



## CITY OF CARMEL-BY-THE-SEA CITY COUNCIL AGENDA

Mayor Dave Potter, Council Members Jeff Baron,  
Karen Ferlito, Bobby Richards, and Carrie Theis  
Contact: 831.620.2000 [www.ci.carmel.ca.us](http://www.ci.carmel.ca.us)

All meetings are held in the City Council Chambers  
East Side of Monte Verde Street  
Between Ocean and 7th Avenues

### REGULAR MEETING Tuesday, March 1, 2022

**Governor Newsom's Executive Order N-29-20 has allowed local legislative bodies to hold public meetings via teleconference and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body. Also, see the Order by the Monterey County Public Health Officer issued March 17, 2020. The health and well-being of our residents is the top priority for the City of Carmel-by-the-Sea.**

**To that end, this meeting will be held via teleconference and in-person at City Hall located on Monte Verde Street between Ocean and Seventh Avenue To participate via teleconference click the following link or copy and paste the link into your browser:**

**[https://ci-carmel-ca-us.zoom.us/j/84931190059?](https://ci-carmel-ca-us.zoom.us/j/84931190059?pwd=NU1ERmJIN0I2dXBEBEV2ZW4vajNOdz09)  
pwd=NU1ERmJIN0I2dXBEBEV2ZW4vajNOdz09 Meeting ID: 849 3119 0059 Passcode:  
679306 Dial +1 253 215 8782**

**To participate in this meeting in-person the public must show proof of vaccination (including virus booster) and wear a face covering at all times when in City Hall. Seating will be limited and available on a first come first served basis. The meeting will also be web-streamed on the City's website. The public can also email comments to [cityclerk@ci.carmel.ca.us](mailto:cityclerk@ci.carmel.ca.us). Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be added to the agenda and made part of the record.**

### OPEN SESSION 4:30 PM

#### TOUR OF INSPECTION 4:00 PM

Prior to calling the meeting to order, the Board/Commission will conduct an on-site tour of inspection of the properties listed on the agenda and the public is welcome to join. After the tour is complete, the Board/Commission will begin the meeting in the City Council Chambers no earlier than the time noted on the agenda.

- A. Mills Act Contract, L'Auberge Carmel - Monte Verde Street 2 NE of 7th Avenue

#### OPEN SESSION 4:30 PM

#### CALL TO ORDER AND ROLL CALL

## **EXTRAORDINARY BUSINESS**

- A.** Proclamation Celebrating the 50th anniversary of Meals on Wheels on the Monterey Peninsula
- B.** Proclamation Designating March as American Red Cross Month

## **PUBLIC APPEARANCES**

Members of the public are entitled to speak on matters of municipal concern not on the agenda during Public Appearances. Each person's comments shall be limited to 3 minutes, or as otherwise established by the Chair. Matters not appearing on the agenda will not receive action at this meeting and may be referred to staff. Persons are not required to provide their names, and it is helpful for speakers to state their names so they may be identified in the minutes of the meeting.

## **ANNOUNCEMENTS**

- A.** City Administrator Announcements
- B.** City Attorney Announcements
- C.** Council Member Announcements

## **CONSENT AGENDA**

Items on the consent agenda are routine in nature and do not require discussion or independent action. Members of the Council, Board or Commission or the public may ask that any items be considered individually for purposes of Council, Board or Commission discussion and/ or for public comment. Unless that is done, one motion may be used to adopt all recommended actions.

1. Monthly Reports for January 2022
2. December 6, 2021 Special Meeting, December 7, 2021 Regular Meeting, December 14, 2021 Special Meeting, January 3, 2022 Special Meeting, January 4, 2022 Regular Meeting, January 31, 2022 Special Meeting, and February 1, 2022 Regular Meeting
3. January 2022 Check Register Summary
4. Resolution 2022-019 Approving Policy 2022-01 establishing Guidelines for the Review of Projects involving the Installation of a Grease Interceptor
5. Resolution 2022-020 Authorizing the City Administrator to Execute Amendment No. 1 to a Professional Services Agreement with Joseph Systems Inc. for a not-to-exceed amount of \$28,840.70 and extending the term through June 30, 2022
6. Resolution 2022-021 Approving Uses of American Rescue Act Plan (ARPA) Funds

## **ORDERS OF BUSINESS**

Orders of Business are agenda items that require City Council, Board or Commission discussion, debate, direction to staff, and/or action.

7. Resolution 2022-022 Accepting a Status Report and Amending the FY 2021/22 Capital Improvement Plan to include the Police Building Renovation Project with a budget of \$2,000,000
8. Resolution 2022-023 Approving a Lease Agreement with Pacific Repertory Theatre for Operations and Management of the Forest Theater, and Approving a Public Works

budget amendment of \$60,000 for initial upgrades

9. Consider a resolution awarding a Professional Services Agreement to Winter & Company, for a not-to-exceed fee of \$139,330, to provide consultant support for the "Design Traditions 1.5" project to update the City's Design Guidelines and Zoning Code

## **PUBLIC HEARINGS**

10. Consideration of a recommendation from the Historic Resources Board to the City Council that the City Council enter into a Mills Act Historical Property Contract (MA 21-238, L'Auberge Carmel) with Esperanza Carmel Commercial, LLC for the historic 'Sundial Lodge' now known as L'Auberge Carmel located on Monte Verde 2 northeast of 7th Avenue (APN 010-191-005).

## **FUTURE AGENDA ITEMS**

### **ADJOURNMENT**

- 1.

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, outside the Park Branch Library, NE corner of Mission Street and 6th Avenue, the Carmel-by-the-Sea Post Office, 5th Avenue between Dolores Street and San Carlos Street, and the City's webpage <http://www.ci.carmel.ca.us> in accordance with applicable legal requirements.

### **SUPPLEMENTAL MATERIAL RECEIVED AFTER THE POSTING OF THE AGENDA**

Any supplemental writings or documents distributed to a majority of the City Council regarding any item on this agenda, received after the posting of the agenda will be available for public review at City Hall located on Monte Verde Street between Ocean and Seventh Avenues during regular business hours.

### **SPECIAL NOTICES TO PUBLIC**

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk's Office at 831-620-2000 at least 48 hours prior to the meeting to ensure that reasonable arrangements can be made to provide accessibility to the meeting (28CFR 35.102-35.104 ADA Title II).

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL  
PROCLAMATION**

**A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA CELEBRATING THE 50TH ANNIVERSARY OF THE NATIONAL SENIOR NUTRITION PROGRAM**

**WHEREAS**, Since 1972, the National Senior Nutrition Program has funded local agencies and organizations to serve home-delivered and congregate meals that help to ensure older adults have opportunities to stay healthy, independent, and connected; and

**WHEREAS**, More than 10 million older Americans face hunger each year; and

**WHEREAS**, Older Americans face malnutrition, isolation, and

**WHEREAS**, Local senior nutrition programs help older adults access healthy foods; nutrition screening, education, and counseling; social opportunities; and other supports that encourage well-being; and

**WHEREAS**, The Meals on Wheels of the Monterey Peninsula is an integral part of Carmel – providing sustenance and so much more to our older community members, especially those most vulnerable to social isolation; and

**WHEREAS**, Meals on Wheels of the Monterey Peninsula is having a positive impact on our community and its senior members by:

- Nourishing their bodies, minds, and spirits
- Empowering seniors, disabled adults, veterans to remain independent
- Driving out hunger and isolation in our region

**NOW, THEREFORE, BE IT PROCLAIMED THAT I**, Dave Potter, Mayor of the City of Carmel-by-the-Sea, on behalf of the City Council and the citizens of Carmel hereby proclaim March 2022 to be the 50th Anniversary of the National Senior Nutrition Program. We urge every resident to recognize older adults and the people who support them through nutrition services as essential contributors to the strength of our community.

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David Potter, Mayor

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL  
PROCLAMATION**

**A PROCLAMATION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
DESIGNATING MARCH AS  
AMERICAN RED CROSS MONTH**

**WHEREAS**, March is American Red Cross Month, a special time to honor the kindness of our neighbors who aid families in need every day in Monterey County, across the United States and around the world. Their dedication touches millions of lives each year as they carry out the organization's 140-year mission of preventing and alleviating suffering; and

**WHEREAS**, During the trying times of the coronavirus pandemic, people have stepped up to help others in need, whether it was responding to this year's record-breaking disasters across the country or rolling up their sleeves to give blood when our country faced a severe blood shortage; and

**WHEREAS**, Here in Monterey County, local families have relied on Central Coast Chapter volunteers for comfort and hope while coping with wildfires and floods. As a recent example, in response to the evacuation of some 15,000 people in the Central Coast area due to dangerously wet and windy storms, the Red Cross mobilized 100 disaster responders to support those in need. In the days following the evacuation orders, the Red Cross and our partners provided more than 1,200 total overnight stays in hotel accommodations for those that were displaced, provided 2,655 meals and snacks to those forced to evacuate their homes, and made more than 167 individual care contacts to support the health and mental health needs of those affected. Volunteers also helped 20 households affected by home fires in Monterey County by addressing their urgent needs such as food, lodging, and recovery support; and

**WHEREAS**, Central Coast Chapter volunteers (192 from Monterey) have supported local families in other ways too. Last year in Monterey County, the Red Cross installed 377 smoke alarms, making 146 homes safer. Our Pillowcase Project and Prepare with Pedro initiatives reached 150 children. Over 850 county residents enrolled in health and safety training classes, and over 1300 blood donations were made. In addition, services were provided to 298 members of the armed forces; and

**WHEREAS**, This lifesaving work is vital to strengthening our community's resilience. Nearly 200 years since the birth of American Red Cross founder Clara Barton, we dedicate this month of March to all those who continue to advance her noble legacy, and we ask others to join in their commitment to care for people in need.

**NOW, THEREFORE, BE IT PROCLAIMED THAT I**, Dave Potter, Mayor of the City of Carmel-by-the-Sea, on behalf of the City Council and the citizens of Carmel hereby proclaim March 2022 as Red Cross Month. I encourage all Americans to reach out and support its humanitarian mission.

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David Potter, Mayor



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
CONSENT AGENDA

**TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Yashin Abbas, Interim City Clerk

**APPROVED BY:** Chip Rerig, City Administrator

**SUBJECT:** Monthly Reports for January 2022

## RECOMMENDATION:

Review and receive monthly reports.

## BACKGROUND/SUMMARY:

This is a monthly series of reports:

- 1) City Administrator Contract Log - no report for January 2022
- 2) Community Planning and Building Department Reports
- 3) Police, Fire, and Ambulance Reports
- 4) Public Records Act Requests
- 5) Public Works Departments Report

## FISCAL IMPACT:

N/A

## PRIOR CITY COUNCIL ACTION:

Monthly review and approval.

## ATTACHMENTS:

- Attachment #1 - City Administrator Contract Log
- Attachment #2 - CBP Monthly Report January 2022
- Attachment #3 - Police, Fire, and Ambulance Reports
- Attachment #4 - Public Records Act Request Log January 2022
- Attachment #5 - Public Works Report for January 2022

The City Administrator did not enter into any contracts during the month of January 2022.



# CITY OF CARMEL-BY-THE-SEA Monthly Report

January 2022

## Community Planning and Building Department

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Margi Perotti, Administrative Coordinator
SUBMITTED ON:	February 7, 2022
APPROVED BY:	Brandon Swanson, Community Planning & Building Director

### JANUARY 2022– DEPARTMENT ACTIVITY REPORT

#### I. PLANNING APPLICATIONS:

In January of 2022, **38** planning permit applications were received.

#### II. BUILDING PERMIT APPLICATIONS:

In January of 2022, **49** Building Permit applications were received.

#### III. CODE COMPLIANCE CASES:

In January of 2022, **16** new code compliance cases were created.

#### IV. ENCROACHMENT APPLICATIONS:

In January of 2022, **18** encroachment permit applications were received.

#### V. YEAR-TO-DATE TRENDS

Table 1 includes the January 2022 totals, for planning and building permit applications, encroachments and code compliance cases with a comparison to January 2020 totals. As shown in the table, in 2022 there was a **12% increase** in planning permit applications, an **112% increase** in building permit applications, **100% decrease** in code compliance cases, and a **16% decrease** in encroachment permit applications compared to the same period 2021.

	<u>Planning</u>	<u>Building</u>	<u>Code Compliance</u>	<u>Encroachments</u>
2021 Totals	34	23	8	18
2022 Totals	38	49	16	15
% Difference	12%	112%	100%	-16%





# CITY OF CARMEL-BY-THE-SEA

## Monthly Report

January 2022

Public Safety

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Interim Chief Brian Uhler
<b>SUBMITTED ON:</b>	February 18, 2022
<b>APPROVED BY:</b>	Chip Rerig, City Administrator

### AMBULANCE REPORT

#### Summary of Carmel Fire Ambulance November Calls for Service

#### AMBULANCE PERFORMANCE MEASURE

The performance goal for Code-3 (life threatening emergency-lights & siren) ambulance calls with a response time of 5 minutes or less from dispatch to arrival is 95%. For the month of January 2022 the ambulance was unable to meet the performance measure. The response time was 94.29% with (2) code-3 call over 5 minutes.

49 total calls for service in CBTS

38 Code 3 EMS calls for service – Average response time: 3:03 seconds, (3) EMS calls over 5:00 min

1/3/2022 – Code 3 response 05:36 min – 5 Guadalupe Street

1/3/2022 – Code 3 response 06:13 min - Torres Street/5<sup>th</sup> Avenue – Downgraded to Code 2 in route

1/28/22 – Code 3 response 05:03 min –Responded from Monterey

### MONTEREY FIRE REPORT

#### Summary of Monterey Fire November Calls for Service

#### FIRE PERFORMANCE MEASURE

The performance goal for Code-3 (life threatening emergency-lights & siren) fire calls with a response time of 5 minutes or less from dispatch to arrival is 95%. For the month of January 2022 the fire department was able to meet the performance measure. The response time was 100% with (0) code-3 calls over 5 minutes.

66 total calls for service in CBTS Average response time: 3:26 min.

56 total Code-3 Fire calls for service with (0) Fire calls over 5:00 min

### BEACH FIRES

(0) Illegal beach fires were recorded during the month of November

January 2022

request number	Date Requested	10-day due date	records requested	requestor	date completed
2022-001	1/14/2022	1/24/2022	City Clerk Britt Avritt's resignation letter	Theresa Buccola	1/24/2022
2022-002	1/18/2022	1/28/2022	Please forward the date that BRITT AVRIT became an AGENT of CARMEL BY THE SEA, along with her first employment contract.	Theresa Buccola	1/25/2022
2022-003	1/26/2022	2/5/2022	dataset for City of Carmel by the Sea. Would you be so kind to send over a list/txt/csv or a link of business that are registered in your city or have licenses to operate. Business Name Address (full address with street, city, Zip) Phone Num (optional) Website address (optional) License Num License Expiry Business Category (type of the business, optional)	Karla Torres, Verisk Innovative Analytics	1/31/2022 2/7/2022

Request No.	Request Date & Received By	10-Day Due Date	14-Day Ext. Date	Date Completed by PSO	Requestor	Phone	Info Requested	Status	Date & PSO Mailed
2022-0001	1/3 mw	13-Jan		1/13/2022	Cyd Gloer	415-235-7800	CG1900100/CC2100596	completed	picked up
2022-0002	1/3 mw	13-Jan		1/3 mw	David Monize	831-601-2930	CA2100365	completed	picked up
2022-0003	1/4 MR	14-Jan		1/4/22 MR	Lexis Nexis		OJ Accident Report	UTL	mailed back
2022-0004	1/11 MW	21-Jan		1/25 DA	Dominique Barbar	859-539-1803	CG2100588	denied	denial letter mailed
2022-0005	1/6 DA	16-Jan		1/14 DA	Miguel Torres	831-747-7571	CG2100461	completed	mailed
2022-0006	1/20 DA	30-Jan		1/20 DA	Christopher Davis		CA2100608 Photos	completed	released at front counter
2022-0007	1/20 DA	30-Jan		1/20 DA	Deborah Mizzi		CG2100609	completed	picked up
2022-0008	1/19 MW	29-Jan		1/22 MW	Advance Investigations	203-745-4455	Records Check	completed	faxed
2022-0009	1/24 MW	4-Feb		1/27 DA	Nicola Sebastiani	831-877-0146	CG2000543	completed	released at front counter
2022-0010	1/24 MW	4-Feb		1/27 DA	Catherine Sebastiani	650-457-3504	CG2100612	completed	released at front counter
2022-0011	1/26 DA	6-Feb		1/27 DA	Lexis Nexis		CA2100611	completed	mailed by DA
2022-0012	1/26 DA	6-Feb		1/27 DA	Lexis Nexis		Accident Report	UTL	mailed back request
2022-0013	1/26 DA	6-Feb		1/27 DA	Metropolitan Reporting		CA2100592	completed	mailed by DA
2022-0014	1/21/2022	1-Feb		1/27 DA	Jacquelyn Smith Woodward		812210	UTL	called to advise no report
2022-0015	1/25 DA	5-Feb		1/27 DA	Pamela Campione		CG1900752/CG2000270	completed	released at front counter
2022-0016	01/31 C Mitchell	11-Feb		2/1 DA	Judith Nail		CG2200019	completed	released at front counter
2022-0017	1/24 DA	4-Feb		2/1 DA	Mark Baker-FL Department of Law Enforcement		CC1700342	UTL	left voicemail for the RP



# **CITY OF CARMEL-BY-THE-SEA**

## **Public Works Department**

### **Monthly Report – January 2022**

**TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Robert Harary, P.E., Director of Public Works

**SUBMITTED ON:** February 3, 2022

**APPROVED BY:** Chip Rerig, City Administrator

#### **City Council Meeting of January 4, 2022**

- Approved Resolution 2022-001, approving Amendment No. 6 to the janitorial services contract with PureServe, extending the term through June 30, 2022 for a fee not-to-exceed \$102,000.
- Approved Resolution 2022-002, authorizing Change Orders No. 4 to Iverson Tree Service and John Ley Tree Service, each for an increase of \$70,000 and terms expiring June 30, 2022.
- Staff presented a new report on Council Strategic Initiatives which included several, non-capital improvement project-oriented Public Works programs.

#### **Forest and Beach Commission Meeting of January 13, 2022**

- Denied a tree removal application for a healthy coast live oak tree at the northeast corner of Carpenter and Fourth. The tree damaged a driveway retaining wall which must be reconstructed; however, the wall could be re-designed to accommodate the tree.
- Denied a tree removal application for a healthy Monterey cypress located on San Antonio, 2 SW of Fourth. Cypress is growing adjacent to a healthy eucalyptus, but they are starting to crowd each other. Recommended removal of the non-native eucalyptus.
- Formed an Ad Hoc Committee for the Arbor Day event to be held on October 8, 2022. Committee to select location, speakers, children activities, advertising, donations, etc.
- Discussed future meeting topics during 2022 to cover the full authority of the Commission, specifically related to the beachfront and parks. Past meetings have been dominated by tree removal permits. Upcoming key topics will include the overall beachfront, including the 16 controversial benches along the Scenic Pathway, and the Forest Management Plan.
- Presented Forester's Report and Public Works Report for December 2021.

#### **Climate Action Committee Meeting of January 20, 2022**

- A presentation was made regarding greenhouse gas emissions forecasting, reduction targets, and future monitoring/updating.

- Reviewed a draft list of Climate Change Adaptation Strategies which incorporated comments received at the November public workshop.

**Traffic Safety Committee Meeting of January 26, 2022**

- Notable topics related to Public Works included:
  - Old business item related to disabled parking spaces adjacent to and across from the Post Office was closed.
  - Residents of Santa Rita, between Ocean and Mountain View, expressed concerns about two-sided parking which restricts emergency vehicle access. Site visit planned.
  - Ocean Avenue intersections, between San Antonio and Monte Verde, should be enhanced with consistent safety features such as pedestrian crossing bars and no parking signs or posts between Ocean Avenue and the pedestrian pathways. Begin with pilot intersection.
  - Safety at the intersection of Junipero and Seventh Avenue was reviewed. Committee to recommend to the City Council to post this intersection for 3-way stop control.

