervisors concurrently herewith, to authorize the County to utilize these funds to continue the habitat management on the 134-acre area until the funds are expended or June 30, 2021, whichever is earlier; and as not adopted; and

**WHEREAS**, County desires CONTRACTOR to continue the habitat management services on the 134-acre area with the remaining UCP funds until June 30, 2021, while County develops a comprehensive habitat management program for County-owned property on the former Fort Ord; and

**WHEREAS**, the Parties wish to reallocate unused funding for Year 5 under Attachment B in the amount of \$16,100 and further increase the amount by \$1,700 to allow CONTRACTOR to provide services for Year 6, as set forth in Attachment B-1; and

**WHEREAS**, the CONTRACTOR desires to update its Fee Schedule effective August 2, 2020; and

**WHEREAS**, the Parties wish to amend the Agreement to extend the term for approximately eleven (11) months to June 30, 2021, to update the Fee Schedule, to delineate the services for Year 6, and to increase the amount by \$1,700 for a total not to exceed \$105,650 to allow CONTRACTOR to continue to provide services identified in the Agreement as amended by this Amendment No. 1.

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

1. Amend Paragraph 1.1 of Section 1.0, "Performance of the Agreement", to delete "This AGREEMENT with Attachment B – Fee Schedule" and to add "This AGREEMENT with Attachment B-1 – Revised Fee Schedule, effective August 2, 2020."

2. Amend Section 2.0, Scope of Work, to add Paragraph 2.13 as follows:

Task 12. During the extension of the term from August 2, 2020 to June 30, 2021, CONTRACTOR shall provide the services under "Year 6" described in Attachment B-1, attached hereto and incorporated herein by reference.

3. Amend the first sentence of Paragraph 3.1 of Section 3.0, "Term of Agreement", to read as follows:

The term of the AGREEMENT shall commence with the signing of this AGREEMENT on November 10, 2015 through and including June 30, 2021.

4. Amend Paragraph 4.1 of Section 4.0, "Compensation and Payments", to read as follows:

It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto as Attachment B-1 – Revised Fee Schedule, effective August 2, 2020.

5. Amend Paragraph 5.1 of Section 5.0, "Invoices", to read as follows:

Invoices for all services rendered under this Agreement shall be submitted monthly and promptly, and in accordance with Paragraph 5.2 of the Agreement. All invoices shall reference the Agreement number (A-12978), services/project name (Interim Mitigation Monitoring for the California Tiger Salamander Habitat), and an original hardcopy shall be sent to the following address or via email to [RMA-Finance-AP@co.monterey.ca.us](mailto:RMA-Finance-AP@co.monterey.ca.us):

County of Monterey  
Resource Management Agency (RMA) – Finance Division  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527

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Amendment No. 1 to Agreement No. A-12978  
Denise Duffy & Associates, Inc.

Maintain Suitable Upland Habitat for California Tiger Salamander  
on the 134-Acre County Owned Property on the Former Fort Ord (RFP #10519)

RMA

Term: November 10, 2015 – June 30, 2021

Not to Exceed: \$105,650



Any questions pertaining to invoices under this Agreement should be directed to the RMA Finance Division at (831) 755-4800 or via email to: [RMA-Finance-AP@co.monterey.ca.us](mailto:RMA-Finance-AP@co.monterey.ca.us).

6. Amend Paragraph 6.2, "Indemnification for Design Professional Services Claims", of Section 6.0, "Indemnification", to read as follows:

CONTRACTOR shall indemnify, defend and hold harmless County, its governing board, directors, officers, employees, and agents against any claims that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of CONTRACTOR, its employees, subcontractors, and agents in the performance of design professional services under this Agreement, excepting only liability arising from the sole negligence, active negligence or willful misconduct of County, or defect in a design furnished by County, but in no event shall the amount of such CONTRACTOR's liability exceed such CONTRACTOR's proportionate percentage of fault as determined by a court, arbitrator or mediator, or as set out in a settlement agreement. In the event one or more defendants to any action involving such claim or claims against County is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, such CONTRACTOR shall meet and confer with the other parties to such action regarding unpaid defense costs.

7. Amend Paragraph 7.3.1.2 of Section 7.0, "Insurance Requirements", to read as follows:

Business automobile liability insurance, covering all motor vehicles, including leased, non-owned and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

8. Amend County information under Section 16.0, "Notices", to read as follows:

TO COUNTY:

Dawn Yonemitsu, Management Analyst I  
County of Monterey  
Resource Management Agency  
1441 Schilling Place, South 2<sup>nd</sup> Floor  
Salinas, California 93901-4527  
Phone: (831) 755-5304  
Email: [yonemitsud@co.monterey.ca.us](mailto:yonemitsud@co.monterey.ca.us)

9. Amend the second sentence of Paragraph 19.2 of Section 19.0, "Travel Reimbursement", to read as follows:

A copy of the policy is available online at :  
<https://www.co.monterey.ca.us/home/showdocument?id=69364>.

