

Attachment 1

Draft Fourth Extension of
Memorandum of Agreement
with UCP East Garrison, LLC

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

This FOURTH EXTENSION TO MEMORANDUM OF AGREEMENT REGARDING HABITAT MANAGEMENT ON PORTIONS OF THE PARKER FLATS RESERVE AT THE FORMER FORT ORD, CALIFORNIA (“Extension”) is entered into as of _____ 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 a Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord, California with an Effective Date of February 2, 2015 (the “Agreement”) and the First Extension to the Memorandum of Agreement Regarding Habitat Management on Portions of the Parker Flats Reserve at the Former Fort Ord California with effective date of July 28, 2020 (“First Extension”). 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 United States Fish and Wildlife Service (“USFWS”) and California Department of Fish and Wildlife (“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 first extension extended the term of the Agreement to June 30, 2021, and authorized County’s use of the sum remaining from the \$104,155 endowment plus any accrued interest for the purpose of continued habitat management on the CTS Preservation and Habitat Restoration Area while the County planned for long-term habitat management.

G. As the Habitat Conservation Plan for the former Fort Ord has not been adopted and the incidental take permits have not been issued, a Fourth Extension to extend the term one year is necessary.

H. The County is in the process of developing a Habitat Resource Management Plan (“RMP”) pursuant to the 1997 Installation Wide Multispecies Habitat Management Plan for the Former Fort Ord (“HMP”) as modified by the Memorandum of Understanding Concerning the Proposed East Garrison/Parker Flats Land Use Modification. The intent is that the RMP will incorporate long-term habitat management of the CTS Preservation and Habitat Restoration Area.

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I. In order to provide additional time for the development and adoption of the RMP, the second extension extended the term of the Agreement to June 30, 2024, or until the RMP was adopted, whichever was earlier. The third extension extended the term of the Agreement to June 30, 2026, or until the RMP is adopted, whichever is earlier.

J. The administrative draft RMP is under review and additional time is needed for the completion and adoption of the RMP, and the Parties desire to extend the term of this Agreement until June 30, 2028, or until the date the RMP is adopted by the County, whichever is first.

K. The Parties intend that the Developer shall continue to have no obligation to provide additional funds to replenish the Interim Management Fund in light of Developer's prior endowment under the Agreement, Developer's payment of the FORA Community Facilities District ("CFD") Special Tax, a portion of which was earmarked for habitat management on the former Fort Ord and transferred to the County upon FORA's dissolution, and Developer's payment of the FORA CFD Replacement Fee, a portion of which is for habitat management, pursuant to the First Amendment to Development Agreement recorded on July 14, 2020.

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

1. Extension. County and Developer hereby agree to extend the Agreement, as previously amended by the Third Extension, to June 30, 2028, or until the date the RMP, inclusive of long-term habitat management of the CTS Preservation and Habitat Restoration Area, is adopted by the County, whichever is first.

2. No Change to Remainder of Agreement. All other terms and provisions of the Agreement, as previously amended by the First, Second and Third Extensions, shall remain in full force and effect during the Term of this Agreement as extended except that 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 working with the California Department of Fish and Wildlife to record a conservation easement or other acceptable restriction vehicle for preservation of the CTS Preservation and Habitat Restoration Area.

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

4. 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.

5. 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.

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

COUNTY OF MONTEREY

By: _____
Chief Contracts & Procurement Officer

Date: _____

By: _____
N/A
Craig Spencer, Director (if applicable)

Date: _____

**Approved as to Form
Office of the County Counsel
Susan K. Blich, County Counsel**

By: _____
Michael Whilden, Deputy County Counsel

Date: _____

Approved as to Fiscal Provisions

By: _____
Auditor/Controller

Date: _____

**Reviewed as to Liability Provisions
Office of the County Counsel-Risk
Management**

By: _____
N/A
David Bolton, Risk Manager

Date: _____

CONTRACTOR

UCP East Garrison, LLC, a Delaware limited liability company

UCP, LLC, a Delaware limited liability company, its sole member

Contractor's Business Name

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

Daniel Turpin, Division President
Name and Title

Date: _____

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

Dean Mills, Vice President
Name and Title

Date: _____

Approved as to Form

By: _____
Holly Traube Cordova
Regional Legal Counsel

Date: _____