**Public Works Administration**

- Notified by non-profit Project O, that Carmel is certified as a “Blue City” – Ocean Champion Status, indicating environmental stewardship for waterways and ocean, and joining the Blue City Network of like-minded jurisdictions. Carmel is the first certified city in Monterey County.
- Finalized cost-sharing negotiations with Pac Rep and drafted a Lease Agreement with the City Attorney’s office for the Forest Theater.
- Completed background checks for a Tree Care Specialist, Maintenance Worker-Forestry, and Maintenance Worker-Streets. All three new hires are anticipated to start in February.
- Reviewed 21 Project Manager applications. Panel interviews scheduled for early February.
- Advertised the Administrative Technician position for the Environmental Compliance Division.
- Began data collection in preparation for updating the 5-year Capital Improvement Plan.
- Provided information to Carmel Magazine related to Carmel Cares.

**Carmel Cares**

- Continued to maintain and improve the Scenic Pathway, Devendorf Park, Vista Lobos Park, Sunset Center grounds, median islands, and other areas.
- Major cleanup of the Forest Theater grounds included tree and shrub trimming and weed removals, in concert with Forestry crews.
- Completed fabrication of seven (7) custom downtown Carmel map display cases, a show bill structure for Sunset Center, and upgraded frames for signage along the Scenic Pathway.
- The Median Minders Community Engagement Program continues to grow with new volunteers.

**Environmental Programs**

- Began public outreach efforts associated with SB1383, requiring food scraps to be put into the green waste cart.
- Distributed 270 organic waste kitchen pails at no charge to residents.
- Received 30 replacement cigarette butt receptacles and added “Butt Stops Here” labels.
- Reviewed the North Dunes Habitat Restoration Project Annual Report for fiscal year 2020/21.

- Negotiated the scope of work and fees with Dudek to re-write the City's Stormwater Ordinance Section 17.43 and portions of 17.42.
- Completed Professional Services Agreement with Neill Engineers to design the first three drainage projects at the south end of Mission Trail Nature Preserve (MTNP) funded by a Per Capita Park Grant.
- Tope's Tree Service began removal of three large, dead trees in the MTNP.
- Tested orange slime observed in the Forest Hill Park creek. On-site and lab results were clean.

**Facility Maintenance**

- Removed holiday decorations along Ocean Avenue and in Devendorf Park.
- Vendor installed ADA-compliant partitions in the Del Mar men's public restroom.
- Hired electrician and coordinated with PG&E to replace the damaged electrical conductors between a pole-mount meter and the Flanders Mansion, updated to meet current Codes.
- Repaired the rear basement porch at Flander's Mansion using on-site redwood.
- Discovered much graffiti, especially in park restrooms over weekends. Coordinating w/PD.
- Authorized contractor to relocate Sunset Center's fire pump muffler to meet Fire Code.
- Replaced the fire pump belt destroyed by rats.
- Obtained cost estimates for City Hall roof repairs.

**Street Maintenance**

- Received reimbursement of \$2,998 from California Office of Emergency Services for partial reimbursement of storm damage from February 2021.
- Coordinated with Carmel Area Wastewater District to vactor out the City's four CDS drainage filtration units to meet stormwater discharge quality regulations.
- Regraded/cleared out drainage channels, replaced eroded wood chips, and removed piles from the MTNP.
- Repaired the edge and footings along the Fourth Avenue Boardwalk due to erosion.
- Finished hot mix asphalt repair along Carmelo Street near Twelfth Avenue.
- Installed two new benches.
- Repaired traffic and street name signs.

**Forestry, Parks and Beach (Forester's Report)**

- Completed irrigation and landscaping along the Ocean Avenue median island between Lincoln and Monte Verde Streets for the Downtown Beautification Project.
- Potted 46 Monterey pine and 37 bishop pine seedlings provided by Cal Fire with the help of the young people from the Carmel Youth Center. The Monterey pine seed is from Ano Nuevo State Park. The bishop pine (*Pinus muricata*) is native to the California coast, tolerant of salt air and better-mannered than the Monterey pine.
- Eleven (11) dead trees were removed by contractors.
- Planted six (6) new trees.
- Five (5) trees were confirmed to be planted as a condition of issued removal permits from previous months. These planting were verified by property owners sending in photos.
- Identified the public-right-of-way area adjacent to the bus stop on Rio Road, north of Lasuen Drive, to begin eradicating ivy from.

• Private and Development Activities

**2022 Permitted Removals and Required Planting**

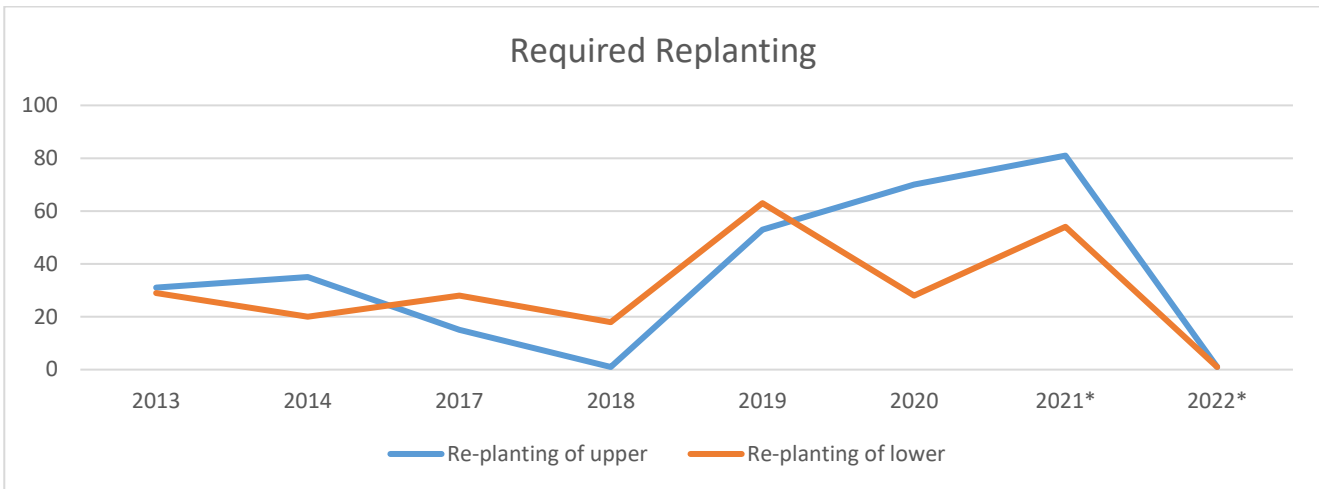
	Removals	Plant Upper	Plant Lower	No room for new tree	Meets Density Recommendation	Total Number of Trees Required
<b>January</b>	2	1	1	0	0	2
February						
March						
April						
May						
June						
July						
August						
September						
October						
November						
December						
<b>Totals</b>	2	1	1	0	0	2

**Historic Permitted Removals and Required Plantings**

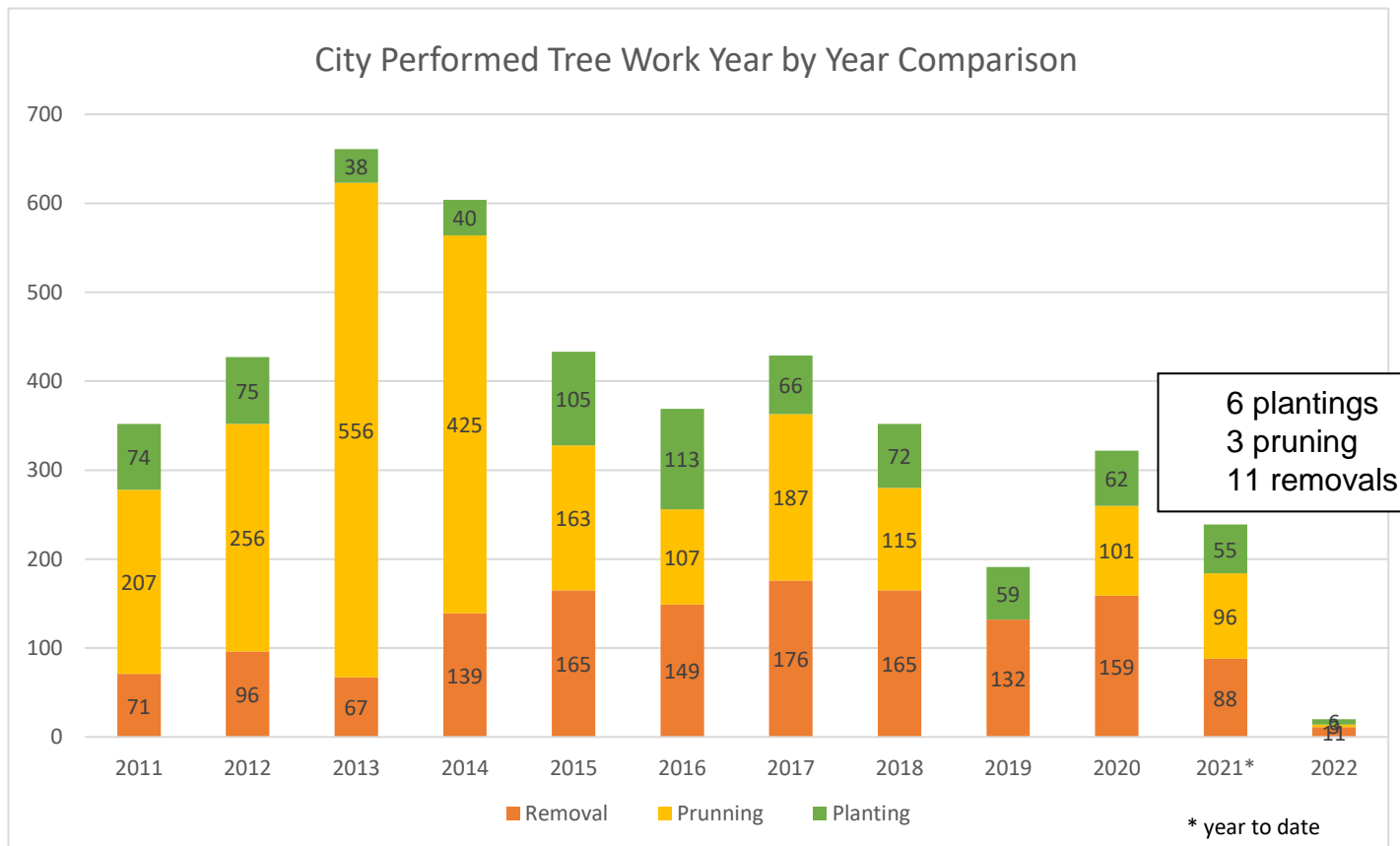
	Removal permits	Removal of upper	Removal of lower	Replanting Required	Replanting of upper	Replanting of lower	Replanting %
2012	96			20			20.83%
2013	123	60	63	59	31	29	47.97%
2014	145	64	81	49	35	20	33.79%
2016	90			37			41.11%
2017	119	50	69	43	15	28	36.13%
2018	77	37	60	20	1	18	20.62%
2019	170	107	63	116	53	63	68.24%
2020	98	57	41	93	67	26	94.90%

	Permitted Removals	Removal of Upper	Removal of Lower	Replanting Required	Replanting of Upper	Replanting of Lower	Re-planting %	Applications Processed
2021	204	81	123	135	81	54	66.18%	213
2022*	2	1	1	2	1	1	100.00%	14

\*year to date



## City Forestry, Parks, and Beach Activities





City Work for January 2022

<b>Work Type</b>	<b>Count</b>
Inspection	36
Plan Reviews	8
Planting	6
Pruning	3
Removal	11

**SPECIAL MEETING  
Monday, December 6, 2021**

**OPEN SESSION  
4:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 4:31 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**EXTRAORDINARY BUSINESS**

**Item A:** Receive a presentation on the Monterey Regional Stormwater Management Program (MRSWMP)

Environmental Compliance Manager Agnes Martelet introduced the presenter. MRSWMP Program Manager Jeff Condit presented an update on the program's successes and responded to Council's questions.

The City Attorney announced the closed session items, and that Item B will be removed.

**CONSENT AGENDA**

**Item 1:** Resolution 2021-085 of the City Council of the City of Carmel- by-the-Sea Proclaiming the Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953(e)

City Attorney Brian Pierik provided the staff report.

Public Comment – None

Council discussion followed.

On a motion by Council Member Ferlito and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2021-085 proclaiming the continuing need to meet by teleconference pursuant to Government Code Section 54953(e) by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**PUBLIC APPEARANCES**

None

**ORDERS OF BUSINESS**

**Item 2:** Resolution 2021-074 approving: (1) Amendment No.1 to the Franchise Agreement with GreenWaste Recovery, Inc. to comply with Senate Bill 1383, and to allow an assignment of the Franchise Agreement resulting from a change in ownership, and (2) a 3.76 percent increase to charges for the collection of solid waste, recycling and organics, effective January 1, 2022, to cover additional operational costs associated with SB 1383

Environmental Compliance Manager Agnes Martelet provided the staff report. Rob Hilton of HF&H Consultants, who provide support with the franchise contract oversight, responded to Council's questions.

Public Comment – None

Council discussion followed.

On a motion by Council Member Theis and seconded by Council Member Ferlito, the City Council adopted Resolution 2021-074 approving: (1) Amendment No.1 to the Franchise Agreement with GreenWaste Recovery, Inc. to comply with Senate Bill 1383, and to allow an assignment of the Franchise Agreement resulting from a change in ownership, and (2) a 3.76 percent increase to charges for the collection of solid waste, recycling and organics, effective January 1, 2022, to cover additional operational costs associated with SB 1383 by the following roll call vote:

AYES: BARON, FERLITO, THEIS, POTTER  
NOES: RICHARDS  
ABSENT: NONE  
ABSTAIN: NONE

**Item 3:** Resolution 2021-076 authorizing changes to the position allocation schedule within the Fiscal Year 2021-2022 Adopted Budget

City Administrator Chip Rerig provided the background and Director of Budget and Contracts Sharon Friedrichsen discussed the staff report in detail. They responded to Council's questions.

The following members of the public spoke on this item:

- Rita Patel
- Don McDougall
- Ken Cranstone
- Alexandra Fallon
- Mark Stillwell
- Marci Meaux

Council discussion followed.

On a motion by Mayor Potter and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2021-076 authorizing changes to the position allocation schedule within the Fiscal Year 2021-2022 Adopted Budget by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE

ABSTAIN: NONE

**Item 4:** Fire protection and ambulance/paramedicine services with the City of Monterey

City Administrator Chip Rerig provided the background. Mayor Pro Tem Richards and Council Member Carrie Theis presented the staff report as part of the Ad Hoc Committee and responded to questions.

The following members of the public spoke on this item:

- Mark Stillwell
- Tim Twomey
- David Jedinak

Council discussion followed.

On a motion by Mayor Potter and seconded by Council Member Baron, the City Council directed staff to engage in contract negotiations with the City of Monterey for a contract for fire protection and ambulance/paramedicine services as recommended by the Ad Hoc Committee and return to the City Council with a contract for adoption.

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Mayor Potter requested a brief recess at this time.**

**The Council reconvened the meeting at 7:04 p.m.**

**Item 5:** Receive a Presentation and Provide Direction to Staff Regarding a Proposed Grease Interceptor Policy

Public Works Director Robert Harary provided the staff report and responded to Council's questions.

The following members of the public spoke on this item:

- Michael Chang
- Mark Stillwell

Council discussion followed.

Council directed staff to develop a written policy regarding this matter for future consideration and bring this item back next month. No formal action was taken.

**Item 6:** Resolution 2021-083 establishing the meeting dates of the City Council for calendar year 2022

City Administrator Chip Rerig provided the background. Acting City Clerk Ashlee Wright discussed the proposed meeting schedule.

Public Comment - None

Council discussion followed.

On a motion by Mayor Potter and seconded by Council Member Ferlito, the City Council adopted Resolution 2021-083 establishing the meeting dates of the City Council for calendar year 2022 with the modification of the September meeting moved to the first week by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 7:** Provide staff with direction regarding Board and Commission term expirations

Acting City Clerk Ashlee Wright provided the staff report.

Public Comment – None

Council discussion followed.

On a motion by Council Member Theis and seconded by Council Member Baron, the City Council approved the new Board and Commission term expiration dates by the following roll call vote:

AYES: BARON, FERLITO, THEIS, POTTER  
NOES: RICHARDS  
ABSENT: NONE  
ABSTAIN: NONE

### **CLOSED SESSION**

Item B was pulled to be brought back at the January regular meeting.

The Mayor announced the closed session items.

**Item A:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Government Code Section 54957  
Title: City Administrator

**Item B:** CONFERENCE WITH LABOR NEGOTIATORS – Government Code Section 54957.6  
Agency designated representatives: City Attorney  
Unrepresented employee: City Administrator

Public Comment - None

### **ADJOURNMENT**

The City Council adjourned to Close Session at 8:14 PM.

APPROVED:

ATTEST:

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Dave Potter, Mayor

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Ashlee Wright, Acting City Clerk

**REGULAR MEETING**  
**Tuesday, December 7, 2021**

**TOUR**  
**3:00 PM**

**TOUR OF INSPECTION**

Prior to calling the meeting to order, the Board/Commission will conduct an on-site tour of inspection of the properties listed on the agenda and the public is welcome to join. After the tour is complete, the Board/Commission will begin the meeting in the City Council Chambers no earlier than the time noted on the agenda.

- A.** Verizon - 4 locations: Carmelo 2 SW of 8th (Residence), Carmelo 2 NE of 9<sup>th</sup> (Residence), Camino Real & 9<sup>th</sup> (La PLayer Hotel), Camino Real 3 NE of 9<sup>th</sup> (Residence)

**OPEN SESSION**  
**4:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 4:31 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**PUBLIC APPEARANCES**

The following members of the public spoke:

Wanda Vollmer  
Jo Todd  
Richard Kreitman  
Amy Herzog

**ANNOUNCEMENTS**

**Item A:** City Administrator Announcements

City Administrator Chip Rerig thanked Corporal Lightfoot, CERT volunteers and all resident volunteer groups that keep the village special. He thanked Library and Community Activities Director Ashlee Wright, Executive Assistant Leslie Fenton, and Community Activities Commission for organizing the wonderful City Holiday Tree Lighting event on December 3, and thanked everyone who attended.

**Item B:** City Attorney Announcements

City Attorney Brian Pierik stated that there was no reportable action from the December 6, 2021 Closed Session agenda.

**Item C:** Council Member Announcements

Council Member Ferlito thanked the Community Activities Commission for the City Holiday Tree Lighting event. She thanked the CERT volunteers, and that she is looking forward to their other activities. She announced that she will be attending AMBAG's Special Meeting December 8. She suggested for Director of Community Planning and Building Brandon Swanson to give a brief update on the regional housing needs assessment numbers.

Mayor Pro Tem Richards thanked the Community Activities Commission and staff and hopes that the City Holiday Tree Lighting become a traditional event. He wishes good luck to the three new businesses: Social Hour, Monica Graham Fine Art, and Big Little Boxes. He thanked the CERT volunteers. He attended the Veteran's celebration in the park this month.

Council Member Theis reported that Monterey Regional Waste Management District's current General Manager is retiring, and that the new General Manager, Felipe Melchor, will start in January.

Mayor Potter announced that Caltrans has grant monies available. Council Member Ferlito stated that she will pursue grant funding for the Illegal dumping and litter task force.

### **CONSENT AGENDA**

Items 4 and 5 were pulled for further discussion.

**Item 1:** Monthly Reports for October: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report

**Item 2:** October 2021 Check Register Summary

**Item 3:** October 4, 2021 Special Meeting, October 5, 2021 Regular Meeting, November 1, 2021 Special Meeting, and November 2, 2021 Regular Meeting

**Item 6:** Resolution 2021-081 to designate the 2021 Holiday Closure from December 27, 2021 – December 31, 2021

**Item 7:** Resolution 2021-082 authorizing a one-time payment to employees known as the COVID-19 Emergency Recognition Pay in recognition and appreciation for employees' efforts during the initial COVID-19 Emergency Shelter in Place Order.

**Item 8:** Resolution 2021-085 authorizing a Free Use Day of Sunset Center to AIM Youth Mental Health for their 2nd annual Scientific Symposium.

Public Comment – None

On a motion by Mayor Pro Tem Richards and seconded by Council Member Baron, the City Council approved items 1, 2, 3, 6, 7 and 8 on the Consent Agenda by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**The following items were pulled for discussion:**



**Item 4:** Resolution 2021-079 authorizing the consumption of alcohol on public property for Visit Carmel's Culinary Week kick-off event to be held Friday, January 14, 2022; and authorizing the consumption of alcohol on public property and the erection of a tent for the Carmel Art Festival event that will be held May 13 -15, 2022.

Public Comment – None

Council discussion followed.