10. All other terms and conditions of the Agreement, including all Exhibits thereto except as superseded by Attachment B-1 attached hereto and incorporated herein by reference, remain unchanged and in full force.
11. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.
12. The recitals to this Amendment No. 1 are incorporated into the Agreement and this Amendment No. 1.

IN WITNESS WHEREOF, the Parties hereto have executed this Amendment No. 1 to the Agreement which shall be effective as of the last date opposite the respective signatures below.

**COUNTY OF MONTEREY**

**CONTRACTOR\***

By: \_\_\_\_\_  
Contracts/Purchasing Officer

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

**Approved as to Form  
Office of the County Counsel  
Leslie J. Girard, County Counsel**

By: Wendy S. Strimling  
57334300DB194BC  
Wendy S. Strimling  
Assistant County Counsel

Date: 7/16/2020

**Approved as to Fiscal Provisions**

By: Gary Giboney  
D3834BFEC1D8449  
Auditor/Controller

Date: 7/17/2020

**Approved as to Indemnity and Insurance Provisions  
Office of the County Counsel**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

Denise Duffy & Associates, Inc.

Contractor's Business Name  
Denise Duffy  
Digitally signed by Denise Duffy  
DN: cn=Denise Duffy, o=DD&A, Inc., ou=  
email=mechevarria@ddaplanning.com, c=US  
Date: 2020.07.16 14:07:36 -0700

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

Its: Denise Duffy, President  
(Print Name and Title)

Date: 7/16/2020

By: Denise Duffy  
Digitally signed by Denise Duffy  
DN: cn=Denise Duffy, o=DD&A, Inc., ou=  
email=mechevarria@ddaplanning.com, c=US  
Date: 2020.07.16 14:08:07 -0700

(Signature of Secretary, Asst. Secretary, CFO,  
Treasurer or Asst. Treasurer)

Its: Denise Duffy, Secretary  
(Print Name and Title)

Date: 7/16/2020

\*INSTRUCTIONS: If CONTRACTOR 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 CONTRACTOR 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) managers. If CONTRACTOR 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 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 or Amendment to said Agreement.

**ATTACHMENT B-1 - REVISED FEE SCHEDULE**  
**Effective AUGUST 2, 2020**

Task No.	Task Name	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Total
1	Baseline Biological Field Surveys	\$7,500						\$7,500
2	Baseline Biological Letter Report	\$5,000						\$5,000
3	Initial Land Management Assessment	\$1,500						\$1,500
4	Installation of Barriers and Signs	\$7,000						\$7,000
5	Biannual Field Visits for Monitoring of CTS Habitat	\$1,200	\$1,400	\$1,600	\$1,700	\$1,700	\$1,700	\$9,300
6	Data Analysis and Annual Monitoring Report (includes one meeting with County and CDFW)	\$4,000	\$4,100	\$4,200	\$4,350		\$4,400	\$21,050
7	Biannual Assessment of Land Management Issues (firebreaks, erosion control, vegetation management, barriers & signs, etc.)	\$1,400	\$1,500	\$1,650	\$1,750		\$1,900	\$8,200
8	Perform Land Management Tasks (firebreaks, erosion control/repair, vegetation management, repair/replace barriers & signs, trash pick-up, etc.)	\$4,000	\$4,200	\$4,100	\$4,150		\$4,250	\$20,700
9	Annual Assessment of Fuel-Breaks and Access Roads	\$1,200	\$1,300	\$1,400	\$1,550		\$1,650	\$7,100
10	Perform Maintenance of Fuel-Breaks and Access Roads	\$3,500	\$3,300	\$3,800	\$3,800		\$3,900	\$18,300
<b>TOTAL COST</b>		<b>\$36,300</b>	<b>\$15,800</b>	<b>\$16,750</b>	<b>\$17,300</b>	<b>\$1,700</b>	<b>\$17,800</b>	<b>\$105,650</b>

Reimbursable expenses, including printing and computer plots, delivery services, computer supplies/disks, mileage, etc. will be reimbursed at actual cost WITH NO MARKUP. Mileage cost may not exceed current standard Internal Revenue Service (IRS) rates. Appropriate documents shall accompany requests for reimbursement.

**Services provided under this Agreement shall not exceed the total sum of \$105,650.**

Denise Duffy & Associates, Inc.  
 Maintain Suitable Upland Habitat for California Tiger Salamander  
 on the 134-Acre County Owned Property on the Former Fort Ord (RFP #10519)  
 RMA