

Attachment B

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ATTACHMENT B

RENEWAL AND AMENDMENT NO. 1 TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF MONTEREY AND DENISE DUFFY AND ASSOCIATES, INC.

THIS AMENDMENT NO. 1 to Professional Services Agreement No. A-16313 between the County of Monterey, a political subdivision of the State of California (“County”) and Denise Duffy & Associates, Inc. (“CONTRACTOR”), is hereby entered into between the County and the CONTRACTOR (collectively, the “Parties”) and retroactively effective as of July 1, 2024.

WHEREAS, the County entered into Funding Agreement A-16313 with UCP East Garrison, LLC (“Project Applicant”) to provide funding for the East Garrison Specific Plan and Combined Development Permit Project (“Project”) (PLN030204) in an amount not to exceed \$240,295.90 for a term of May 22, 2023 through June 30, 2024;

WHEREAS, CONTRACTOR entered into Professional Services Agreement A-16313 (“PSA”) with the County to provide environmental services for the Project in an amount not to exceed \$184,843 and for a term of May 22, 2023 through June 30, 2024;

WHEREAS, the Agreement expired by its own terms on June 30, 2024;

WHEREAS, additional funds are needed to complete the Project;

WHEREAS, the Parties wish to renew the Agreement to allow the CONTRACTOR to address the 118 conditions of approval, concerns raised regarding parking availability, and the appeal period and statute of limitations for making a claim per CEQA;

WHEREAS, CONTRACTOR, prior to June 30, 2024, provided approved additional unforeseen planning and environmental support services for the Project to include preparation of a supplemental technical analysis, ongoing planning services in response to comments raised at the Planning Commission hearing, and preparation for the Board of Supervisors’ meeting;

WHEREAS, the Parties wish to expand the Scope of Work with Exhibit A-1, Scope of Work/Payment Provisions, to add Tasks A.7, Receive Documents and Establish Compliance Program; A.8, Meeting Attendance, and A.9, Project Management;

WHEREAS, the Agreement provisions require updating; and

WHEREAS, the Parties wish to extend the term of the agreement two (2) years to June 30, 2026, to allow CONTRACTOR to continue to provide services and to increase the Agreement amount of \$184,843 by \$124,455 for a new not to exceed amount of \$309,298.

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

1. This Agreement A-16313 is hereby renewed retroactive to July 1, 2024, and all of its prior terms and conditions shall be deemed to have been in effect continuously since that time.
2. Amend the first sentence of Section 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** and **A-1** in conformity with the terms of this Agreement.
3. Amend Section 2, Payments by County, to read as follows:
The 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 not exceed the sum of **\$309,298**.
4. Amend the first sentence of Section 3, Term of Agreement, to read as follows:
The term of this Agreement is from May 22, 2023 to June 30, 2026 unless sooner terminated pursuant to the terms of this Agreement.
5. In all places within the Agreement, any reference to the County's email address that includes @co.monterey.ca.us is hereby replaced with @countyofmonterey.gov.
6. Amend Paragraph 9.02, 'Qualifying Insurer,' of Section 9.0, "Insurance," to read as follows:
Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VII, according to the current A.M. Best's Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Agent.
7. Amend Paragraph 9.03, "Insurance Coverage Requirements," of Section 9.0, "Insurance," to read as follows:
Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.

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(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Auto Liability Coverage: must include all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three (3) years following the expiration or earlier termination of this Agreement.

(Note: Professional liability insurance coverage is required if the CONTRACTOR is providing a professional service regulated by the state. Examples of service providers regulated by the state are insurance agents, professional architects and engineers, doctors, certified public accountants, lawyers, etc. However, other professional contractors, such as computer or software designers, technology services, and services providers such as claims administrators, should also have professional liability. If in doubt, consult with your risk or contract manager.)

If the CONTRACTOR maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the CONTRACTOR.

8. Rename Paragraph 9.04, "Other Insurance Requirements," of Section 9.0, "Insurance Requirements," to "Other Requirements."

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9. Amend Paragraph 9.04, "Other Insurance Requirements," of Section 9.0, "Insurance Requirements," to read as follows:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Additional Insured Status:

The County of Monterey, its officers, officials, employees, and volunteers are to be covered as additional insureds on the commercial general liability policy with respect to liability arising out of work or operations performed by or on behalf of the CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage shall be provided in the form of an endorsement to the CONTRACTOR's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10, CG 20 26, CG 20 33, or CG 20 38; and CG 20 37 if a later edition is used).

Primary Coverage:

For any claims related to this Agreement, the CONTRACTOR's insurance coverage shall be primary and non-contributory and at least as broad as ISO CG 20 01 04 13 as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it. This requirement shall also apply to any Excess or Umbrella liability policies.