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council adopted Resolution 2021-079 authorizing the consumption of alcohol on public property and the erection of a tent for the Carmel Art Festival event that will be held May 13 -15, 2022 by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 5:** Resolution 2021-080 amending Policy C16-02, Records Management Program.

Public Comment – None

Council discussion followed. Council Member Baron recommended modifications for the timeframe to be permanently for Records #9, #30, and #72. Council directed staff to bring this item back to a future meeting. No formal action was taken.

## **ORDERS OF BUSINESS**

**Item 9:** Resolution 2021-077 updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule

City Administrator Chip Rerig presented the staff report and responded to Council's questions.

Public Comment – None

Council discussion followed.

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council adopted Resolution 2021-077 updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule for Grades 1-6 only directed staff to bring back at a future meeting a more comprehensive schedule that would include the current grades 7-10 (recommending 7, 8, 9 to be banded together, and 10 to be separate) by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 10:** Consideration of a permanent encroachment permit application (EN 21-187, Stilwell) to install an underground grease interceptor in the public right of way between the sidewalk and the curb on the eastside of San Carlos Street near the corner of 5<sup>th</sup> Avenue

Council Member Theis recused herself due to her place of business being within the sphere of influence.

Community Planning and Building Director Brandon Swanson provided the staff report.

The applicant provided information.

The following members of the public spoke on this item:

Jo Todd  
Rich Pepe  
Mark Stillwell

Council discussion followed.

On a motion by Council Member Ferlito and seconded by Mayor Pro Tem Richards, the City Council considered and provided a determination on an application (EN 21-187) to install an underground grease interceptor in the public right of way between the sidewalk and the curb on the east side of San Carlos Street near the corner of 5th Avenue, as conditioned, by the following roll call vote:

AYES: BARON, FERLITO, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: THEIS

The motion passed 4-0-1 with Council Member Theis recused.

## **PUBLIC HEARING**

**Item 11:** Consideration of an appeal by Sequoia Deployment Services on behalf of Verizon Wireless (APP 21-360, Verizon Wireless-Carmelo) of the Planning Commission's denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility on a replacement utility pole, and ancillary equipment on the ground adjacent to that pole, within the public right-of-way, located in the Multi-Family Residential (R-4) District

Community Planning and Building Director Brandon Swanson provided the background. Senior Planner Marnie Waffle presented the staff report. Tripp May (Telecommunications Firm) provided additional information. City Attorney Brian Pierik announced that BBK law attorney Gail Karish is also present to assist with questions.

The Appellant, Verizon Wireless, as represented by Pete Shubin and Paul Albritton, provided information.

The following members of the public spoke on this item:

Anthony Lombardo, representative of the Stop the Cell Tower in Carmel Neighborhoods group, on behalf of Nancy Louis, Sue Dangle and Kelly Kampsi.

Bob Kavener  
Bill Lewis  
Mike Handy  
Tasha Witt  
Alison Kavener  
Veronica Faustner  
Deon Campizi  
Christie Hollenbeck  
Dylan Witt  
Jan Reimers  
Alissandra Dramov  
Janice Bradner  
Sherri McCarthy Hamlin  
Karyl Hall on behalf of the Carmel Village Preservation Group  
Gene Dangle  
No name given  
Mary Crowe  
Jeanie Branham  
Sara Boyle  
Jeff Melching  
No name given

**Mayor Potter requested a brief recess at this time.**

**The Council reconvened the meeting at 7:30 p.m.**

The Appellant and staff responded to Council's questions.

Mayor Potter moved to adopt Resolution 2021-084 denying an Appeal (APP 21-360) and upholding the Planning Commission denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility located on the east side of Carmelo Street between 8th & 9th Avenues in the Multi-Family Residential (R-4) District, and seconded by Mayor Pro Tem Richards.

City Council discussion followed.

Public Comment – None

On a substitute motion by Council Member Ferlito and seconded by Council Member Baron, the City Council continued the hearing and direct staff to work with the applicant on evaluating an alternate location, such as the Golden Bough Theatre located in the A-1 District, with an agreement with Verizon to extend the shock clock to June 17, 2022.

AYES: BARON, FERLITO  
NOES: THEIS, RICHARDS, POTTER

ABSENT: NONE  
ABSTAIN: NONE

The substitute motion failed with 2 ayes and 3 noes, with Council Member Theis, Mayor Pro Tem Richards and Mayor Potter dissenting.

On a motion by Mayor Potter and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2021-084 upholding the Planning Commission's denial of a Design Review, Use Permit (DR/UP 21-115, Verizon Wireless-Carmelo), and associated Coastal Development Permit for the installation and operation of a wireless telecommunications facility located on the east side of Carmelo Street between 8th & 9th Avenues in the Multi-Family Residential (R-4) District based upon the following evidence for denial by the following roll call vote:

1) CMC Section 17.12.020.H.5 states: *"No part of any antenna shall be higher than 24 feet."* The project is in conflict with 17.12.020.H.5 in that, no part of any antenna shall be higher than 24 feet and the proposed 38.7" antenna would be located on top of a 46'-6" utility pole, well over the 24-foot maximum height limit. The R-4 height limit applies to Verizon's antenna because (i) the R-4 height limit for antennas applies to all antennas erected in the R-4 district, except certain amateur radio antennas (which are subject to special privileges and exemptions from generally applicable local zoning regulations under both federal and state laws); (ii) the R-4 regulations also apply to the public right-of-way because the zoning district boundaries extend to the centerline of the public right-of-way; and (iii) the provision does not exempt antennas for telecommunications facilities. Moreover, other district-specific antenna regulations show that the exemptions for telecommunications facilities apply in some, but not all, districts as shown in the design regulations for antennas in the R-1 and commercial districts that exempt telecommunication facilities from compliance to the extent provided in Chapter 17.46. However, the antenna regulations for the R-4 district do not contain such an exemption.

2) CMC Section 17.46.020.A states: *"Wireless communications facilities shall be allowed within all zones except the R-1 district. Such facilities shall be discouraged in open space areas, areas of extraordinary scenic quality and in the R-4 district."* The project is in conflict with 17.46.020.A in that, wireless communications facilities are *"discouraged"* in the R-4 district and the proposed project would be located on the east side of Carmelo Street between 8th and 9th Avenues in the R-4 district. Given the existence of a more-preferred and technically feasible alternative, the denial of Verizon's application in a discouraged zone is warranted. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same improvements in outdoor and in-vehicle service within the mid-band frequencies. An

alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use more creative engineering solutions such as it did in at the Sunset Center site where it deployed directional antennas with separate radios to boost the power output and optimize efficiency. The record also shows that the owners of Golden Bough Playhouse are receptive to allowing Verizon to place a facility on their property thus it is also available. Further, although the expert analysis evaluates a potential alternative on the Golden Bough Playhouse property, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the A-1 district in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, it is also reasonable to assume that alternative locations within this non-residential district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease. Further support for the CMC's policy discouraging visibility from the front of properties is found in CMC Section 17.12.020.H.1, which prohibits antennas and supporting facilities in the front yard spaces between the property line and the portion of the main structure on the property closest to the property line.

3) CMC Section 17.46.040.A states: *"Site location and development of wireless communications facilities shall preserve the visual character and aesthetic values of the community. Facilities shall be integrated to the maximum extent feasible into the existing characteristics of the site and surrounding area."* The project is in conflict with 17.46.040.A in that, while the site location on the east side of Carmelo Street between 8th and 9th Avenues is in an R-4 district, it is an "island" surrounded by the R-1 district and single-family residences and directly across the street from single-family residences in the R-1 district. The code discourages wireless facilities in R-4 zones and in the public rights-of-way because wireless facilities at these locations are inherently likely to produce visual incompatibility with the surrounding areas. Moreover, even though the facility would be located in an R-4 zone, its impacts would not be. The antenna would negatively impact ocean views from neighboring properties in R-1 zones. The bulky pole-mounted accessory equipment would be prominently visible from ground level, including by the public who uses the public rights-of-way for both transportation and aesthetic/expressive purposes. Although other utilities are currently in the public rights-of-way, no other utility equipment would be as tall or have similar impacts on ocean views and Verizon's accessory equipment would be noticeably larger than other cabinets or shrouds on or adjacent to nearby utility poles, even with its re-design after the Planning Commission's denial. As such, the project is inconsistent with the visual character and aesthetic values of the surrounding single-family residential community.

- 4) CMC Section 17.46.040.C states: *"Wireless communications facilities, to every extent possible, should not be sited to create visual clutter or negatively affect important public or private views as determined by the Planning Commission."* The project is in conflict with 17.46.040.C in that, it would create visual clutter and negatively affect both important public and private views. Based on the written record submitted by the public (including photo simulations that showed the antenna protruding above the tree line, even though no other utility infrastructure would similarly protrude) and first-hand observations by the Planning Commissioners at the project site, the proposed extension would encroach into scenic ocean views from spaces within the La Playa Carmel Hotel and surrounding residences including those across the street. Whereas these properties currently have an unobstructed view of the ocean, Verizon's proposed facility would encroach on and obstruct those views. Moreover, the encroachment into these views would exceed the overall height limit permitted by the CMC. Although Verizon has submitted revised plans that lower the overall height of the antenna by approximately 13", the impact to views has not been materially changed. Potential siting alternatives that would mitigate the visual clutter and negative view impacts include the Golden Bough Playhouse or a new pole in the public right-of-way adjacent to the Golden Bough Playhouse on Monte Verde or Casanova. Lastly, an alternative configuration that involves mounting the antenna in the communications space below the electric utility lines would eliminate the protrusion above the pole in direct line-of-sight of neighboring properties.
- 5) CMC Section 17.46.040.C states: *"Wireless communications facilities are discouraged in the public right-of-way."* The project is in conflict with 17.46.040.C because the record that shows that there are technically feasible and potentially available alternatives located in more preferred locations. Analysis by the City's independent expert shows that Verizon could achieve virtually all its objectives for the proposed location if it used an alternative site at the Golden Bough Playhouse that did not violate the discouraged locations provisions in the Code (i.e., not within an R-4 zoning district or within the public rights-of-way). Verizon's disclosures show that it intends provide service on low-band and mid-band frequencies to the area southwest from the proposed location. As the analysis prepared by CTC shows, an alternative location at the Golden Bough Playhouse would provide nearly identical service improvements within the low-band frequencies (at least 85% of the same service improvements to in-building services, nearly 100% of the same service improvement to in-vehicle services and more than 100% of the intended improvements to outdoor services because the alternative site would reach a larger area) and nearly 100% of the same improvements in outdoor and in-vehicle service within the mid-band frequencies. An alternative site at the Golden Bough Playhouse would also provide new in-building services within the mid-band frequencies to an area currently without those services that is slightly larger than the area Verizon's proposed location would cover. Although the in-building coverage within the mid-band would have roughly a 33% overlap with the area covered by Verizon's proposed site, this is a conservative estimate that assumes Verizon would use the same equipment at both locations rather than use more creative engineering solutions such as it did in at the Sunset Center site where it

deployed directional antennas with separate radios to boost the power output and optimize efficiency. Taken together, the alternative site provides substantially the same service improvements in low-band frequencies, substantially the same improvements to outdoor and in-vehicle coverage in the mid-band frequencies and new in-building services within the mid-band frequencies to an area that is essentially equal in size to the one that could be covered by Verizon's proposed site. Given the parity between the proposed and alternative sites, denial of the proposed site due to a preference for the available alternative site would not "materially inhibit" Verizon's ability to provide services. Although the CTC Report evaluates a potential alternative on the Golden Bough Playhouse structure, it is reasonable to assume that substantially the same results would be achieved if Verizon placed a new pole within the public right-of-way in the segments of Monte Verde or Casanova that are included in the theater district (A-1 Zoning District) in which the Golden Bough Playhouse sits. Thus, while the Golden Bough Playhouse has expressed its willingness as a potential landlord to Verizon, alternative facilities within the non-residential A-1 district would also be technically feasible and potentially available if Verizon and the Golden Bough Playhouse could not reach agreement on a lease.

6) CMC Section 17.46.050.E states: *"Support facilities (i.e., vaults, equipment rooms, utilities, and equipment enclosures) shall be constructed out of nonflammable, nonreflective materials. Support facilities that cannot be located within existing buildings or underground shall either be located out of public view or shall be enclosed in an architecturally compatible structure on private property."* The project is in conflict with 17.46.050.E the support facilities would not be located underground or out of public view. As previously proposed with ground-mounted equipment enclosed by a redwood grape stake fence enclosure, the enclosure would be flammable and architecturally incompatible. Although some wooden structures appear in commercial portions of the City's public rights-of-way, no such structures exist in the vicinity of the proposed facility and none are as tall or bulky as the one proposed to house the ground equipment. Verizon's revised configuration also violates 17.46.050.E because the pole-mounted enclosure would be publicly visible and not located underground. Even though the non-antenna wireless equipment (including the radios) can be installed in an underground vault, Verizon would install them above ground on the pole within public view. This configuration contravenes the code requirement and Verizon has made no showing that it could not install the support facilities underground. According to oral testimony by Verizon's representative, undergrounding the nonantenna equipment was possible but would result in potentially negative aesthetic impacts and possible constructability issues. Council is unpersuaded by the testimony at the hearing regarding the infeasibility of installing the nonantenna equipment underground.

7) The size of the equipment area would add unreasonable visual clutter to the utility pole; the project would not be compatible with the surrounding land use; the proposed equipment area creates visual clutter and unreasonably diminishes public and private views; the pole mounted equipment would add mass to the utility pole; the alternatives analysis provided contains certain shortcomings in that it does not provide identify the personal wireless service that the applicant provides or intends to

provide; the project would diminish the public use and enjoyment of the public right-of-way; and, the project would set an undesirable land use precedent within the residential area of the village that would contribute to the adverse visual impact. the Verizon representative indicated that undergrounding the non-antennae equipment was possible but raised potential negative aesthetic impacts and constructability issues.

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**ADJOURNMENT**

The City Council adjourned the meeting at 8:32 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Ashlee Wright, Acting City Clerk



**CITY COUNCIL SPECIAL MEETING - CLOSED SESSION**  
**Tuesday, December 14, 2021**

**OPEN SESSION**  
**3:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 3:30 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**PUBLIC APPEARANCES**

None

**ORDERS OF BUSINESS**

**Item 1:** Resolution 2021-087 Legal Services Agreement with the law firm of Best Best & Krieger for telecommunications legal services.

City attorney Brian Pierik provided the staff report. Gail Karish responded to Council's questions.

The following member of the public spoke:

Michael McWalters

On a motion by Mayor Potter and seconded by Council Member Baron, the City Council adopted Resolution 2021-087 authorizing the City Administrator to sign a Legal Services Agreement with the law firm of Best Best & Krieger for telecommunications legal services by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**CLOSED SESSION**

City Attorney Brian Pierik announced the closed session items.

**Item A:** PUBLIC EMPLOYEE PERFORMANCE EVALUATION PURSUANT GOVERNMENT CODE SECTION 54957  
Title: City Administrator

**Item B:** CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to Government Code Section 54956.9(d)(2)  
(One case)

**ADJOURNMENT**

The City Council adjourned to Close Session at 3:44 PM.

APPROVED:

ATTEST:

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Dave Potter, Mayor

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Ashlee Wright, Acting City Clerk

**SPECIAL MEETING – CLOSED SESSION**  
**Monday, January 3, 2022**

**OPEN SESSION**  
**4:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 4:30 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**PUBLIC APPEARANCES**

None

**CONSENT AGENDA**

**Item 1:** Resolution 2022-007 of the City Council of the City Of Carmel- by-the-Sea Proclaiming The Continuing Need To Meet By Teleconference Pursuant To Government Code Section 54953 (e)

Public Comment - None

On a motion by Council Member Theis and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2022-007 proclaiming the continuing need to meet by teleconference pursuant to Government Code Section 54953 (e) by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**CLOSED SESSION**

City Attorney Brian Pierik announced the closed session agenda

Public Comment – None

**Item A:** CONFERENCE WITH LABOR NEGOTIATORS PURSUANT TO GOVERNMENT CODE SECTION 54957.6

Agency designated representatives: City Administrator Chip Rerig, Assistant City Administrator Maxine Gullo

Employee organization: General Employees Unit, an Affiliated Unit of LiUNA; Management Employees Unit, an Affiliated Unit of LiUNA; Police Officers Association (POA); Carmel Fire Ambulance Association

**Item B:** CONFERENCE WITH LEGAL COUNSEL--ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code Section 54956.9 (d)(2): (One case: Exposure to litigation by Verizon against the City for the denial of the Carmelo application)

**ADJOURNMENT**

The City Council adjourned to Close Session at 4:34 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Ashlee Wright, Acting City Clerk

**REGULAR MEETING**  
**Tuesday, January 4, 2022**

**OPEN SESSION**  
**4:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 4:31 PM.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**PUBLIC APPEARANCES**

The following members of the public spoke:

Jo Todd

**ANNOUNCEMENTS**

City Administrator Announcements

City Administrator Chip Rerig reported on the City's recruitments and is producing a recruitment video celebrating why it is great to live, work, and play in Carmel-by-the-Sea. He thanked Director of Budget and Contracts Sharon Friedrichsen for her dedication to the organization for nine years and that she has been a great asset and will miss her professionalism and wished her the best.

Council Member Announcements

The Mayor Pro Tem congratulated Chamber of Commerce CEO Jenny MacMurdo on her new position in Pacific Grove. He was part of the panel that recommended Ms. MacMurdo for the CEO position in 2017 and that she did a fantastic job.

Council Member Theis stated that she enjoyed working with Ms. Friedrichsen, wished her the best, and that she will miss her and Ms. MacMurdo.

Council Member Baron echoed the sentiments of both the City Administrator and Mayor Pro Tem, and that it was great working with Ms. Friedrichsen the past three years. He announced that his next Climate Change Meeting will be on January 20, 2022. He has also been participating in meetings as a member of the community and invited everyone to join their discussions on January 12 at the American Legion at 12-2 PM and a virtual meeting on January 13 at 5 PM.

Council Member Ferlito recalled first working with Ms. Friedrichsen as a Forest and Beach Commissioner and that she will miss her. She wished Ms. MacMurdo well and that it was a true pleasure seeing her grow into the CEO position.

The Mayor wished good luck to both of Ms. Friedrichsen and Ms. MacMurdo.

City Attorney Announcements

City Attorney Brian Pierik stated that there was no reportable action from the January 3, 2022 Closed Session agenda.

## CONSENT AGENDA

- Item 1:** Monthly Reports for November: 1) City Administrator Contract Log; 2) Community Planning and Building Department Reports; 3) Police, Fire, and Ambulance Reports; 4) Public Records Act Requests, and 5) Public Works Department Report
- Item 2:** November 2021 Check Register Summary
- Item 3:** Resolution 2022-001 authorizing the City Administrator to execute Amendment No. 6 with Pureserve Building Services, Inc., extending the existing janitorial services contract through June 30, 2022 for a fee of \$97,000, plus a supplemental services contingency of \$5,000, for a not-to-exceed total of \$102,000
- Item 4:** Resolution 2022-002 authorizing the City Administrator to execute Change Order No. 4 to the on-call tree maintenance services contracts with John Ley's Tree Service and with Iverson's Tree Service, both for a not-to-exceed amount of \$70,000 and extending the term through June 30, 2022
- Item 5:** Resolution 2022-003 amending Policy C16-02, Records Management Program
- Item 6:** Resolution 2022-006 authorizing the purchase of radio antenna equipment from L3Harris Technologies, Inc. in an amount not to exceed \$357,786
- Item 7:** Adopt Resolution 2022-009 designating Carmel-by-the-Sea CERT as an official City Support Group in accordance with Support Group Policy No. 89-47
- Item 8:** Adopt a Resolution No. 2022-008 updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule effective January 1, 2022

### Public Comment

- Wanda Vollmer

On a motion by Mayor Pro Tem Richards and seconded by Council Member Baron, the City Council approved the Consent Agenda by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

## ORDERS OF BUSINESS

- Item 9:** Receive a verbal report on housing topics affecting the City including: The Regional Housing Number Allocation (RHNA) assessment; Senate Bills SB8, SB9 and SB10; recent grant-funded efforts to produce a feasibility study and to explore the City's barriers to affordable housing; and the required 2023 General Plan Housing Element update

Community Planning and Building Director Brandon Swanson provided the staff report and responded to Council's questions.

Public Comment

- Ken White

Council discussion followed. No formal action was taken.

