

THIRD AMENDMENT TO CITY ADMINISTRATOR

AT-WILL EMPLOYMENT AGREEMENT

This Third Amendment to City Administrator At-Will Employment Agreement (“Third Amendment”) is made and entered into between the City of Carmel-by-the-Sea, California, a municipal corporation (“City”) and Richard (“Chip”) Lyons Rerig, an individual (“City Administrator”). The City and the City Administrator are sometimes individually referred to as a “Party” and collectively as “Parties.” This Third Amendment shall be effective on June 1, 2020.

WHEREAS, the Parties entered into an Employment Agreement (“Employment Agreement”) on February 2, 2016.

WHEREAS, pursuant to Section 7A of the Employment Agreement, City Administrator received a base salary that, at the time of the Employment Agreement, was \$190,000.00.

WHEREAS, the current base salary of the City Administrator based upon Resolution No. 2018-110 and the Second Amendment to the Employment Agreement is \$196,650.00.

WHEREAS, pursuant to Section 7C of the Employment Agreement, the City Council of the City of Carmel-by-the-Sea (“City Council”) grants salary increases to City Administrator in its discretion. City Administrator does not currently have a salary increase pending.

WHEREAS, since March 2020, the global community, nation, State of California and City of Carmel-by-the-Sea have been gripped by COVID-19, a flu-like virus, that is significantly more contagious and deadly than the flu, and has caused mass illness and death.

WHEREAS, on March 4, 2020, the Governor of the State of California declared a state of emergency due to COVID-19. Since that time, the Governor and the Monterey County Health Officer have issued numerous Orders requiring residents to shelter in place, and all business except those deemed “essential” to halt any operations that cannot be performed by employees from home. The response to COVID-19, including these Orders, has had a devastating effect on the economy at all levels as well as to the budget of the City of Carmel-by-the-Sea. There are certain efforts underway to begin limited reopening of businesses, but the extent of impact of COVID 19 on the economy and the City’s budget to date and for the foreseeable future remains unknown.

WHEREAS, in an effort to conserve costs for the City, the City Administrator has requested an amount equal to 10% (ten percent) of the City Administrator’s annual base salary for 12 (twelve) months commencing June 1, 2020 through May 31, 2021 be reduced from the City’s contribution to Section 457 deferred compensation program of the City Administrator. The current annual base salary of the City Administrator is \$196,650 and 10% (ten percent) thereof is \$19,665.00.

WHEREAS, the Parties now desire to amend the Employment Agreement as follows:

NOW, THEREFORE, in consideration of the premises, the Parties agree as follows:

1. An amount equal to 10% (ten percent) of the City Administrator's annual base salary for 12 (twelve) months commencing June 1, 2020 through May 31, 2021 shall be reduced from the City's contribution to the Section 457 deferred compensation program of the City Administrator. The current annual base salary of the City Administrator is \$196,650 and 10% (ten percent) thereof is \$19,665.00.

2. Any and all benefits included in Section 8 of the Employment Agreement, or otherwise agreed to between the City Council and City Administrator, shall remain the same.

3. For purposes of this Amendment only, and for no other future use unless expressly agreed upon in writing, the Parties agree to waive Section 7E of the Employment Agreement. This Salary Reduction is entirely voluntary by City Administrator and does not in any way reflect any dissatisfaction with performance of the City Administrator by the City Council.

4. Government Code Provisions

a. Pursuant to Government Code section 53260, in the event City provides City Administrator with a cash settlement related to termination of the Employment Agreement, the cash settlement shall not exceed the lesser of (1) an amount equal to the monthly salary of Employee multiplied by 18 or (2) an amount equal to the monthly salary of City Administrator multiplied by the number of months left on the unexpired term of the Employment Agreement.

b. Pursuant to Government Code sections 53243 and 53243.3, in the event City provides paid leave salary to City Administrator pending an investigation into City Administrator, the City Administrator shall fully reimburse City for any paid leave salary if City Administrator is convicted of a crime involving an abuse of his office or position.

c. Pursuant to Government Code sections 53243.1 and 53243.3, in the event the City provides funds for City Administrator's legal criminal defense, the City Administrator shall fully reimburse City for any such funds if City Administrator is convicted of a crime involving an abuse of his office or position.

d. Pursuant to Government Code sections 53243.2 and 53243.3, in the event LAFCO provides City Administrator with a cash settlement related to City Administrator's termination, City Administrator shall fully reimburse City for any such cash settlement if City Administrator is convicted of a crime involving an abuse of his office or position.

e. Pursuant to Government Code section 53243.4, an "abuse of office or position" means (a) an abuse of public authority, including, but not limited to, waste, fraud, and violation of the law under color of authority, or (b) a crime against public justice, including, but not limited to, a crime described in Title 5 (commencing with Section 67), Title 6 (commencing with Section 85), or Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

5. Except as specifically modified and amended in this Amendment, the Employment Agreement and First Amendment and Second Amendment remain in full force and

effect and binding upon the Parties.

IN WITNESS WHEREOF, the Parties have executed this Third Amendment.

CITY OF CARMEL-BY THE SEA

A Municipal Corporation

By: _____

Dave Potter
Mayor

Chip L. Rerig
City Administrator

ATTEST:

By: _____

Britt Avrit
City Clerk

APPROVED AS TO FORM:

By: _____

Brian Pierik
City Attorney