Waiver of Subrogation:

CONTRACTOR hereby grants to County a waiver of any right to subrogation which any insurer of said CONTRACTOR may acquire against the County by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

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Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's Contract Administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10. Amend Section 11., "Non-Discrimination," to read as follows:

During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government Code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

11. Amend Agreement to add Paragraph 16.16, "Independent Contractor Compliance with Government Code Section 1097.6(c)," under Section 16, "Miscellaneous Provisions," as follows:

Independent Contractor Compliance. This section applies to those situations when a CONTRACTOR is awarded an Agreement for a preliminary phase of a project, with future phases to be bid separately. This section does not apply to those situations when an Agreement is awarded for multiple phases of a project under a single Agreement/proposal. When applicable, and as described below, CONTRACTOR's duties and services under this Agreement shall not include preparing or assisting the public entity with any portion of the public entity's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the public entity. The public entity entering this Agreement shall at all times retain responsibility for public contracting,

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including with respect to any subsequent phase of this project. CONTRACTOR's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. CONTRACTOR shall cooperate with the public entity to ensure that all bidders for a subsequent contract on any subsequent phase of this project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by CONTRACTOR pursuant to this Agreement.

12. All other terms and conditions of the Agreement, including all Exhibits thereto, remain unchanged and in full force.
13. This Amendment No. 1 shall be attached to the Agreement and incorporated therein as if fully set forth in the Agreement.

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IN WITNESS WHEREOF, the County and CONTRACTOR have executed this Amendment No. 1 as of the day and year written below.

COUNTY OF MONTEREY

DENISE DUFFY & ASSOCIATES, INC.

By: N/A
Contracts/Purchasing Officer

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

Date: _____

Denise Duffy, President
Name and Title

By: _____
Craig W. Spencer, Director

Date: _____

Date: _____

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

Approved as to Form
County Counsel
Susan K. Blitch, County Counsel

Denise Duffy, Secretary
Name and Title

By: _____
Michael Whilden, Deputy County Counsel

Date: _____

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

Approved as to Liability Provisions

By: N/A
David Bolton, Risk Manager

Date: _____

County Board of Supervisors' Agreement Number: _____ approved on _____.

*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 EXHIBIT 1 – SCOPE OF WORK/PAYMENT PROVISIONS

To Agreement by and between
County of Monterey, hereinafter referred to as “County”
and
Denise Duffy & Associates, Inc., hereinafter referred to as “CONTRACTOR”

A. SCOPE OF SERVICES

CONTRACTOR shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth below:

A.7 Receive Documents and Establish Compliance Program

CONTRACTOR shall compile available documents, initiate review of pertinent background materials, and develop a program to document the Project’s compliance with the County Conditions of Approval to consist of the following:

A.7.1 Initiation and Materials Review

- a. CONTRACTOR shall compile available documents and review pertinent background materials associated with the Project.
- b. CONTRACTOR shall prepare a Request for Information (“RFI”) to include requests for additional information and/or documentation to be provided by the County, Applicant, and/or other parties to complete the required condition compliance services.

A.7.2 Establish Compliance Tracking Program

- a. CONTRACTOR shall develop a program to document the Project’s compliance with County Conditions of Approval and assist the County with condition compliance and record documentation.
- b. CONTRACTOR shall work with the County to determine a standard format, process, and template for compliance verification to include development of a tracking matrix to ensure compliance with the Mitigation Monitoring and Reporting Program (“MMRP”) and Conditions of Approval as well as the preparation of associated compliance documentation.

A.7.3 Parking Analysis Peer Review

CONTRACTOR shall provide a peer review of the Applicant’s parking analysis and final parking plan and assist with community engagement efforts required under Conditions 117 and 118 to consist of the following:

- i. Peer Review. CONTRACTOR shall review the analysis methodology and conclusions of the parking study to identify any questions on the contents of the study and areas where the study

ATTACHMENT B EXHIBIT 1 – SCOPE OF WORK/PAYMENT PROVISIONS

may require additional information or clarification, summarizing the findings and recommendations in a letter report.

Estimated completion of Peer Review is approximately two (2) to three (3) weeks.

- ii. Community Engagement. CONTRACTOR shall prepare presentation materials, present at up to two (2) community meetings to be facilitated by the County and/or Applicant, and answer community questions.

CONTRACTOR assumes attendance at one (1) pre-community meeting internal coordination call with the County and Applicant for each of the two (2) community meetings.

CONTRACTOR shall prepare a draft presentation for each meeting for County review and respond to one (1) round of comments from the County prior to preparing the final presentation.