**Item 10:** Resolution 2022-004 receive and file the annual comprehensive financial report for the fiscal year ending June 30, 2021

Director of Budget and Contracts Sharon Friedrichsen provided the background. Sheldon Chavan of Chavan and Associates LLP gave a presentation and responded to Council's questions.

Public Comment - None

On a motion by Council Member Theis and seconded by Council Member Baron, the City Council adopted Resolution 2022-004 and received and filed the annual comprehensive financial report for the Fiscal Year ending June 30, 2021 by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 11:** Consideration of extending the mandatory removal date for temporary parklets beyond January 20th, 2022

Community Planning and Building Director Brandon Swanson provided the staff report and responded to Council's questions.

The members of the publics spoke on this item:

Joel Jung  
Cindy Lloyd  
Dawn Galante  
Amy Herzog  
Parker Logan  
Jack Galante  
Kenny Spilfogel  
Anthony Carnazzo

Council discussion followed.

Mayor Potter moved to grant only a three-month extension of the temporary parklets, with increased enforcement to bring them in conformity as far as public health and safety such as litter abatement, and for staff to bring this item back to Council in February, and then have the Planning Commission set guidelines and make a recommendation to Council and set a special meeting, if necessary. Mayor Potter withdrew his motion as Council Member Theis proposed to make two separate motions for clarity.

On a motion by Council Member Theis and seconded by Mayor Potter, the City Council will take a look at the results of the sub-committee on parklets and the data that was received on their next

Council meeting in February to give direction to the Planning Commission on taking a look at a permanent solution, by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

On a motion by Mayor Potter and seconded by Council Member Theis, the City Council approved a hard stop to the temporary parklets on April 20, 2022 after a three-month extension, with increased enforcement, and to bring this item back to Council in February, by the following roll call vote:

AYES: THEIS, RICHARDS, POTTER  
NOES: BARON, FERLITO  
ABSENT: NONE  
ABSTAIN: NONE

**Item 12:** Receive a verbal report and discuss resuming in-person meetings

City Administrator Chip Rerig provided the staff report. The City Administrator and City Attorney Brian Pierik responded to Council's questions.

Public Comment - None

Council discussion followed. No formal action was taken.

**Mayor Potter requested a brief recess at this time.**

**The Council reconvened the meeting at 7:10 PM.**

**Item 13:** Receive a status report on the various City Council Strategic Initiative projects assigned at the Council's October 12th, 2021 public workshop

Community Planning and Building Director Brandon Swanson provided the staff report and responded to Council's questions.

The following members spoke on this item:

Dale Byrne  
Karyl Hall  
Nancy Twomey

Council discussion followed. Council directed staff to set up a meeting date for the study session and get public participation.

## **PUBLIC HEARING**

**Item 14:** Consideration of an Appeal (APP 21-415) by Robert Carver on behalf of Dolores & 7th, LLC, of the Planning Commission decision to include Condition of Approval #27 restricting modifications to the front of the existing building as part of the approval of a



Design Review and Use Permit application (DR 21-114 and UP 21-226 – The Conservatory), for a remodel and change of use for an historic structure, known as the China Arts Center located at Dolores Street, 2 northwest of 7th Avenue in the Central Commercial (CC) Zoning District and Downtown Conservation District (CD) Overlay; APN: 010-147-006

Community Planning and Building Director Brandon Swanson provided the background and Associate Planner Evan Kort presented the staff report.

The Appellant, Robert Carver of Studio Carver, made a presentation. Building owner Sean Moriarty provided information. They responded to Council's questions.

The following members of the public spoke on this item:

Karyl Hall  
Richard Kreitman  
Ian Martin  
Neal Kruse  
Jack Galante  
Nicola Reilly  
Jo Todd  
Rich Pepe  
Sandra Pepe  
Michael McWalter

Council discussion followed. City Attorney Brian Pierik provided clarification.

On a motion by Mayor Pro Tem Richards and seconded by Mayor Potter, the City Council adopted Resolution 2022-005, granting an Appeal, APP 21-415, approving a Design Review Application, DR 21-114, and Use Permit, UP 21-226 (The Conservatory) for a remodel and structural seismic retrofit of an historic 5,857 square-foot structure, the addition of a 311 square-foot interior balcony, staircase, elevator and elevator mechanical room, basement addition, the repair of a leaking roof and install new solar panel array, and the addition of new electrical, HVAC, plumbing, and acoustic infrastructure, as well as a new skylight and exterior windows to the China Arts Building located at Dolores Street 2 northwest of 7th Avenue in the Central Commercial (CC) Zoning District and Downtown Conservation District (CD) Overlay, APN: 010-147-006, with the removal of Planning Commission Condition of Approval #27, by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**FUTURE AGENDA ITEMS**

None

**CLOSED SESSION**

City Attorney Brian Pierik announced the closed session item.

**Item A:** CONFERENCE WITH LABOR NEGOTIATORS – Government Code Section 54957.6  
Agency designated representatives: City Attorney  
Unrepresented employee: City Administrator

**ADJOURNMENT**

The City Council adjourned to Closed Session at 8:11 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Ashlee Wright, Acting City Clerk

**CITY COUNCIL SPECIAL MEETING - CLOSED SESSION**  
**Monday, January 31, 2022**

**OPEN SESSION**  
**3:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 3:30 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**PUBLIC APPEARANCES**

None

**CONSENT AGENDA**

**Item 1:** Resolution 2022-017 of the City Council of the City of Carmel-by-the-Sea Proclaiming the Continuing Need to Meet By Teleconference Pursuant to Government Code §54953(e)

On a motion by Mayor Potter and seconded by Mayor Pro Tem Richards, the City Council adopted Resolution 2022-017 proclaiming the continuing need to meet by teleconference pursuant to Government Code Section 54953(e) by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**CLOSED SESSION**

City Attorney Brian Pierik announced the closed session items.

**Item A:** Conference with Real Property Negotiators - Government Code §54956.8  
Property: Forest Theater (lots one to fifteen inclusive in block 85 as designated on the Map of Addition Number 5 to Carmel-by-the-Sea) Agency Negotiators: City Administrator Chip Rerig, Library and Community Activities Director Ashlee Wright, Public Works Director Robert Harary and City Attorney Brian Pierik; Negotiating Parties: Steven Retsky and Pacific Repertory Theatre Under Negotiation: Terms of Lease

**Item B:** Conference with Labor Negotiators - Government Code §54957.6  
Agency designated representatives: City Administrator Chip Rerig, Katy Suttorp (Burke, Williams & Sorensen), Brian Uhler, Interim Public Safety Director, Brandon Swanson, Community Planning Building Director. Employee organization: General Employees Unit, an Affiliated Unit of LiUNA; Management Employees Unit, an Affiliated Unit of LiUNA; Police Officers Association (POA); Carmel Fire Ambulance Association

Public Comment - None

**ADJOURNMENT**

The City Council adjourned to Close Session at 3:35 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Yashin Abbas, Interim City Clerk

**REGULAR MEETING**  
**Tuesday, February 1, 2022**

**OPEN SESSION**  
**4:30 PM**

**CALL TO ORDER AND ROLL CALL**

Mayor Potter called the meeting to order at 4:35 p.m.

Present: Council Members: Baron, Ferlito, Theis, Mayor Pro Tem Richards, Mayor Potter

**EXTRAORDINARY BUSINESS**

**Item A:** Presentation and Recognition of Carmel-by-the-Sea as a Certified Blue City by Project  
O

Environmental Compliance Manager Agnes Martelet introduced the presenters. Evelina Marchetti and Alisan Amrhein spoke on behalf of the Blue City Network and presented the certificate of recognition. Mayor Potter thanked them for the recognition.

**PUBLIC APPEARANCES**

The following members of the public spoke:

Beth Bowman  
Richard Kreitman  
David Fink  
Nancy Twomey  
Alissandra Dramov

**ANNOUNCEMENTS**

**Item A:** City Administrator Announcements

The City Administrator briefly talked about the Cal Ans system in response to a public comment. He welcomed the Interim City Clerk Yashin Abbas, and thanked Acting City Clerk/Library and Community Activities Director Ashlee Wright and Leslie Fenton for doing a wonderful job, and now they are working on reopening the library in March. He announced the City's ongoing recruitment. He reported that he and his family had gotten ill with COVID. He encouraged the public to give feedback on the beautification of the median island on Ocean Avenue and Monteverde, a pilot project in collaboration with Carmel Cares.

**Item B:** City Attorney Announcements

The City Attorney stated that there was no reportable action from the January 31, 2022 Closed Session agenda for Items A and B.

**Item C:** Council Member Announcements

Council Member Baron stated that he also had COVID and cautioned everyone to be safe. He announced that his monthly Climate Change Committee Meeting will be on February 17, 2022 and that they will conduct public outreach regarding the climate action plan. The Committee intends to reach out to the building industry for comments and industry review in March.

Council Member Richards announced that he signed up for his first median and is looking forward to working with Carmel Cares.

Mayor Potter thanked Acting City Clerk/Library and Community Activities Director Ashlee Wright and appreciates her team approach and has done a great job multi-tasking.

**CONSENT AGENDA**

Item 7 was pulled from the consent agenda to be brought back at the next City Council regular meeting.

**Item 1:** December 2021 Check Register Summary

**Item 2:** Monthly Reports for December 2021

**Item 3:** Resolution 2022-010 Accepting a Donation of \$50,000 Towards the Purchase of a New Ambulance

**Item 4:** Resolution 2022-011 Adopting the Fiscal Year 2022-2023 Budget Schedule

**Item 5:** Resolution 2022-013 Authorizing the City Administrator to Execute a Professional Services Agreement with Neill Engineers Corp. for On-Call Engineering Services for a not-to-exceed fee of \$138,200 and a term ending June 30, 2024

**Item 6:** Parking Enforcement Outside the City on Scenic Drive

Public Comment

- Dale Byrne

On a motion by Mayor Pro Tem Richards and seconded by Council Member Baron, the City Council approved items 1, 2, 3, 4, 5, and 6 on the Consent Agenda by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

The following item was continued for discussion at the next City Council regular meeting:

**Item 7:** Resolution 2022-014 awarding a Professional Services Agreement to Winter & Company, for a not-to-exceed fee of \$83,160, to provide consultant support for the 'Design Traditions 2.0' project to update the City's Design Guidelines and Zoning Code

Public Comment

- Neal Kruse

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council moved to continue this item at the March City Council regular meeting by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

### **ORDERS OF BUSINESS**

**Item 8:** Fiscal Year 2021-2022 Mid-Year Budget Report and Resolution 2022-012 Approving FY 2021-2022 Adopted Budget Amendments

Finance Manager and Acting Director of Budget & Contracts Robin Scattini provided the staff report.

Public Comment - None

Council discussion followed.

On a motion by Mayor Pro Tem Richards and seconded by Mayor Potter, the City Council adopted Resolution 2022-012 approving FY 2021-2022 adopted budget amendments, and directed staff to bring back the items at the March City Council regular meeting regarding the use of the ARPA funds and a presentation on the design and approval of funding allocation for the Police Station renovation, by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 9:** Resolution 2022-015 Authorizing the Mayor to Execute a Fifth Amendment to the City Administrator At-Will Employment Agreement Effective October 1, 2021

City Attorney Brian Pierik provided the staff report.

Public Comment - None

Council discussion followed.

On a motion by Mayor Potter and seconded by Council Member Baron, the City Council adopted Resolution 2022-015 authorizing the Mayor to execute a fifth amendment to the City Administrator at-will employment agreement effective October 1, 2021 by the following roll call vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**Item 10:** Receive a Report on the Outdoor Seating Ad Hoc Committee survey results and provide direction regarding when and how the Planning Commission should begin work on a potential permanent outdoor seating program

Community Planning and Building Director Brandon Swanson provided the staff report.

The following members of the public spoke on this item:

Richard Kreitman  
Janice Bradner  
Tim Twomey  
David Fink  
Joel Jung  
Jack Galante  
Graeme Robertson  
Bashar Al Sneed

Council discussion followed and directed staff to bring this item back next month. No formal action was taken.

**Item 11:** Resolution 2022-016 Updating the At-Will (Unrepresented) Miscellaneous and Police Management Pay Schedule/Salary Schedule

Assistant City Administrator Maxine Gullo provided the staff report.

Public Comment - None

On a motion by Council Member Baron and seconded by Council Member Theis, the City Council adopted Resolution 2022-016 updating the at-will (unrepresented) miscellaneous and police management pay schedule/salary schedule by the following vote:

AYES: BARON, FERLITO, THEIS, RICHARDS, POTTER  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

#### **FUTURE AGENDA ITEMS**

None

#### **CLOSED SESSION**

City Attorney Brian Pierik announced the closed session item.

**Item A:** CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION GOVERNMENT CODE SECTION 54956.9 (d)(1) - GTE MOBILENET OF CALIFORNIA LIMITED PARTNERSHIP, a California limited partnership d/b/a VERIZON WIRELESS v. CARMEL-BY-THE-SEA; United States District Court for the Northern District of California, Case No. 5:22-cv-00347-NC

Public Comment - None



**ADJOURNMENT**

The City Council adjourned to Close Session at 6:55 PM.

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Yashin Abbas, Interim City Clerk



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
CONSENT AGENDA

**TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Robin Scattini, Finance Manager

**APPROVED BY:** Chip Rerig, City Administrator

**SUBJECT:** January 2022 Check Register Summary

## RECOMMENDATION:

Approve the check register for January 2022.

## BACKGROUND/SUMMARY:

The check register is produced from the City's financial system. The report groups the checks by the respective department or function. The check register includes the check number, the name of the vendor, a description of the purchase, the check issue date and the amount of the check. Per the California Supreme Court's decision in the case of Los Angeles County Board of Supervisors v. Superior Court (Dec. 29, 2016) (2016 WL 7473802), the check register excludes the specific invoice payments for legal services incurred for pending and active investigations, pending and active litigation, as well as recently concluded matters. The Supreme Court has ruled that these specific invoices are protected under attorney-client privilege and need not be disclosed under the Public Records Act.

On the last page of the report, staff have included the contract balance for the respective vendors that were paid in January.

## FISCAL IMPACT:

The check register summary for January 2022 totals \$585,715.

## PRIOR CITY COUNCIL ACTION:

Council ratified the December 2021 check register at its February 1 regular meeting.

## ATTACHMENTS:

January 2022 check register

**January 2022 Check Register**

<b>Check No.</b>	<b>Vendor/Employee</b>	<b>Transaction Description</b>	<b>Date</b>	<b>Amount</b>
Department: 110 City Council				
48273	Peninsula Messenger LLC	Mail service:sorting and delivery FY 2021-22	01/12/2022	4,320.00
<b>Total for Department: 110 City Council</b>				<b>4,320.00</b>
Department: 111 City Administration				
48255	Alhambra	Water service City Hall	01/12/2022	98.33
48257	Amazon Web Services Inc	Data and cloud storage fees	01/12/2022	764.31
48258	AT&T	Telephone service citywide FY 2021-22	01/12/2022	711.80
48261	Carmel Pine Cone	Legal noticing	01/12/2022	270.00
48264	Digital Deployment	Website support agreement FY 2021-22	01/12/2022	1,400.00
48267	Iron Mountain	Records storage	01/12/2022	428.64
48275	Pitney Bowes Inc. Supplies	Postage meter supplies	01/12/2022	241.42
48276	SESAC -	Music performance license through 12/31/2022	01/12/2022	513.00
48278	T-Mobile	Monthly cell service and purchases	01/12/2022	1,487.79
48285	Carmel Pine Cone	Legal noticing	01/13/2022	465.00
48289	Copies By-The-Sea	Agenda printing	01/13/2022	1,698.76
48293	FedEx	Shipping fees-Business office	01/13/2022	84.36
48295	Hinderliter, De Llamas & Associates	Sales/transaction tax auditing services	01/13/2022	1,485.65
48304	Prism Public Risk Innovation	FY 2021-22 Employee Assistance Program	01/13/2022	474.60
48311	US Bank	HR subscriptions, supplies, meeting expenses	01/13/2022	446.61
48314	Zoom Imaging Solutions, Inc.	Admin/Finance Copier usage fees FY 2021-22	01/13/2022	361.56
48329	Benefit Coordinators Corporation (BCC)	COBRA Admin expenses FY 2021-22	01/20/2022	75.00
<b>Total for Department: 111 City Administration</b>				<b>11,006.83</b>
Department: 112 City Attorney				
48307	Telecom Law Firm PC	Legal services- Verizon Wireless item	01/13/2022	12,577.00
<b>Total for Department: 112 City Attorney</b>				<b>12,577.00</b>
Department: 115 Community Planning & Building				
48292	Evan Kort	Wellness Program Reimbursement per MOU	01/13/2022	150.00
48331	Carmel Towing & Garage	Fuel for CPB vehicle	01/20/2022	49.92
48337	Engineered Fire Systems	FY21/22 fire plan review services	01/20/2022	1,450.00
48366	Uline Inc.	Rain gear for staff	01/20/2022	543.85
<b>Total for Department: 115 Community Planning &amp; Bu</b>				<b>2,193.77</b>

Department: 116 Police

48256	Altius Medical	Medical/bio-hazard waste disposal	01/12/2022	94.00
48260	Caltronics/J.J.R Enterprises. Inc	Police Dept copier usage	01/12/2022	222.04
48263	Community Hospital of the Monterey Pen	Testing services Police Dept	01/12/2022	54.00
48265	Elissa Higgins	Reimbursement: meals-defensive tactics seminar	01/12/2022	226.00
48268	Jacob Clifford	Reimbursement: ammunition and supplies	01/12/2022	639.80
48272	Pacific Gas & Electric	Video cameras citywide	01/12/2022	178.49
48279	US Bank	Seminar fees, training materials, supplies	01/12/2022	934.70
48280	US Bank Voyager Fleet	Police Dept: Fuel charges	01/12/2022	118.25
48283	Alhambra	Water service Police Dept	01/13/2022	311.74
48286	Carmel Towing & Garage	Police Dept-Fuel FY 2021-22	01/13/2022	3,419.91
48309	Transunion Risk & Alterna	Investigative services for PD-Monthly fee	01/13/2022	75.00
48311	US Bank	Auto repairs, supplies, uniform replacement	01/13/2022	2,861.71
<b>Total for Department: 116 Police</b>				<b>9,135.64</b>

Department: 117 Fire

48255	Alhambra	Water service Fire Dept	01/12/2022	185.50
48260	Caltronics/J.J.R Enterprises. Inc	Fire Dept copier usage	01/12/2022	11.57
48262	City Of Monterey	FY 21-22 Fire Contract monthly charges	01/12/2022	222,578.82
48266	First Alarm	Alarm services Carmel Fire Station	01/12/2022	289.44
48269	Mission Linen Service	Fire Dept-Linen service	01/12/2022	119.09
48271	Municipal Emergency Services	1 set turn-outs	01/12/2022	2,745.99
48286	Carmel Towing & Garage	FY 2021-22 Fire Dept fuel purchases	01/13/2022	553.69
48351	Mission Linen Service	Fire Dept-Linen service	01/20/2022	119.09
<b>Total for Department: 117 Fire</b>				<b>226,603.19</b>

Department: 118 Ambulance

48259	Bound Tree Medical LLC	Ambulance medical supplies-FY 2021-22	01/12/2022	823.53
48262	City Of Monterey	FY 2021-22 Ambulance agreement	01/12/2022	1,777.30
48262	City Of Monterey	Ambulance repairs-parts and service	01/12/2022	3,537.68
48274	Peninsula Welding & Medical Supply, inc.	Ambulance Dept-Oxygen tanks	01/12/2022	31.86
48281	Verizon Wireless	Ambulance Vehicles Air cards FY 2021-22	01/12/2022	289.20
48284	Bound Tree Medical LLC	Ambulance medical supplies-FY 2021-22	01/13/2022	514.26
48286	Carmel Towing & Garage	FY 2021-22 Ambulance Dept fuel purchases	01/13/2022	872.30
48288	City Of Monterey	Training expenses for M Nietenson	01/13/2022	130.18
48288	City Of Monterey	FY 2021-22 Ambulance Agreement-Overtime expenses	01/13/2022	6,810.60
<b>Total for Department: 118 Ambulance</b>				<b>14,786.91</b>

Department: 119 Public Works

48270	Monterey Bay Air Resources District	Annual renewal-permits for diesel engines in city	01/12/2022	1,399.00
48282	Ailing House Pest Control	FM pest control FY 2021-2022	01/13/2022	644.00
48287	Cintas Corporation	Uniforms for PW FY 2021-2022	01/13/2022	488.44
48291	De Lage Landen Financial	PW copier maintenance FY 21-22	01/13/2022	205.39
48294	Granite Rock Company	Supplies FY 2021-2022	01/13/2022	271.90
48296	John Ley's Tree Service	Tree work citywide	01/13/2022	20,909.00
48297	MJ Murphy Lumber and Hardware	PW supplies FY 2021-2022	01/13/2022	227.08
48298	Napa Auto Parts	Vehicle Supplies FY 2021-2022	01/13/2022	128.13
48299	Monterey Sanitary Supply	Janitorial supplies	01/13/2022	163.59
48303	Poe's Plumbing & Backflow	FM plumbing repairs FY 2021-2022	01/13/2022	295.00
48305	Rincon Consultants, Inc	Climate action planning	01/13/2022	5,465.00
48306	Scarborough Lumber & Building	PW Supplies FY 2021-2022	01/13/2022	176.85
48308	Tope's Tree Service Inc.	Tree work citywide	01/13/2022	1,068.50
48310	Tree Stuff Lockbox No 639707	Supplies	01/13/2022	683.76
48326	Ailing House Pest Control	FM pest control FY 2021-2022	01/20/2022	354.00
48327	Alhambra	Water for PW FY 2021-2022	01/20/2022	188.76
48328	Always Under Pressure	Installed exhaust vent on pressure washer	01/20/2022	581.57
48330	Carmel Area Wastewater District	Vactor services FY 2021-2022	01/20/2022	1,669.38
48331	Carmel Towing & Garage	PW fuel FY 21-22	01/20/2022	2,259.98
48332	Cintas Corporation	Uniforms for PW FY 2021-2022	01/20/2022	138.22
48333	City Of Monterey	Vehicle service, repairs, parts	01/20/2022	5,567.34
48334	Cypress Painting & Decorating, Inc.	Generator repair	01/20/2022	4,140.00
48336	Dustin Kruger	Training course fees	01/20/2022	700.00
48338	Gerecke Electrical LLC	Emergency repair Sunset Center parking lot	01/20/2022	400.00
48339	Golden State Portables	Forest Theater restrooms FY 2021-2022	01/20/2022	761.76
48340	Granite Rock Company	Supplies FY 2021-2022	01/20/2022	446.92
48341	Greenwaste Recovery Inc	Vista Lobos food waste bin	01/20/2022	116.00
48342	Hayward Lumber	Supplies	01/20/2022	19.84
48343	Jesse Garibay	Reimbursement: work boots- per MOU	01/20/2022	218.50
48346	LSA Associates, Inc	Greenhouse gas emissions analysis technical support	01/20/2022	5,378.75
48347	M & S Building Supply	Supplies-PW Maint	01/20/2022	324.29
48350	Marina Backflow Company	FM backflow repairs FY 2021-2022	01/20/2022	120.00
48352	MJ Murphy Lumber and Hardware	PW supplies FY 2021-2022	01/20/2022	183.08
48353	Napa Auto Parts	Vehicle Supplies FY 2021-2022	01/20/2022	230.14
48354	Monterey Lighting	Supplies	01/20/2022	798.00
48355	Monterey Tire Service Inc	Flat tire repair Unit 2	01/20/2022	154.94
48356	Ono Consulting	Tree evaluation	01/20/2022	675.00
48357	Pacific Smog	Smog Inspection Ford F-450	01/20/2022	57.75
48359	Pureserve Building Service	Monthly janitorial services	01/20/2022	16,166.72
48360	Safeway Sign Co.	New traffic control signs	01/20/2022	327.75
48361	Sara Davis	Reimbursement: Forestry Supplies	01/20/2022	194.58
48362	Scudder Roofing	Repair PD roof leak	01/20/2022	965.00
48363	Sentry Alarm Systems	Fire alarm system monitoring	01/20/2022	2,930.80

48364	Tom Lang	Reimbursement: work boots per MOU	01/20/2022	179.99
48365	Tree Stuff Lockbox No 639707	Supplies	01/20/2022	317.88
48367	US Bank	Supplies, Gator repair, fuel charges	01/20/2022	1,992.53
48369	Zee Medical Service Co.	First Aid Supplies Boxes	01/20/2022	222.11
<b>Total for Department: 119 Public Works</b>				<b>80,907.22</b>

Department: 120 Library

48302	Pacific Grove Self Storage	Storage unit for city art	01/13/2022	307.00
<b>Total for Department: 120 Library</b>				<b>307.00</b>

Department: 121 Community Activities

48300	Office Depot, Inc.	Supplies	01/13/2022	67.10
<b>Total for Department: 121 Community Activities</b>				<b>67.10</b>

Department: 122 Economic Revitalization

48277	Sunset Cultural Center Inc.	FY 2021-22 Operating Grant-Q3 2021-22	01/12/2022	189,375.00
48313	Visit Carmel	Marketing and economic development contribution	01/13/2022	25,200.00
<b>Total for Department: 122 Economic Revitalization</b>				<b>214,575.00</b>

Department: 130 Non-Departmental

48272	Pacific Gas & Electric	Gas and electric service citywide FY 2021-22	01/12/2022	49.01
48301	Pacific Gas & Electric	Gas and electric service citywide FY 2021-22	01/13/2022	1,368.73
<b>Total for Department: 130 Non-Departmental</b>				<b>1,417.74</b>

Department: 311 Capital Projects

48360	Safeway Sign Co.	25 stop signs 4-way for downtown	01/20/2022	975.33
48367	US Bank	Parts ADA sink	01/20/2022	159.05
<b>Total for Department: 311 Capital Projects</b>				<b>1,134.38</b>

Department: 411 Debt Service

48312	US Bank St. Paul	2012 Taxable Pension Obligation Bonds Admin fee	01/13/2022	1,000.00
<b>Total for Department: 411 Debt Service</b>				<b>1,000.00</b>

Department: 513 Veh & Equip Replacement

48290      Cosco Fire Protection      Emergency fire pump replacement project:Sunset Center      01/13/2022      5,682.96

Total for Department: 513 Veh & Equip Replacement	5,682.96
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<b>Grand Total</b>	<b>585,714.74</b>
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**January Contract Payments:**

<b>Vendor</b>	<b>Contract Amt</b>	<b>Paid through Jan</b>	<b>Contract Balance</b>	
Pen Messenger	\$ 122,000.00	\$ 34,966.00	\$ 87,034.00	
City of Monterey	\$ 2,670,946.00	\$ 1,335,472.92	\$1,335,473.08	Fire admin services
Rincon	\$ 50,500.00	\$ 29,466.75	\$ 21,033.25	
Pureserve	\$ 102,000.00	\$ 97,000.32	\$ 4,999.68	
LSA Associates	\$ 19,990.00	\$ 17,196.25	\$ 2,793.75	
Tope's Tree Svc	\$ 65,000.00	\$ 54,881.98	\$ 10,118.02	
J. Ley's Tree Svc.	\$ 70,000.00	\$ 24,999.00	\$ 45,001.00	
Telecom Law Firm PC	\$ 34,999.00	\$ 24,914.00	\$ 10,085.00	



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
CONSENT AGENDA

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Agnes Martelet, Manager, Environmental Compliance
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2022-019 Approving Policy 2022-01 establishing Guidelines for the Review of Projects involving the Installation of a Grease Interceptor

## RECOMMENDATION:

Adopt Resolution 2022-019 (Attachment 1) approving Policy 2022-01 establishing guidelines for the review of projects involving the installation of a grease interceptor.

## BACKGROUND/SUMMARY:

### Regulatory Background

Grease traps have been essential elements in commercial kitchens for many years to separate fats, oil and grease (FOG) from kitchen wastewater before it goes into the sanitary sewer system. Typical grease traps found in Carmel kitchen restaurants are usually the size of a camping cooler and are located near the sink and dishwasher.

State, county, and local regulations have changed over the past few years, requiring larger grease interceptors to more effectively capture FOG, rather than maintaining prior grease traps, when restaurants and kitchens are constructed or significantly renovated. Although grease interceptors provide much more effective FOG capture, they are more difficult to locate, particularly on sites that are already developed and have space constraints.

The following State, County and local regulations pertain to the siting and configuration of grease interceptors:

The California Retail Food Code Section 114201, parts a and b state: *“(a) If provided, a grease trap or grease interceptor shall not be located in a food or utensil handling area unless specifically approved by the enforcement agency,”* and *“(b) Grease traps and grease interceptors shall be easily accessible for servicing, pumping, and inspection.”*

The Monterey County Health Department requires that, *“each grease retention device must be readily accessible for servicing,”* and that *“grease traps/interceptors shall be installed/maintained per California*



## *Retail Food Code 114201(a)(b).”*

In addition, the Carmel Area Wastewater District (CAWD) requirements include grease interceptors to separate organic matter out of the water coming from the dishwashing process before it can get into sewer system. Per CAWD’s Sanitary Sewer System Specifications Section 11.11, “Commercial Grease and Oil Collection Systems,” Part B, “Grease Interceptors” states,

- 1. All restaurants or food service facilities shall have an outside grease interceptor located on private property only and be installed per the requirements of the current edition of the Uniform Plumbing Code and the District’s Pretreatment Ordinance.*
- 2. All new construction for restaurants shall have grease interceptors. Grease interceptors are not allowed within the public right-of-way. If this is found to be unworkable, the owner must apply from the City of Carmel.*
- 3. Grease interceptors shall be located outside buildings unless a finding is made by the District Engineer or authorized representative that the location of the building on the site or some other aspect of the use prevents an outside location and that placement within a building is not hazardous to public health and safety.*

### **Grease Interceptor Policy**

At the December 2021 City Council meeting, staff provided recommendations on location and site-specific features for grease interceptor configurations that should be preferred, or allowed on a case-by-case basis with proper justification, as well as options that should be discouraged in Carmel. Policy no. 2022-01 (Attachment 2) provides guidance on preferred grease interceptor configuration in accordance with staff and Council recommendations.

The preferred configuration for new grease interceptors is outside, on private property, and in a location that facilitates servicing, in compliance with the above requirements and restrictions.

However, each restaurant site in Carmel has unique property characteristics and, in certain cases, the preferred grease interceptor configuration may be technically infeasible.

The following locations are allowed on a case-by-case basis, with proper justification and documentation, as detailed in the policy:

- Inside a building with exemption waivers approved by other agencies
- Locations requiring pumps for sewage flow
- On a public sidewalk, not on an arterial street
- Near tree roots of non-significant trees

Grease interceptor locations that impact the following resources are discouraged in the City:

- Grease interceptors shall not be located in a public street or on a public sidewalk along an arterial street (Ocean Avenue, Carpenter Street, San Carlos Street, Rio Road)
- Driveways
- Storm drain inlets (15-foot buffer)
- Americans with Disabilities Act (ADA) ramps or other ADA facilities
- Emergency exits or fire suppression apparatus
- No pumps within the public right-of-way
- Historic resources

### **FISCAL IMPACT:**

When grease interceptors must be located in the public right-of way due to site constraints, there will be a minor increase of staff time to coordinate interceptor locations, perform additional plan checks, and prepare

operations and maintenance agreements. There will also be additional staff time associated with monitoring and enforcement of operations and maintenance agreements on an annual basis.

#### **PRIOR CITY COUNCIL ACTION:**

In December 2021, Council received a presentation on staff recommendations regarding grease interceptor location and configuration.

#### **ATTACHMENTS:**

Attachment 1: Resolution

Attachment 2: Policy 2022-01

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-019**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING POLICY 2022-01 ESTABLISHING GUIDELINES FOR THE REVIEW OF PROJECTS INVOLVING THE INSTALLATION OF A GREASE INTERCEPTOR**

WHEREAS, regulations have changed over the past few years, requiring the installation of large grease interceptors to capture fats, oil, and grease, when restaurants and kitchens are constructed or significantly renovated; and

WHEREAS, grease interceptors can be difficult to locate, particularly on sites that are already developed and have space constraints; and

WHEREAS, at the December 2021 City Council meeting, the City Council considered staff recommendations on location and site-specific features for grease interceptor configurations that should be preferred, allowed on a case-by-case basis with proper justification, as well as options that should be discouraged in Carmel; and

WHEREAS, Policy no. 2022-01 provides guidance on preferred grease interceptor configuration in accordance with staff and Council recommendations.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:**

Approve Policy 2022-01 establishing guidelines for the review of projects involving the installation of a grease interceptor.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of March, 2022, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

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Yashin Abbas  
Acting City Clerk

**CITY OF CARMEL-BY-THE-SEA  
POLICY AND PROCEDURE**

<b>Subject:</b> Guidelines for the Review of Projects involving the Installation of a Grease Interceptor	<b>Policy/Procedure No:</b> 2022-01
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<b>Effective Date:</b> March 1, 2022	<b>Authority:</b> Resolution Adopted by Council on March 1, 2022
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**Purpose:**

To provide guidelines for the review of projects that involve the installation of a grease interceptor.

**Policy/Procedure:**

State, county, and local regulations have changed over the past few years, requiring new, larger, grease interceptors to capture fats, oil, and grease out of the wastewater system, for new and significantly-renovated restaurants. Grease interceptors receive wastewater from restaurant kitchens and discharge into the sanitary sewer system via a sewer lateral.

This procedure provides a framework for approval of new grease interceptors for new or significantly-renovated restaurants in the City:

Always preferred grease interceptor configuration:

- On private property
- Outdoors such as in a private parking lot or patio
- Wastewater system, including grease interceptor, designed to be all gravity flow
- Grease interceptor must be accessible for regular servicing

When site constraints prevent siting of a grease interceptor according to the preferred configuration above, the following procedures shall be followed to approve grease interceptor siting on a case-by-case basis:

<b>Special Condition</b>	<b>Required Documentation for Approval</b>
Siting inside of a building	<ul style="list-style-type: none"> <li>• Documentation of technical infeasibility of preferred siting</li> <li>• Construction details and access information for maintenance</li> <li>• Waivers by Monterey County Health Department and/or Carmel Area Wastewater District as required</li> </ul>
Pump required (non-gravity flow)	<ul style="list-style-type: none"> <li>• Documentation of technical infeasibility of preferred construction</li> <li>• Construction details and access information for maintenance</li> </ul>
On a public sidewalk, not on an arterial street	<ul style="list-style-type: none"> <li>• Documentation of technical infeasibility of preferred siting</li> <li>• Maintenance Agreement recorded on the property deed for the grease interceptor</li> <li>• Construction details and access information for maintenance</li> </ul>
Near tree roots	<ul style="list-style-type: none"> <li>• Documentation of technical infeasibility of preferred siting</li> <li>• Consultation with the City Forester</li> </ul>

The following siting constraints shall be considered when reviewing project plans to avoid significant conflicts. Grease interceptor siting that impacts these resources shall be discouraged:

- Grease interceptors shall not be located in a public street or on a public sidewalk along an arterial street (Ocean Avenue, Carpenter Street, San Carlos Street, Rio Road)
- Driveways
- Storm drain inlets (15-foot buffer)
- Americans with Disabilities Act (ADA) ramps or other ADA facilities
- Emergency exits or fire suppression apparatus
- No pumps within the public right-of-way
- Historic resources

**Responsible Party:**

Public Works Director

**Department of Origin:**

Public Works

**Revision Dates:**

**Rescinded Date:**



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
CONSENT AGENDA

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Joel Staker, Information Network Services Manager
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2022-020 Authorizing the City Administrator to Execute Amendment No. 1 to a Professional Services Agreement with Joseph Systems Inc. for a not-to-exceed amount of \$28,840.70 and extending the term through June 30, 2022

## RECOMMENDATION:

Adopt Resolution 2022-020 authorizing the City Administrator to execute Amendment No. 1 to a Professional Services Agreement with Joseph Systems Inc. for a not-to-exceed amount of \$28,840.70 and extending the term through June 30, 2022 for contract computer consulting services.

## BACKGROUND/SUMMARY:

The City utilizes a variety of consultants to augment its staffing capacity, especially to provide specialized services. Joseph Systems Inc. is providing specialized server migration services. The vendor rates are based on negotiated State rates through CMAS contract 3-16-70-1261F valid from 2/19/2016 - 9/6/2022 for Information Technology Goods & services purchase and warranty of IT consulting services. CMC 3.12.140E and 3.12.170 allow for cooperative purchases using state contract vehicles.

The City Administrator entered into an agreement with Joseph Systems Inc. for contract Computer Consulting services on August 9th, 2021 for a not to exceed cost of \$23,008.70 with an end date of December 15, 2021. According to the Carmel-by-the-Sea Municipal Code, contracts exceeding \$24,999 shall be entered into only by Council authorization. The proposed recommendation for City Council consideration is to authorize the City Administrator to execute an amendment to the existing agreement with Joseph Systems Inc. that will increase it by an additional \$5,832 for a new not-to-exceed amount of \$28,840.70 with an end date of June 30, 2022.

## FISCAL IMPACT:

The existing contract amount is for a not to exceed cost of \$23,008.70. The addition of \$5,832 will bring the contract to a new not-to-exceed cost of \$28,840.70.

There are existing funds available in the FY21-22 budget to cover this agreement increase.

## PRIOR CITY COUNCIL ACTION:

None

## ATTACHMENTS:

Attachment #1: Resolution

Attachment #2: Joseph Systems Inc. Agreement Amendment



**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-020**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AMENDMENT NO. 1 TO THE PROFESSIONAL SERVICES AGREEMENT WITH JOSEPH SYSTEMS INC. FOR COMPUTER CONSULTING SERVICES FOR A NOT TO EXCEED AMOUNT OF \$28,840.70 AND EXTENDING THE TERM THROUGH JUNE 30, 2022**

WHEREAS, Carmel-by-the-Sea utilizes consultants to provide specialized services; and

WHEREAS, on August 9, 2021, the City Administrator entered into a professional services agreement with Joseph Systems Inc. for the provision of specialized server migration services in the amount of \$23,008.70 with an end date of December 15, 2021; and

WHEREAS, the server migration services require an additional amount of time and funding beyond the original professional services agreement; and

WHEREAS, Carmel Municipal Code requires contracts exceeding \$24,999 to be entered into only by Council authorization.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:**

Authorize the City Administrator to execute Amendment No. 1 to the Professional Services Agreement with Joseph Systems Inc. for computer consulting services for a not to exceed amount of \$28,840.70 and extending the term through June 30, 2022.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of March, 2022, by the following vote:**

AYES:

NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter, Mayor

\_\_\_\_\_  
Yashin Abbas, Interim City Clerk

**AMENDMENT NO. 1**  
**AGREEMENT NUMBER: IT-J4SYSTEMS-39-21-22**  
**JOSEPH SYSTEMS, INC. dba J4 SYSTEMS**

1. This amendment (the "Amendment") is made by City of Carmel-by-the-Sea and Joseph Systems, Inc. dba J4 Systems, parties to agreement IT-J4SYSTEMS-39-21-22 (the "Agreement") executed on August 9, 2021.

2. The Agreement is amended as follows:

a. **Term** of the Agreement is modified as follows:

The work under this contract shall continue from December 15, 2021 and shall terminate on June 30 2022, unless services are no longer needed prior to June 30, 2022. In that case the contract shall terminate sooner

b. The **Compensation** of the Agreement is modified as follows:

CITY shall pay CONSULTANT in an amount not to exceed \$28,840.70 for the term of the entire agreement stipulated in 2a.

3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail.

**CONSULTANT:**

By: \_\_\_\_\_  
Ivan MacNamara

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

**CITY:**

By: \_\_\_\_\_  
Chip Rerig, City Administrator

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

**ATTEST:**

By: \_\_\_\_\_  
Yashin Abbas, Interim City Clerk

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Pierik, City Attorney

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



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
CONSENT AGENDA

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Robin Scattini, Finance Manager
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2022-021 Approving Uses of American Rescue Act Plan (ARPA) Funds

## RECOMMENDATION:

Adopt Resolution 2022-021 Approving Uses of American Rescue Act Plan (ARPA) Funds

## BACKGROUND/SUMMARY:

On March 11, 2021, the American Rescue Plan Act (ARPA) (HR 1315) was signed into law. On January 6, 2022, the Department of the Treasury adopted the Final Rule of approved uses of the American Rescue Plan Act (ARPA) funds. The City will receive a total of \$911,672 in ARPA funds, of which \$455,836 was received in July 2021 and the remaining \$455,836 will be received in July 2022. Costs must be obligated by December 31, 2024 and expended by December 31, 2026. The City's first report of uses is due to the Department of the Treasury on April 30, 2022.