OPTIONAL TASK

- iii. Parking Plan Revisions. CONTRACTOR to provide assistance with revisions to the parking plan based on the results of the peer review under Task A.7.3.i. This task requires up to 20 hours of staff time with any additional hours requiring contract amendment.

This task is subject to prior consent by the County.

A.7.4 Pre-Construction Period Compliance and Monitoring

- a. CONTRACTOR shall prepare compliance documentation for pre-construction conditions as well as generate a compliance memorandum to document compliance with the Conditions of Approval and MMRP.
- b. CONTRACTOR shall maintain and update the database and mitigation matrix developed in the above tasks
- c. CONTRACTOR shall document material submitted for the pre-construction period on behalf of the Applicant, record this information in the matrix and consolidate information to enable consistent and reliable external reporting.
- d. CONTRACTOR shall review, update, and manage the compliance matrix as needed to assess the compliance status of individual mitigation measures/conditions and identify action items and responsibility on a regular basis.

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- e. CONTRACTOR shall coordinate final sign-off on conditions between the County and the Applicant.
- f. CONTRACTOR assumes that County staff will be responsible for site visits to verify condition compliance at the site .

A.7.5 California Environmental Quality Act (CEQA) Addendum

CONTRACTOR shall prepare the CEQA Addendum that includes, but is not limited to, additional meetings, performance of air quality modeling to quantify the anticipated reduction in air quality emissions, and revisions to the Addendum.

A.8 Meeting Attendance

- a. CONTRACTOR shall participate in semi-weekly status meetings and/or conference calls with the County, Applicant, and other project team members. The frequency of these status meetings shall be adjusted on an as-needed basis by the County based on the need for consultation.
- b. CONTRACTOR shall attend additional meetings to include technical meetings with the Applicant, internal County coordination, Board of Supervisors, and Planning Commission hearing(s).
- c. CONTRACTOR assumes these meetings and/or conference calls will be held regularly to discuss project status, key timelines, document review, and address any technical issues that may arise.

A.9 Project Management

- a. CONTRACTOR shall routinely coordinate with the County and provide compliance memorandums concerning condition compliance.
- b. CONTRACTOR shall attend to all aspects of managing the project, including scheduling resources, handling team communication, and responding to requests for information.
- c. CONTRACTOR shall review Planning Commission materials, including public and commissioner comments, incorporate revisions based on updated materials, and incorporate additional information into the draft hearing materials.

B. PAYMENT PROVISIONS

B.1 COMPENSATION/PAYMENT

County shall pay an amount not to exceed \$309,298 for the performance of all things necessary for or incidental to the performance of work as set forth in the

ATTACHMENT B EXHIBIT 1 – SCOPE OF WORK/PAYMENT PROVISIONS

Scope of Work. CONTRACTOR'S compensation for services rendered shall be based on the following rates or in accordance with the following terms:

DD&A, Inc., Revised Cost Breakdown for East Garrison Specific Plan Condition Compliance

Task		Subtotal	Cost Per Task
A.7	Receive Documents & Establish Compliance Program		\$46,402
A.7.1	Initiation & Materials Review	\$10,194	
A.7.2	Establish Compliance Tracking Program	8,583	
A.7.3	Parking Analysis and Parking Plan	1,111	
A.7.4	Pre-Construction Period Compliance & Monitoring	21,464	
A.7.5	CEQA Addendum	5,050	
A.8	Meeting Attendance		\$24,655
A.9	Project Management		19,042
TOTAL LABOR			\$90,099
Expenses/Subconsultant			
	Transportation Subconsultant Peer Review	\$23,000	
	Reproduction	300	
	Mileage (current IRS mileage rate)	150	
	Miscellaneous (phone, fax, cellular, postage, courier, etc.)	425	
	Subtotal		\$23,875
	Administration Fee		3,581
TOTAL BUDGET			\$117,555
Expenses/Subconsultant – Optional Task			
	Transportation Consultant Direct Revisions	\$6,000	
	Subtotal		\$6,000
	Administration Fee		900
TOTAL BUDGET WITH OPTIONAL TASK			\$124,455

CONTRACTOR warrants that the cost charged for services under the terms of this contract are not in excess of those charged by any other client for the same services performed by the same individuals.

B.2 CONTRACTOR'S BILLING PROCEDURES

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 Agreement No. A-16313, the Project name and/or services, and an original hardcopy shall be sent to the following address or via email to 194-HCD-Finance@countyofmonterey.gov:

County of Monterey
Housing and Community Development – Finance
1441 Schilling Place, South 2nd Floor
Salinas, California 93901-4527

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Any questions pertaining to invoices under this Agreement should be directed to HCD Finance at (831) 755-4800 or via email to 194-HCD-Finance@countyofmonterey.gov:

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

The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

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

The 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.

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