The Department of the Treasury has created four eligible use categories, along with subcategories and specific examples of approved uses within those categories/subcategories. The categories/subcategories and specific examples, along with staff's recommendations are as follows:

Category 1: Replace Public Sector Revenue Loss: Provision of public sector services – inclusive of purchasing of fire trucks, ambulances and police vehicles.

Staff recommends this use. During FY21-22, the City has purchased two police vehicles and has budgeted the purchase of an ambulance. The purchase of a new fire truck is also on the City's future Capital Improvement Plan. Reporting emergency vehicle purchases are straight forward and easily documented for the Department of the Treasury. Just like the Finance Department's goal of having a "clean" audit each fiscal year, the Finance Department has the goal of having "clean" ARPA reporting to the Department of the Treasury.

Category 2: Respond to Public Health & Economic Impacts: Restore and Bolster Public Sector Capacity – inclusive of rehiring public sector staff.

Staff recommends this use. The personnel costs of all restored staff positions that were laid off or discontinued due to the COVID-19 pandemic qualify. Reporting personnel costs are straight forward and easily documented for the Department of the Treasury. Just like the

Finance Department's goal of having a "clean" audit each fiscal year, the Finance Department has the goal of having "clean" ARPA reporting to the Department of the Treasury.

Category 3: Provide premium pay for essential workers: This is not recommended since there are eligibility requirements of positions and salary benchmarks that might not qualify.

Category 4: Build water, sewer, broadband infrastructure: This is not applicable since the City does not provide these services.

#### **FISCAL IMPACT:**

The City's allocation of ARPA funds totals \$911,672. The first payment in the amount of \$455,836 was received in July 2021. The second payment in the amount of \$455,836 is expected to be received in July 2022.

Expense items that are budgeted to be paid for with General Fund revenue and Measure C revenue will be paid for with ARPA funds. This process will make the corresponding General Fund revenue and Measure C revenue available for other uses.

#### **PRIOR CITY COUNCIL ACTION:**

Council received a presentation on the Department of the Treasury's authorized uses of ARPA funds at its February 1 regular meeting.

#### **ATTACHMENTS:**

Attachment 1: Resolution

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-021**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
APPROVING USES OF THE AMERICAN RESCUE PLAN ACT (ARPA) FUNDS**

WHEREAS, on March 11, 2021, the American Rescue Plan Act (ARPA) (HR 1315) was signed into law; and

WHEREAS, on January 6, 2022, the Department of the Treasury adopted the Final Rule of approved uses of the American Rescue Plan Act (ARPA) funds; and

WHEREAS, the City will receive a total of \$911,672 in ARPA funds; and

WHEREAS, the City wishes to utilize ARPA funds in compliance with the Department of the Treasury's Final Rule.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF  
CARMEL-BY-THE-SEA DOES HEREBY:**

Approve the uses of the ARPA funds as follows:

- A) Category: Replace Public Sector Revenue Loss - Provision of public sector services- purchasing police vehicles, an ambulance, a fire truck
- B) Category: Respond to Public Health & Economic Impacts – Restore and bolster public sector capacity – rehiring public sector staff

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-  
THE-SEA this 1st day of March, 2022, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dave Potter  
Mayor

\_\_\_\_\_  
Yashin Abbas  
Interim City Clerk



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Robert Harary, P.E, Director of Public Works
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2022-022 Accepting a Status Report and Amending the FY 2021/22 Capital Improvement Plan to include the Police Building Renovation Project with a budget of \$2,000,000

## RECOMMENDATION:

Adopt Resolution 2022-022 Accepting a Status Report and Amending the FY 2021/22 Capital Improvement Plan to include the Police Building Renovation Project with a budget of \$2,000,000.

## BACKGROUND/SUMMARY:

The Police Building was constructed in 1967. At 54+ years old, this facility requires modernization to accommodate current technology and improvements to maintain police functionality, and replacement of building components that have exceeded their service life.

**Initial Project Programming** In the FY 2017/18 Budget, Council allocated \$250,000 for design and pre-construction activities for the Project. In August 2017, Council awarded a Professional Services Agreement to Kasavan Architects in the amount, including contingency, of \$122,815. The original concept at that time was to renovate interior areas (dispatch room and install a new ADA restroom) and expand onto the existing southeast deck for new evidence processing, property storage, and utility rooms.

During the schematic design phase, a variety of alternatives were evaluated with the architect, and Council ultimately selected Option 5, which included these interior renovations, plus expansion into two wings of the building, totaling 2,501 additional square feet. Option 5 included expansion into the southwest planter area to house a new Emergency Operations Center (EOC)/training room and three (3) offices. As a result of the expanded scope of the Project, an amendment to the Agreement with Kasavan was approved in April 2018 for a total, including contingency, of \$74,534, increasing the total design services fee to \$197,349. At that time, the Project was re-named the "Police Building Renovation and Expansion Project."

### Key Project Milestones during Design

As the Project design progressed, it was presented to Council and various Commissions as outlined below.

- In April 2018, the Historic Resources Board concluded that the police building is not an historic resource.
- In May 2018, the Forest and Beach Commission approved the removal of 11 non-significant trees in the southwest planter, and requested to review the proposed landscaping/planting plan.
- In June 2018, the City Council adopted the FY 2018/19 Budget and Capital Improvement Program (CIP), which included \$1.9M for construction of the Police Building Renovation and Expansion Project.
- In June 2018, the Planning Commission provided six design recommendations.
- In August 2018, the City Council agreed to incorporate comments received from the Forest and Beach and Planning Commissions, as refined by the Project Team, and directed staff to obtain final approval from both commissions.
- In October 2018, the Forest and Beach Commission approved the landscaping/planting plan. (This plan is no longer anticipated because the expansion wings have been deleted.)
- In November 2018, the Planning Commission approved all design changes as presented.
- In March 2019, when the design of the expanded Project was 90% complete, Council set a different direction for the Project focusing on critical interior renovations and repairs, and deleting both expansion area wings. This action freed up \$882,000 for other City purposes. The Project was renamed back to the “Police Building Renovation Project,” and the Project had to be re- designed accordingly.
- In June 2019, Council adopted the FY 2019/20 Budget and CIP which carried over \$1,000,000 for construction of the re- designed Project.
- In November 2019, Council approved the 100% design of the Project, which had just received a Building Permit, and the architect's construction cost estimate was \$1.14M.
- In June 2020, Council rejected both bids received (low bid was \$1.31M) and postponed the Project as the Covid-19 Pandemic began. The balance of the allocated construction funds were re-allocated to the General Fund.
- In April 2018, the Historic Resources Board concluded that the police building is not an historic resource.
- In May 2018, the Forest and Beach Commission approved the removal of 11 non-significant trees in the southwest planter, and requested to review the proposed landscaping/planting plan.
- In June 2018, the City Council adopted the FY 2018/19 Budget and Capital Improvement Program (CIP), which included \$1.9M for construction of the Police Building Renovation and Expansion Project.
- In June 2018, the Planning Commission provided six design recommendations.
- In August 2018, the City Council agreed to incorporate comments received from the Forest and Beach and Planning Commissions, as refined by the Project Team, and directed staff to obtain final approval from both commissions.
- In October 2018, the Forest and Beach Commission approved the landscaping/planting plan. (This plan is no longer anticipated because the expansion wings have been deleted.)
- In November 2018, the Planning Commission approved all design changes as presented.
- In March 2019, when the design of the expanded Project was 90% complete, Council set a different direction for the Project focusing on critical interior renovations and repairs, and deleting both expansion area wings. This action freed up \$882,000 for other City purposes. The Project was renamed back to the “Police Building Renovation Project,” and the Project had to be re- designed accordingly.
- In June 2019, Council adopted the FY 2019/20 Budget and CIP which carried over \$1,000,000 for construction of the re- designed Project.

- In November 2019, Council approved the 100% design of the Project, which had just received a Building Permit, and the architect's construction cost estimate was \$1.14M.
- In June 2020, Council rejected both bids received (low bid was \$1.31M) and postponed the Project as the Covid-19 Pandemic began. The balance of the allocated construction funds were re-allocated to the General Fund.

### **Project Design Features (without expansion wings):**

The Police Building Renovation Project as designed and bid contained the following exterior site modifications and interior building renovations.

#### **Exterior Site Modifications include:**

- New Americans with Disabilities Act (ADA) accessible van parking space
- ADA ramp from parking space up to front doors ADA-accessible storefront/automatic front door
- Replacement of railings to code
- New shingles on Mansard roof New single-ply roofing
- New exterior paint matching current color

#### **Interior Building Renovations:**

- Asbestos abatement to protect employee health
- A new ADA-compliant restroom off of the lobby
- To accommodate the new restroom, reconfiguration of 4 offices on upper level
- Conversion of conference room into evidence processing and storage room
- Conversion of a marginally-used restroom into a copier and office supplies area
- Dispatch modifications to accommodate new furniture and equipment
- Bullet-resistant glass at dispatch/reception
- New evidence lockers
- Existing EOC in lower level to be reconfigured and updated
- Plumbing system repairs
- Modifications to heating, ventilation, boiler, and air handling systems which are well past their service life
- Update electrical system, receptacles, switches, and lighting system due to significantly-increased demands and meet code
- Update fire sprinklers in remodeled area

Four (4) additive bid items will also be included in the bid documents and could be awarded with the construction contract depending on the actual bid amounts and available funding at that time:

- Card-reader security entrances
- A large exhaust fan for evidence storage
- Waterproofing the roof above the garage
- Paint exterior of the Public Works Building and common areas/plaza to match the Police Building

### **Two (2) Most Recent Police Building Renovation Project Activities:**

#### **A. Bidding and Project Postponement**

In January 2020, the Project was advertised for construction bids, and two (2) bids were received at



the public bid opening held on March 17, 2020, as follows:

Contractor	Architect's Cost Estimate	Ausonio Construction	Avila Construction
Base Bid	\$1,100,000	\$1,311,970	\$1,341,329

Both bid proposals were responsive and responsible with a difference of just \$30,000 between the two, indicating that the drawings and specifications for the Project were well done. The low bid was 19% above the architect's cost estimate.

In June 2020, as the impacts of the new Covid-19 Pandemic were uncertain, the bids were rejected, the Project was postponed, and the funds were re-allocated.

### **B. Police Dispatch Room Renovation:**

Multiple ergonomic reports and employee safety issues have been associated with the dispatch room which is occupied 24/7/365. This room renovation could not be further delayed; however, the renovation project plans are being used for renovating the dispatch room.

At the City Council Special Meeting of March 16, 2021, Council adopted a resolution approving six (6) essential public safety projects, including the Police Dispatch Room Renovation Project, with an allocation of \$50,000 using FY 2020/21 end balance. This project is nearing completion.

### **C. Project Review:**

The current Interim Chief and Interim Public Works Director have assessed the needs of the organization, inspected the building, and reviewed the plans (as approved in 2019). This process has led to three adjustments to the plan which will assist the City in meeting its current public safety facility needs. These include:

1. Locker Room Modernization
2. Public Report Taking Area
3. EV Charging Infrastructure

Additionally, a complimentary future "phase 2" project to expand the existing floorplan by 860 square feet (20' x 43') will provide for a multipurpose meeting space with a small kitchen/storage area. When added, this area will serve the community and City in the following ways:

- Proper Emergency Operations Center
- Community meeting room
- Public Safety and City Employee Training facility
- CERT Training facility
- Staff break and eating area (when area not in use for other priority)

Completion of Phase 2, when added to the main building improvements as outlined in this report, will address foreseeable public safety and community needs for many years into the future.

## FISCAL IMPACT:

Staff currently estimates that the fee to rehire the architect (Kasavan Architects) will be about \$150,000 to update the contract documents (relatively minor) and provide professional services during the bidding and construction phases of the project. These services were included, but not fully expended, under the prior, now expired, Agreement. If approved, the architect's first task in a new Agreement would be to update their construction cost estimate to refine our budgeting needs. **Staff recommends that this \$150,000 item should be budgeted at this time.**

Prior to awarding the construction contract, other expenses will be incurred including printing and advertising of the project plans and specifications, and relocating police personnel that would be impacted for construction. **Staff recommends that this \$50,000 item should also be budgeted at this time.**

Although it is known that both construction bids received in June 2020 were \$1.3M, the current cost for the same project is uncertain, particularly due to the following three (3) factors:

1. Historically, rebids come in higher than original bids, as bidders recognize the risk of their bid proposals again being rejected
2. The supply chain has interrupted the availability of certain building materials
3. Inflation since June 2020

Staff currently anticipates that the cost of construction would be roughly \$1.8M. Again, this budgetary estimate needs to be updated by the architect as the first task under a new Agreement. While Council may wish to encumber the \$1.8M at this time, this resource will not be encumbered during FY 2021/22 since restarting the architect, updating the contract documents, orienting a new Project Manager, rebidding the project, and awarding the construction contract will not occur prior to July. However, **staff recommends that this \$1.8M amount, or a more architect-refined estimate when available, be added to the FY2021/22 CIP budget and then rolled forward into the FY 2022/23 CIP budget.**

Due to robust receipts of Hostelry Tax (TOT) and updated Sales & Use Tax and Measure C Tax projections, staff recommends adjusting these three revenue sources upward to fund this project.

In addition, the City is currently recruiting for a Project Manager. Should we be successful and hire a Project Manager, this person's first year on the job will be dominated by concurrent construction of the Police Renovation Project and the annual paving project. This leaves minimal resources to begin the design of eight (8) other FY 2021/22-funded projects in the CIP, plus any additional CIP projects which may be added in the FY 2022/23 CIP.

One preliminary option would be to amend the Staffing Plan to include a second, limited-term Project Manager. Another option would be to retain an external Construction Management (CM) firm to manage either or both of these larger construction projects, freeing up the new Project Manager to launch a number of backlogged projects. **Should a CM firm be desired for both projects, another \$150,000 should be allocated at that time.** This information is to provide Council with a general forecast of additional funds which may be needed to fully execute this Project.

## PRIOR CITY COUNCIL ACTION:

Date	Description
5/17	Approved initial Police Building Renovation Project for FY 2017/18
8/17	Awarded Professional Services Agreement to Kasavan Architects
11/17	Presented 4 schematic design options for Renovation and Expansion
11/17	Approved 5th schematic design option for Renovation and Expansion into two wings

3/18	FY 2018/19 Capital Improvement Plan and Budget presentation based on \$1.5M construction funding
4/18	Approved final schematic design and Amendment No. 1 to Kasavan's Agreement
6/18	Adopted FY 2018/19 Budget with \$1.9M for construction
3/19	Reviewed the 90% design of the Project and directed to redesign the Project focusing on repairs, ADA, and interior renovations only, without both expansion wings
6/19	Adopted FY 2019/20 Budget with \$1.0M reserved for the downsized renovation
11/19	Approved the 100% design of the downsized renovation project, with an estimated construction cost of \$1.14M
6/20	Rejected both bids received (\$1.3M) as Covid-19 Pandemic began, postponed the project, and re-allocated the funds.

## ATTACHMENTS:

Resolution No. 2022-022 Amending the FY2021-22 Capital Improvement Plan to Include the Police Building Renovation Project

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-022**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
AMENDING THE FY2021-22 CAPITAL IMPROVEMENT PLAN TO INCLUDE THE POLICE  
BUILDING RENOVATION PROJECT**

WHEREAS, the police building was constructed in 1967; and

WHEREAS, this facility requires modernization to accommodate current technology and improvements to maintain police functionality; and

WHEREAS, in June 2019, Council adopted the FY2019/20 Budget and Capital Improvement Plan, which included the Police Building Renovation Project in the amount of \$1,000,000; and

WHEREAS, in June 2020, Council postponed the Project due to the economic uncertainties of the COVID-19 pandemic; and

WHEREAS, in January 2022, Council provided direction to bring back the Project as an amendment to the FY2021/22 Capital Improvement Plan; and

WHEREAS, due to inflation in the construction industry, a preliminary cost estimate is \$2,000,000; and

WHEREAS, the projected increase in receipts of Hostelry Tax, Sales & Use Tax and Measure C Tax revenues for Fiscal Year 2021/22 is sufficient to fund this project.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:**

Amend the FY2021-22 Capital Improvement Plan to include the Police Building Renovation Project in the amount of \$2,000,000, with offsetting revenue as detailed in Exhibit A.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of March, 2022, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

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Yashin Abbas  
Interim City Clerk

**EXHIBIT A**

<b>General Ledger Account and Description</b>	<b>Purpose</b>	<b>FY 2021-22 Adopted Budget</b>	<b>Adjustment Amount</b>	<b>FY 2021-22 Amended Budget</b>
503-513-00-43002 Capital Outlay: Buildings & Improvements	Increase Capital Outlay – Building & Improvements budget for police building renovation project	\$50,000	\$2,000,000	\$2,050,000
102-000-00-31005 Transient Occupancy Tax (TOT)	Fund police building renovation project	\$5,568,562	\$1,000,000	\$6,568,562
101-000-00-31006 Sales & Use Tax	Fund police building renovation project	\$2,454,109	\$500,000	\$2,954,109
206-000-00-31007 Measure C Sales Tax	Fund police building renovation project	\$4,206,660	\$500,000	\$4,706,660



## CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Robert Harary, P.E, Director of Public Works
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2022-023 Approving a Lease Agreement with Pacific Repertory Theatre for Operations and Management of the Forest Theater, and Approving a Public Works budget amendment of \$60,000 for initial upgrades

### RECOMMENDATION:

Adopt Resolution 2022-023, Approving a Lease Agreement with Pacific Repertory Theatre for Operations and Management of the Forest Theater, and Approving a Public Works budget amendment of \$60,000 for initial upgrades.

### BACKGROUND/SUMMARY:

In early 2021, the City issued a Request for Proposal (RFP) for Theatrical Programming and Facility Management Services for the historic Forest Theater. Two proposals were received in May 2021 in response to the RFP, one by Steve Retsky, and the other from Pacific Reperatory Theatre (Pac Rep). The evaluation panel, consisting of the Director of Library and Community Services and Director of Public Works, agreed that the Proposal submitted by Pac Rep, as written by their Executive Director, Stephen Moorer, was fully responsive, more comprehensive, and better fit the needs of the City.

The results of the RFP were introduced to Council in closed session, at which time an ad hoc committee of Mayor Potter and Councilwoman Theis began to guide the negotiating team of City Administrator Chip Rerig and Director of Public Works Robert Harary.

Negotiations with Pac Rep were thoughtful, detailed, and fair. While the prior Forest Theater Lease Agreement held with Sunset Cultural Center included a City subsidy, there will be no subsidy with Pac Rep. Thus, costs were planned to be more equitably shared, while recognizing that Pac Rep is a Nonprofit 501(c)3 California Corporation.

Next, the City Attorney's office and staff crafted the attached Lease and Management Agreement, and minor adjustments were requested by both parties. At the January 31 session, Council directed staff to present the Lease Agreement in open session at the March 1, 2022 Council meeting.

### The following summarizes the key points of the Lease Agreement:

- Effective date March 1, 2022.

- First Term will be 5-1/3 years, ending June 30, 2027. Then five (5) subsequent fiscal year, optional renewable Terms would continue indefinitely, but each new term requires City Council approval.
- Termination by either party requires 1-year notice.
- A 120-day Notice must be issued to cure any default.
- Pac Rep shall provide annual written and verbal reports to the City Council and include events, revenue, expenses, outreach efforts, upgrades, and facility repairs.
- Pac Rep shall provide quarterly memorandums to the City Administrator.
- The Forest Theater Guild is recognized as an Historic User and shall be given equitable scheduling precedence.
- Pac Rep will perform outreach to other cultural, educational, and community groups through press, social media, and regional industry representatives.
- Pac Rep shall provide 24/7/365 contacts for emergency call outs.
- All facility repairs by Pac Rep require prior consent by the City.
- The City can use the facility, rent free, for up to twelve (12) days per year.
- The City (currently Carmel Cares volunteers) will continue to maintain the trees and landscaping as a City park.
- At all times, Pac Rep shall provide general liability insurance of \$1M for each occurrence, and \$2M in the aggregate.
- Any disputes are to be resolved by good faith negotiations/meetings, and if unsuccessful, through a mediation process. If still unsuccessful, the issue will be resolved through binding arbitration.
- Annual inspections of the facility will be made by the City and results provided to Pac Rep.
- Each spring, the parties will jointly prepare a prioritized list of both minor capital needs (under \$25,000) and major capital improvement projects (over \$25,000).

**The following summarizes the Cost Sharing Arrangement as specified in the Lease Agreement:**

**Pac Rep to Fund:**

- Pay \$1.00 to City per year for rent.
- Pay \$15,000 for one time, initial upgrades.
- Pay for electrical, gas, and water utilities, effective January 1, 2023, with a not-to-exceed budget of \$10,000 per year.
- Pay for minor services and repairs, such as for plumbing, electrical, architectural, or storm damage, up to \$5,000 per year.
- Pay \$25,000 for the first major Capital Improvement Project (project and date to be determined).
- Seek fundraising, donations, and grants for capital improvements.

**Cost Sharing – City to Fund:**

- No City subsidy.
- Allocate \$60,000 for one time, initial upgrades.
- Continue to pay for sewer utility and trash/recycling service.
- Continue to pay for electrical, gas, and water utilities through December 31, 2022.



- Pay for electrical, gas, and water utilities beyond \$10,000 per calendar year.
- Pay for minor services and repairs, such as for plumbing, electrical, architectural, or storm damage, beyond \$5,000 per year.
- Continue to manage and pay for ongoing general expenses including: ADA toilets/sink rentals, pest control, alarm service, janitorial service, waste removal, fire system, extinguishers testing, backflow testing, and landscaping which currently costs approximately \$25,000 per year.
- Consider Capital Improvement Projects benefiting the Forest Theater each year; however, such projects shall compete with other, City-wide capital needs.

### **FISCAL IMPACT:**

The one time, initial upgrades of \$75,000, consisting of a \$60,000 investment by the City, plus a \$15,000 contribution by Pac Rep, will be used for several purchases and repairs as follows. These purchases will begin as soon as the Lease Agreement is fully executed. However, it is unlikely that all of these items will fall within this budget, particularly due to the potentially high cost and extended time required to repair the stage floor. Any unexpended funds will be re-budgeted in the Public Works FY22-23 budget.

- Lighting truss/towers
- Stage rigging
- Prefabricated box office
- Picnic tables
- Stage floor and subfloor repairs

Per consultation with the Finance Department, existing General Fund revenues will be able to support the City's \$60,000 in expenditures.

### **PRIOR CITY COUNCIL ACTION:**

None related specifically to the lease to Pacific Repertory Theater.

### **ATTACHMENTS:**

Attachment #1 Resolution 2022-023

Attachment #2 - Exhibit A to Resolution 2022-023

Attachment #3 - Lease Agreement with Pac Rep

**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-023**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING A LEASE AGREEMENT WITH PACIFIC REPERTORY THEATRE FOR OPERATIONS AND MANAGEMENT OF THE FOREST THEATER, AND APPROVING A PUBLIC WORKS BUDGET AMENDMENT OF \$60,000 FOR INITIAL UPGRADES**

WHEREAS, the City issued a Request for Proposal (RFP) for Theatrical Programming and Facility Management Services for the historic Forest Theater; and

WHEREAS, it was determined that the proposal submitted by Pacific Repertory Theater as written by Executive Director, Stephen Moorer, was fully responsive, more comprehensive, and a better fit for the needs of the City; and

WHEREAS, results of the RFP were introduced to Council in closed session and negotiations with representatives on behalf of Pacific Repertory Theater were conducted by an ad hoc committee of Mayor Potter and Councilwoman Theis, City Administrator Chip Rerig, and Director of Public Works Robert Harary; and

WHEREAS, the City Attorney's office and staff crafted the attached Lease and Management Agreement, and Negotiations with Pac Rep were thoughtful, detailed, and fair; and

WHEREAS, at the January 31 session, Council directed staff to present the Lease Agreement in open session for approval at the March 1, 2022 Council meeting.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DOES HEREBY:**

Approve a lease agreement with Pacific Repertory Theatre for operations and management of the Forest Theater, and approving a Public Works Budget amendment of \$60,000 for initial upgrades.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 1st day of March, 2022, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

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Yashin Abbas  
Interim City Clerk

## EXHIBIT A

<b>General Ledger Account and Description</b>	<b>Purpose</b>	<b>FY 2021-22 Adopted Budget</b>	<b>Adjustment Amount</b>	<b>FY 2021-22 Amended Budget</b>
101-119-42-42105 General Fund Expenditures Public Works Department - Facilities Division: Materials & Supplies	Increase Materials & Supplies budget for Forest Theater upgrades per lease agreement	\$60,000	\$60,000	\$120,000

FOREST THEATER  
LEASE AND MANAGEMENT AGREEMENT

Between

CITY OF CARMEL-BY-THE-SEA

A Municipal Corporation

and

PACIFIC REPERTORY THEATRE

A Nonprofit 501(c)3 California Corporation

**March 1, 2022**

**FOREST THEATER LEASE AND MANAGEMENT AGREEMENT**

THIS LEASE AND MANAGEMENT AGREEMENT (“Lease Agreement”) is entered into on \_\_\_\_\_, 2022, by and between the CITY OF CARMEL-BY-THE-SEA, a municipal corporation (“CITY”) and PACIFIC REPERTORY THEATRE, a nonprofit 501(c)3 California corporation (“PRT”).

**RECITALS**

A. CITY owns property and improvements in the public parkland bordered by Santa Rita and Guadalupe Streets, and Mountain View and Josselyn Lane footpath (aka “Seventh Avenue” on lot maps), surrounded by residential properties in Carmel-by-the-Sea, California, known as the Forest Theater and more specifically described as: Lots One to Fifteen inclusive in Block 85 as designated on the map of Addition Number 5 to Carmel-by-the-Sea, Monterey County, California, filed on February 9, 1910, and on record in the office of the County Recorder of the County of Monterey, State of California, in Map Book Two, Cities and Towns, at page 22, as generally depicted on the site plan in Exhibit “A,” attached hereto and incorporated by reference herein.

B. PRT was incorporated in 1983 as a nonprofit 501(c)3 California corporation;

C. CITY desires to Lease the Forest Theater to PRT and assign the management of it to PRT who has the proven expertise and experience of operating community theater facilities for the benefit of a variety of users;

D. PRT and the CITY desire that Forest Theater be operated and managed as a place for public entertainment in accordance with the provisions of this Lease Agreement so that the Forest Theater continues to serve as a cultural stimulant for the community and for the Theater’s historic user groups, while demonstrating sensitivity to and consideration for the residential environment surrounding the open-air facility, and recognizing that seasonal weather conditions limit the year-round use of the outdoor theater;

E. It is the intent of both Parties to achieve these mutual goals through continuing their long-standing partnership in the operation of community theater.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, provisions, conditions and limitations herein set forth, the Parties agree as follows:

**ARTICLE 1**  
**DEFINITIONS**

For purposes of this Lease Agreement, words not herein specifically defined shall be given their normal and usual English language meaning. The following terms, phrases, words, and their derivations shall have the meaning given herein. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

1.1 **Definitions.** Certain terms in this Lease Agreement are specifically defined and set forth as follows:

1.1.1 **Board of Directors.** Those persons acting as Directors of PRT as of the Effective Date and such substitutions, replacements, and new Directors as shall be selected from time to time by the then sitting Board of Directors in accordance with the Bylaws of PRT.

1.1.2 **City Administrator.** The City Administrator of Carmel-by-the-Sea.

1.1.3 **City Council.** The sitting City Council of the City of Carmel-by-the-Sea, at any given point in time during the duration of this Lease Agreement.

1.1.4 **Concession and catering.** The preparation, service, free distribution, or sale of food or any beverage, including any alcoholic beverage, or the free distribution or sale of any concession merchandise or service.

1.1.5 **Concession merchandise.** Inedible goods, souvenirs, and novelties.

1.1.6 **Executive Director.** The person, regardless of name, selected, engaged and authorized by the PRT's Board of Trustees to act as the chief executive officer of the Forest Theater.

1.1.7 **Facility.** "Facility" shall mean the grounds and improvements in the public parkland known as Forest Theater that include the outdoor stage, indoor theater and function space,

audience seating area, concessions building, public restroom building, pedestrian pathways, parking lot, individual parking spaces, driveway, fencing, and gates, as depicted in Exhibit “A”.

1.1.8 **Facility Use Fee.** Facility Use Fee shall be collected for each ticket sold and held in a separate account, by CITY, in a designated Forest Theater Fund.

1.1.9 **Fiscal Year.** A one-year period beginning July 1 and ending the following June 30.

1.1.10 **Improvements.** “Improvements” shall mean and include the structures and all other fixed improvements now or hereafter affixed to the Facility.

1.1.11 **Initial Upgrades.** Improvements funded by the Parties to commence implementation promptly upon execution of this Lease Agreement, and which may include stage flooring, rigging, lighting truss or towers, prefabricated box office, and/or picnic tables.

1.1.12 **Law.** “Law” or “Laws” shall include any judicial decision, statute, constitution, ordinance, resolution, regulation, rule, administrative order, or other requirement of any municipal, county, state, federal or other governmental agency or authority having jurisdiction over the parties hereof or affecting or governing the Facility, in effect either at the effective date hereof or at any time during the Term.

1.1.13 **Lease Agreement.** “Lease Agreement” means this Lease Agreement, as it may be amended, restated or supplemented in writing and executed by both Parties from time to time in accordance with the terms hereof. References to Sections are to this Lease Agreement unless otherwise qualified.

1.1.14 **Manage.** “Manage,” or any derivation thereof, shall mean to direct, control, operate, maintain, govern, determine, oversee, and administer the operations of the Facility in accordance and compliance with the terms and conditions of this Lease Agreement and all applicable laws, rules, and regulations.

1.1.15 **Major Capital Improvement Projects.** Design and construction-oriented Public Works projects to be affixed to the Facility with a life span of at least ten years, and whose



cost exceeds \$25,000. Major Capital Improvement Projects require a formal, public bidding process and contract approval by the City Council.

1.1.16 **Minor Capital Improvements Projects.** Design and construction-oriented Public Works projects to be affixed to the Facility with a life span of at least ten years, and whose cost does not exceed \$25,000. Minor Capital Improvement Projects may be let through an informal quotation process and contract approval by the City Administrator.

1.1.17 **Minor Maintenance Services.** “Minor Maintenance Services” shall refer to routine, ongoing general maintenance, repairs, and replacements, including architectural, electrical, mechanical, or plumbing facilities, typically requiring the services of a licensed contractor, vendor or CITY facility maintenance staff.

1.1.18 **Operator Improvements** shall refer to non-capital improvements and personal property additions, not permanently affixed to existing or subsequently built structures.

1.1.19 **Parties.** “Parties” mean CITY and PRT exclusively and collectively.

1.1.20 **Party.** “Party” means CITY or PRT individually.

1.1.21 **Person.** Includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures, associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

1.1.22 **Premises.** “Premises” shall mean the premises described as set out in the first paragraph of the Recitals of this Lease Agreement.

1.1.23 **Term** shall mean the original fixed term of this Lease Agreement as may be extended by mutual written agreement of the Parties.

## ARTICLE 2

### PURPOSE, SERVICES, DESCRIPTION OF FACILITY, AND TERM

2.1 **Incorporation of the Recitals.** The Parties acknowledge and agree that the above stated recitals are true and correct to the best of their knowledge and are incorporated as though fully set forth herein.

2.2 **General.** The CITY desires to lease the Facility to PRT and retain the services of PRT to operate and manage the Facility under the terms and conditions set forth herein. PRT desires to lease the Facility from CITY and accept the operation and management responsibilities for the Facility under the terms and conditions set forth herein.

2.3 **Principal Function.** The principal function of PRT shall be to promote, market, rent, operate and manage the Facility as a place for public entertainment and community events, as further detailed in the specific scope of services described in this Lease Agreement.

2.4 **Standard of Care.** PRT represents and maintains that it is skilled in the professional calling necessary to perform all of the management services, duties and obligations required by this Lease Agreement to fully and adequately operate the Facility. PRT warrants that all employees and subcontractors shall have sufficient skill and experience to perform any and all services assigned to them. PRT further represents and warrants to City that its employees and subcontractors have, and shall maintain current, all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform any services pursuant to this Lease Agreement. PRT shall perform any services necessary to correct errors or omissions which are caused by PRT's failure to comply with the standard of care provided for herein, any such related costs shall not be considered an Operating Expense. In addition, PRT shall be fully responsible to City for all damages and other liabilities provided for in the indemnification provisions of this Lease Agreement arising from PRT's errors and omissions.

## 2.5 **Scope of Management Services.**

2.5.1 CITY and PRT hereby agree that PRT shall operate and manage the Facility. Management and operation includes, but is not limited to: (1) Acting as a liaison to all user groups; (2) Monitoring the use of the Facility by the user groups; (3) Entering into Use Agreements with user groups (including approval of all insurance and indemnity requirements); (4) Monitoring the condition of the Facility with the CITY; (5) Establishing, implementing and publishing its booking, presentation and rental policies; (6) Approving or denying requests for use of the Facility; (7) Monitoring and ensuring that all appropriate use and consumption permits are obtained; (8) Adopting rental and use fees for any and all uses of the Facility; (9) Auditing ticket sales by the users; (10) Collecting rental revenue and charges for use of the Facility; and, (11) reporting the collected rental revenue, commissions, and Facility charges in the required annual report to the City Council.

2.5.2 PRT shall coordinate and attend Facility walk-through(s) upon arrival and departure of each user group, establish and implement all aspects of booking and scheduling, and operate concessions on its own behalf or through others.

2.5.3 PRT shall enforce the Facility restrictions and limitations in concert with the CITY, but shall not be required to monitor or enforce any building permit regulations which will remain under the sole and exclusive purview of the CITY.

2.5.4 PRT shall also provide CITY with contact information of two or more individuals who would be available to respond to an emergency at the Facility at any time (24 hours per day, 7 days per week, 365 days per year).

2.6 **Reservations.** CITY reserves to itself the right, from time to time, to grant, without the consent of PRT, such easements, rights and dedications that CITY deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the permitted use of the Facility by PRT. PRT agrees, if requested by CITY, to execute in a timely manner, not more than ten (10) calendar days from the date of request, documents to effectuate any such easement rights, dedications, maps or restrictions.

2.7 **Parking Area.** CITY grants to PRT the right to oversee and manage the utilization of the parking spaces located at the Facility and to condition any rental agreement with such right of oversight and management.

2.8 **Condition of Facility and Inventory.** CITY and PRT acknowledge that the Facility is a historic asset and consists of the theater and adjacent spaces and other buildings in various conditions of maintenance and repair. Within ninety (90) days from the date of execution of this Lease Agreement, CITY shall perform a comprehensive, digital photographic inventory of the condition of the Facility and shall make a digital copy available to PRT.

2.9 **Effective Date.** The effective date of this Lease Agreement shall be March 1, 2022.

2.10 **Term.** The initial term of this Lease Agreement (“Term”) shall be for a period of five (5) years and four (4) months, commencing on the Effective Date and ending on June 30, 2027, with ongoing, renewable 5-year optional terms subject to approval by the City Council.

### ARTICLE 3

#### OPERATION AND MANAGEMENT

3.1 **Lease Payment.** CITY hereby acknowledges the public benefit of the services offered by the non-profit organization PRT and the value of the in-kind services that PRT provides to the community. Therefore, in consideration of those public contributions which the CITY recognizes are considered a core function of the CITY, providing a significant social service, and the contractual obligations PRT bears under the provision of this Lease Agreement, CITY hereby agrees that the cash payment for the duration of the Lease Agreement shall be One Dollar (\$1.00) per Fiscal Year, effective July 1, 2022.

3.2 **CITY Leases and Contracts out Operation and Management Functions.** Subject to the terms, covenants and conditions set forth in this Lease Agreement, and also subject to all recorded covenants, conditions and restrictions, utility easements, other recorded private easements, reciprocal easement agreements and any other recorded instruments affecting the use of the Facility as they may exist as of the Effective Date of this Lease Agreement, and which may be modified from time to time, CITY hereby grants to PRT the exclusive right to operate and

manage the Facility as specified in Section 2.4 “Scope of Services” agreed to by the Parties. PRT agrees to operate and manage the Facility in a professional and business-like manner. Operating and capital expenses not otherwise allocated to the parties in this Agreement shall be allocated in accordance with the Proposed Expenditures and Cost Sharing table attached as Exhibit B, and incorporated herein by this reference.

3.3 **PRT Bylaw Covenants.** Throughout the term of this Lease Agreement, PRT’s bylaws, as amended, shall provide that no less than one-third (1/3) of the Directors serving on the PRT Board of Directors shall be residents of the City of Carmel-by-the-Sea, and not less than two thirds (inclusive of Carmel-by-the-Sea residents) shall be residents of Monterey County. The Board of Directors shall maintain and provide the CITY with a current roster of PRT Directors. The Board of Directors shall not adopt any policy or take any action regarding the operation and management of the Facility which would violate the rules and regulations under Section 501(c)3 of the Internal Revenue Code or conflict with PRT’s tax exempt status under said Section 501(c)3, which would create a prohibited conflict of interest between any member of the PRT Board of Directors or provides a direct or indirect financial benefit to any individual member of the Board of Directors, or any entity which any such member directly or indirectly represents, owns or controls.

3.4 **Executive Director.** The Executive Director shall be an employee of PRT and shall report to and serve at the pleasure of the PRT Board of Directors.

3.5 **Employees.** Employees hired by PRT to perform work at the Facility shall be employees of PRT and not of City. Subject to the other terms and provisions of this Lease Agreement, PRT shall have complete and absolute discretion, authority and responsibility with respect to the functions, qualifications, training, compensation and other terms and conditions relating to its employees.

3.6 **PRT Budget.** After adoption by the Board, PRT shall submit its annual budget to the CITY which shall include PRT’s anticipated revenue and expenses relating to the services PRT will provide in connection with the Facility for purposes of reporting on the Scope of Services provided by PRT and the compensation to be received. PRT is not required to prepare a separate

budget for the services PRT provides in connection with the Facility, but such budget information shall be separately identified and included in PRT's complete budget covering all its operations.

**3.7 Reporting and Coordination between the Parties.** PRT shall report its activities, financial data, indicators, and condition to the CITY in the following ways:

**3.7.1 Quarterly Memorandums to City Administrator.** At least every three months, PRT shall provide to the CITY a brief progress memorandum in a form approved by the CITY. The memorandum shall include, but is not limited to: (i) A summary of the activities for the prior three months, including finances and attendance statistics; (ii) The status of anticipated activities for the upcoming quarter; and (iii) Issues relating to activities or contract compliance, if any. The first such memorandum shall be due by June 30, 2022, covering the preceding three months.

**3.7.2 Annual Presentation/Report to the City Council.** At the end of each calendar year, or at the discretion of the City Administrator, PRT shall provide a written report and oral presentation to the City Council summarizing the shows and events, revenue and expenditures, outreach efforts to share use of the Facility, and Facility upgrades and repairs.

## **ARTICLE 4**

### **AUTHORIZED USE OF FACILITY**

**4.1 Permitted Uses.** Subject to the terms, covenants and conditions of this Lease Agreement, PRT shall use the Facility solely for the operation and management of the Facility for cultural events, performing arts presentations, films, classes, general community purposes, rehearsals, private events and other related activities. PRT shall assist the CITY in seeing that the Facility is kept in an orderly condition, free of debris or nuisances and prohibit unnecessary, excessive and annoying public disturbances such as noise or excessively bright lighting which would intrude on the quiet enjoyment of the residential neighbors. PRT may use the Facility to engage in concession activity only as provided in this Lease Agreement and in accordance with City Ordinances and State Statutes. PRT may use the Facility for additional purposes with the prior written approval of the CITY.

## 4.2 **Concessions and Catering Activity.**

4.2.1 **Grant of Right.** CITY grants to PRT the right to engage in concession sales or to allow outside parties to engage in concession sales as may be agreed upon in individual rental agreements. PRT shall be further permitted the right to participate in a percentage of consumer sale receipts generated by tenants under a rental agreement, provided that all concession sales are subject to City Ordinances and State Statutes as they relate to the sale of consumables and alcohol.

4.2.2 **Right Not Effective During CITY Use Periods.** The concession rights granted in this section shall not be effective during any period of time when the Facility is used by CITY, unless by express request of CITY.

4.2.3 **Merchandise Sales Commissions.** PRT may incorporate a sales commission participation agreement with renters of the Facility, retaining for itself any agreed upon sales commissions.

4.2.4 **Permits.** When serving food or alcohol at the Facility, PRT shall abide by all rules and laws governing any permit for use and consumption including any caterer/supplier limitations established by CITY in effect at that time. PRT must ensure that all permits are obtained including a State Alcoholic Beverage Control license as required by law.

4.2.5 **Food Service Establishment Permit Required.** PRT, or any concessionaire(s), shall ensure that all food offered for sale on or from the Facility has been prepared, transported, served and otherwise provided only by a person or entity issued a current valid Food Service Establishment permit by the Monterey County Department of Public Health or its successor.

4.2.6 **Licenses and Permits Required.** PRT, or any concessionaire(s), shall be responsible for obtaining and maintaining, at no cost to CITY, all licenses, permits and other authorization required to legally conduct the concession and catering activity contemplated herein. CITY shall have no obligation to issue such licenses, permits, or other authorization. CITY shall issue such licenses, permits, or other authorization in accordance with applicable CITY rules and regulations. The inability of PRT, or any such concessionaire(s), to secure or to maintain any such

license, permit or other authorization shall not invalidate the concession and catering right granted herein.

4.3 **Revenue.** Unless otherwise noted in this Lease Agreement, all revenue generated from rental or performance fees from the theater and other parts of the Facility, concessions, or percentage of ticket sales for all activities shall inure to the benefit of PRT for the operation and management of the Facility.

4.4 **Facility Use Fee.** PRT shall be permitted to establish a facility use fee per ticket and may increase or decrease the Fee or review its Facility Fee policy at any time. No Facility Use Fee will be charged for any event for which admission is free. PRT shall pay to CITY one dollar (\$1.00) for every admission ticket sold and the balance of the established fee shall be retained by PRT as revenue.

4.5 **Compliance with Laws.** PRT shall not use or permit any person or entity to use the Facility in any manner that violates any law applicable to the Facility or any activity conducted or allowed thereon.

4.6 **Booking and Rental Policies.** PRT is hereby granted the right to establish and implement Facility booking and scheduling policies, rental rates, and fee schedules for all spaces throughout the Facility. The Executive Director shall book the Facility in accordance with such policies, procedures, rates, and charges, and shall invoice users consistently in accordance with the established rates and charges for the use and occupancy of the Facility, related components, and equipment.

4.7 **Outreach to other Groups.** PRT agrees to market Facility through outreach to a variety of cultural, educational, and community groups through press, social media, and regional industry representatives and to summarize such efforts in annual reports and presentations to the City Council.

4.8 **Protection for Historic Users.**

4.8.1 PRT and CITY agree that the privilege to schedule dates in the Facility should be coordinated with the groups that have historically used the Facility. For purposes of this



Lease Agreement, the Historic Users are defined and limited to the Forest Theater Guild and PRT. PRT shall use its reasonable effort to devise an equitable policy that will provide scheduling precedence for other users that have historically used the Facility while maintaining PRT's capacity to book other events that contribute to the cultural opportunities and/or financial health of the Carmel area.

4.8.2 Booking and rental agreements shall, to the extent reasonable and practical, be based upon standard contract terms and conditions adopted by PRT. CITY recognizes that market conditions may occasionally require non-standard terms and conditions and that in such circumstances, PRT shall, in its sole discretion, have the authority to use a non-standard agreement.

4.9 **Use by CITY.** CITY shall have the right to use the Facility for up to twelve (12) full days each Fiscal Year without charge ("CITY's Free Theater Days"), provided that CITY may not use any space previously committed to PRT's Facility rental customers. In the event the CITY elects not to use any of its allocated time, PRT may utilize that time allocation.

CITY also reserves the right to use the Facility on additional days on a space available basis that shall not compete with dates requested by Facility rental customers. In the event CITY uses the Facility for any days in addition to CITY's Free Theater Days, PRT may charge CITY the following: (1) a daily rental fee at the Historic Users rate for occupancy and use of equipment; and (2) staff time for any staff member who performs services for CITY at the Facility, at PRT's usual hourly non-profit rate.

4.10 **Hazardous Materials.** PRT shall not use or allow another person or entity to use any part of the Facility for the storage, use, treatment, manufacture or sale of any Hazardous Materials. City shall acknowledge, however, that PRT may maintain products in the Facility which are incidental to the operation and maintenance of its Facility (such as janitorial supplies), which products contain chemicals which may be categorized as hazardous materials. In addition, this shall not apply to the use of petroleum products and related substances incidental to operation of motorized equipment whose operation in the Facility is contemplated by this Lease Agreement. City shall agree that the use of such products in the Facility in compliance with all Applicable Laws and in the manner which such products are designed to be used shall not be a violation by PRT of this Section 11.3. The term "hazardous material" means any hazardous substance, material

or waste, including but not limited to those listed in 49 CFR 172.101 (U.S. Department of Transportation), the Cal/EPA Chemical Lists of lists or petroleum products and their derivatives.

## **ARTICLE 5**

### **EXPENSES**

5.1 **Costs by PRT.** PRT agrees to assume the full and complete responsibility for all costs of management and supervision of rental agreements and user liaison as detailed in the Scope of Services. PRT shall be responsible for minor maintenance and repair services up to \$5,000 per Fiscal Year. PRT agrees to make available \$15,000 for One Time, Initial Upgrades and \$25,000 for a One Time Major Capital Project supplemented by CITY funds. PRT shall pay for Electrical, Gas, and Water costs effective January 1, 2023.

5.2 **Costs by CITY.** CITY shall be responsible for all other costs, including costs of Sewer and Trash/Recycling Disposal, minor maintenance and repair services beyond the initial \$5,000 to be provided by PRT, up to \$60,000 for One Time, Initial Upgrades, and any Minor Capital Projects or Major Capital Projects, as set forth in Article 6 below.

5.3 **Capital Planning.** PRT will participate in the CITY's capital improvement planning process each spring and will submit PRT's capital budget, if any, by March 1st for CITY review.

5.4 **Fiscal Year.** The fiscal year for PRT shall begin July 1 and end June 30 of each year to coincide with CITY's fiscal year.

5.5 **Unanticipated Expenses Review.** The Parties recognize that management of the Facility under PRT may suggest alternative operational procedures, resulting in associated cost savings, additional revenue, and/or unanticipated expenses. Therefore, the Parties hereby agree to confer at the end of the second Fiscal Year to consider any additional unanticipated related expenses that have become necessary to fulfill the CITY's and PRT's various operational guidelines, as set out in this Lease Agreement.

## 5.6 Accounting Records, Reporting, and Audits.

5.6.1 For purposes of accurately reporting attendance and gross receipts for any and all performances at the Facility, PRT may control ticket sales through its box office, or by other means as PRT deems feasible, and shall maintain an accurate accounting of all ticket proceeds and commissions.

5.6.2 PRT shall maintain books, records, documents and other accounting procedures and practices in accordance with Generally Accepted Accounting Principles (“GAAP”) consistently applied (e.g., a unitary, internally consistent system of accounts and records) that sufficiently and properly reflect all receipts and direct and indirect costs of any nature associated with the exercise of rights and the performance of obligations by PRT under this Lease Agreement.

5.6.3 PRT shall provide to CITY an annual financial report that shall include attendance data in addition to gross sales, net profits, and direct and indirect costs. The annual financial report shall include a budget for the forthcoming year that provides adequate funding to meet the Scope of Services as set forth in this Lease Agreement for operation and management of the Facility. PRT agrees, upon reasonable notice, that all of its books and records pertaining to the financial operation and management of the Facility shall be open to inspection by the City Administrator and other such CITY officers and employees as may be designated during regular business hours. During document inspection, a representative of PRT shall be present in observance.

## ARTICLE 6

### MAINTENANCE, REPAIR, UTILITIES AND CAPITAL IMPROVEMENTS

#### 6.1 City Responsibilities.

6.1.1 CITY agrees to maintain, repair and replace, at its sole cost and expense, the structural integrity of any buildings located on the Facility, and to maintain the seismic soundness of the buildings located on the Facility.

6.1.2 CITY agrees to perform a condition assessment of the Facility and grounds at the beginning of each Fiscal Year and notify PRT of any needed repairs.

6.1.3 CITY agrees to pay for Carmel Area Wastewater District sewer services and trash/recycling utility services under its waste hauler franchise agreement. Upon exhaustion of PRT's utility allocation of \$10,000 per calendar year, CITY agrees to pay for electrical, gas, and water utility services to the Facility in excess of \$10,000 per calendar year.

6.1.4 CITY agrees to pay for ongoing general maintenance expenses including, but not limited to: ADA toilets and sink rentals, alarm monitoring service, backflow testing, fire extinguisher testing and repair, fire system annual inspections, janitorial service, landscape maintenance including tree services, and pest control. Selection of vendors and levels of service shall be determined by the CITY.

6.1.5 CITY agrees to perform ongoing landscaping and grounds care maintenance, including tree care, plantings, mulch, and watering.

6.1.6 CITY agrees to maintain signage, markings, bumpers, driveways and parking lot.

6.1.7 CITY agrees to pay for Minor Maintenance Repair Services, such as urgent architectural, electrical, mechanical, plumbing, roofing, storm damage, and the like, the cost of which exceeds \$5,000 per Fiscal Year, upon exhaustion of PRT's Fiscal Year allocation of \$5,000.

6.1.8 CITY agrees to allocate up to \$60,000 for Initial Upgrades for the Facility which may include stage flooring and subfloor repairs, rigging, and/or lighting truss or towers.

6.1.9 CITY agrees to meet and confer with PRT each Spring to develop a joint, prioritized list of any Minor Capital Improvement Projects (under \$25,000) and a 5-year list of Major Capital Improvement Projects (over \$25,000). Minor and/or Major Projects agreed to between PRT and City staff will be presented to the City Council by CITY during the annual Operating Budget/Capital Improvement Plan; however, all such projects shall compete with other City-wide needs. Any such projects to receive funds shall be administered by the CITY.

## 6.2 PRT's Responsibilities.

6.2.1 PRT is responsible for operation and management of the Facility which shall include the execution and oversight of User Agreements which meet the requirements of this Lease Agreement.

6.2.2 PRT agrees to pay for Pacific Gas & Electric electrical and gas service, and California American Water water service to the Facility, with a not-to-exceed limit of \$10,000 per calendar year, effective January 1, 2023.

6.2.3 PRT agrees to pay for Minor Maintenance and Repair Services, such as urgent architectural, electrical, mechanical, plumbing, roofing, storm damage, and the like, not to exceed \$5,000 per Fiscal Year.

6.2.4 PRT agrees to not embark on any non-emergency repair, replacement, or upgrades of the Facility without the prior consent from the CITY.

6.2.5 PRT agrees to meet and confer with CITY each Spring to develop a joint, prioritized list of any Minor Capital Improvement Projects (under \$25,000) and any Major Capital Improvement Projects (over \$25,000). Minor and/or Major Capital Projects agreed to between PRT and CITY staff will be presented to the City Council by CITY during the annual Operating Budget/Capital Improvement Program development; however, all such projects shall compete with other CITY-wide needs. Any such projects to receive funds shall be administered by the CITY.

6.2.6 PRT agrees to make good faith efforts to support funding for Minor and/or Major Capital Improvement Projects via donation fundraising and submitting grant applications.

6.2.7 PRT agrees to give CITY written notice of any defect or need for repair to any improvement that is to be maintained by CITY pursuant to this Lease Agreement.

6.2.8 Inclusions to User Agreements. Each Use Agreement shall address the following: Grant of license; license area; condition of license area; permitted uses; submittal of performance/rehearsal/technical work schedules; move-in-and move-out procedures; outdoor theater hours of operation (including restrictions and limitations); rental rates; housekeeping

responsibilities; payment schedules; Forest Theater rules and regulations; building use regulations; handling of hazardous building materials; compliance with legal requirements, including Workers' Compensation Insurance; indemnity; liability of user; retention of deposit; security; inspection; liability insurance; books and records; protection of property and facilities; and food and beverage service.

6.2.9 PRT may, upon request of CITY, and upon mutual agreement as to terms, make its staff available to CITY on a case-by-case basis to facilitate and support the routine maintenance and repairs of the Facility.

6.2.10 PRT shall furnish to CITY and maintain a designee and list of alternate contacts with 24/7 phone numbers for emergency call outs.

6.3 **Fundraising.** For the term of this Lease Agreement, PRT may fundraise for the specific benefit of any Facility capital improvements, operation, or programming.

6.4 **Temporary Closure.** The City Council may pursue the implementation of future capital improvements to elements of the Facility which may require restricted access to portions of the Facility, or full closure of the Facility, for a period of time. PRT shall have no obligations or responsibilities with respect to the Facility during any period of temporary closure. The CITY may implement a temporary closure of all, or any portion, of the Facility, in its sole discretion. However, CITY agrees to coordinate with PRT for the purpose of minimizing disruption to PRT's operation and maintenance of the Facility.

## **ARTICLE 7 INSURANCE**

7.1 **CITY's Insurance.** CITY shall maintain and keep in force during the Term of this Lease Agreement, for the mutual benefit of CITY and PRT, at CITY's sole cost and expense, such insurance as it deems appropriate; provided, however, that CITY shall purchase and maintain during the term of this Lease Agreement all-risk property insurance covering the Facility for the full replacement value without any coinsurance provisions.

7.2 **PRT's Insurance.** PRT shall procure and maintain for the duration of the Lease Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with PRT's providing the services in connection with operation and management of the Facility.

7.2.1 **No Limitation.** PRT's maintenance of insurance as required by this Lease Agreement shall not be construed to limit the liability of PRT to the coverage provided by such insurance, or otherwise limit CITY's recourse to any remedy available at law or in equity.

7.2.2 **Minimum Scope of Insurance.** PRT shall maintain and keep in force during the Term of this Lease Agreement insurance of the types described below:

7.2.2.1 **Commercial General Liability** insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover Facility and contractual liability. CITY shall be named as an insured on PRT's Commercial General Liability insurance policy using ISO Additional Insured-Managers or Lessors of Facility Form CG 20 11 or a substitute endorsement providing equivalent coverage.

7.2.2.2 **Worker's Compensation** insurance for all its employees as required by State law.

7.2.3 **Minimum Amount of Insurance.** PRT shall maintain Commercial General Liability insurance written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate, which shall name CITY as additional insured.

7.2.4 All insurance shall be obtained from insurers having an office located in the State of California.

7.2.5 **Other Insurance Provisions**

7.2.5.1 The insurance policies are to contain, or be endorsed to contain, the following provisions for Commercial General Liability insurance:

- a. PRT's insurance coverage shall be primary insurance with respect to CITY. Any Insurance, self-insurance, or insurance pool coverage maintained by CITY shall be excess of PRT's insurance and shall not contribute with it.
- b. PRT's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CITY.

7.2.6 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

7.2.7 Verification of Coverage. PRT shall furnish CITY with original certificates and a copy of the amendatory endorsements, including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of PRT.

7.2.8 Waiver of Subrogation. PRT and CITY hereby release and discharge each other from all claims, losses and liabilities arising from or caused by any hazard covered by property insurance on or in connection with the Facility or said building. This release shall apply only to the extent that such claim, loss or liability is covered by insurance.

7.2.9 PRT shall notify CITY immediately after a casualty or damage occurs to the Facility or any of the buildings.

7.2.10 PRT shall require in all agreements with any users of the Facility, or any part thereof, proof of insurance in the amount of not less than One Million Dollars (\$1,000,000) general liability five (5) days prior to the event.

## **ARTICLE 8**

### **INDEMNIFICATION**

8.1 **Indemnification by PRT.** PRT agrees to indemnify, defend (with counsel reasonably approved by CITY) and hold harmless the CITY and its authorized officers, employees,



agents and volunteers, from any and all claims, actions, losses, damages, and/or liability arising out of this Lease Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the CITY on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. PRT's indemnification obligation applies to the CITY's "active" as well as "passive" negligence but does not apply to the CITY's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782. PRT's obligation hereunder shall not be limited by the availability of insurance. PRT shall require any users of the Facility to provide a written indemnification of the CITY in the same form and substance as set forth herein.

8.2 **Indemnification by CITY.** CITY agrees to indemnify, defend and hold PRT, its officers, directors, employees, agents and representatives, harmless from any injury to any person or to any property or to any part of the Facility caused solely by the negligent or intentional act of CITY, its employees, elected or appointed officials, agents, servants or representatives.

## **ARTICLE 9 DESTRUCTION OR DAMAGE OF FACILITY**

9.1 **Destruction or Substantial Damage of Facility.** In the event of damage to or destruction of the Facility, CITY, in consultation with PRT, will determine the appropriate course of action to restore to prior or better condition and use of the Facility if possible. CITY retains the absolute right to terminate this Lease Agreement in the event of substantial damage to or complete destruction of the Facility. PRT shall include appropriate provisions in rental and user agreements to allow for cancellation of PRT and CITY's responsibilities under such agreements if the Facility is substantially damaged or destroyed.

## **ARTICLE 10 DEFAULT AND TERMINATION**

10.1 **Termination.** Each Party shall have the right to terminate this Lease Agreement at any time by providing written notice to the other Party of its election to terminate ("Termination Notice"). Such notice shall be given no less than one (1) year prior to termination. In exercising a

Party's right to elect to terminate this Lease Agreement, either Party may propose to forbear from its right to terminate by entering into an agreement, executed by both Parties, to modify or amend any provision or provisions of this Lease Agreement, or to enter into a new lease agreement.

**10.2 Termination Upon Default.** Except as otherwise provided in this Lease Agreement either Party may, but is not required to, provide written notice of a material breach to the other Party. The Party receiving the notice shall have not less than one hundred twenty (120) days to allow for the cure of said breach if possible. In the event the breach is not cured within the 120 day period, the Party providing the written notice, may at its sole discretion, exercise its right to terminate this Lease Agreement in accordance with Section 11.5.

**10.3 Default.**

10.3.1 The following events shall constitute a default and material breach of this Lease Agreement:

10.3.1.1 The failure to comply with any of the terms of this Lease Agreement regarding insurance;

10.3.1.2 The material violation of any law, ordinance, rule or regulation which, after notice and reasonable time to cure, remains uncured after sixty (60) calendar days;

10.3.1.3 The abandonment or vacating of the Facility;

10.3.1.4 The dissolution of PRT or the merger of PRT with another entity without the prior written approval of CITY;

10.3.1.5 The assignment or transfer of this Lease Agreement without the prior written consent of CITY as described in Section 10 of this Lease Agreement; or

10.3.1.6 The failure to perform any other condition or covenant of this Lease Agreement where such failure in performance is not remedied within the time allowed by this Lease Agreement, or such other period for remedial action as is expressly otherwise provided for in this Lease Agreement, or agreed upon by both parties.

10.3.2 Extension of Period to Remedy Default. Neither CITY nor PRT shall be in default unless such party fails to perform an obligation required of it within sixty (60) days after written notice from the aggrieved party has been sent by the other, specifying the particular obligation that the other has failed to perform; provided, that if the nature of the other party's obligation is such that more than sixty (60) days are reasonably required for performance, then the other party shall not be in default if it commences performance within such sixty (60) day period, and thereafter diligently prosecutes the same to completion within one hundred eighty (180) days, unless extended by mutual agreement.

10.3.3 Remedies upon default and material breach. Upon the occurrence of any Event of Default by PRT, CITY shall have the option to pursue any one or more of the following remedies:

10.3.3.1 Terminate this Lease Agreement, in which event PRT shall surrender any responsibilities it has with regard to the Facility to CITY, and if PRT fails to do so, CITY may, without prejudice to any other remedy it may have for possession, enter upon and take possession in and responsibility for the Facility and agreements entered into by PRT and remove PRT or any other person who may be occupying such Facility or any part thereof. The surrender of the Facility and PRT's responsibilities with respect to the Facility to CITY upon an Event of Default shall take place at such time as PRT and CITY shall agree and absent such agreement, no sooner than 60 days nor later than 120 days from written notice by CITY to PRT of its intent to exercise its rights under this Section 10.2.3.

10.3.4 Pursuit of one remedy shall not preclude pursuit of any other remedies, such remedies being cumulative and non-exclusive. No agreement to terminate this Lease Agreement or accept a surrender of said Facility shall be valid unless approved by the then sitting City Council of Carmel-by-the-Sea. No waiver by CITY of any violation or breach of this Lease Agreement shall be deemed or construed to constitute a waiver of any other violation or breach of any of the terms of this Lease Agreement. Forbearance by CITY to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default or of CITY's right to enforce any remedies with respect to such default or any subsequent default.

10.3.5 If CITY employs the services of an attorney in connection with an event of default by PRT under this Lease Agreement, or if either party brings an action or proceeding against the other party arising out of or concerning performance or interpretation of this Lease Agreement, the prevailing party shall be entitled to recover from the other party its attorney's fees and costs.

## ARTICLE 11

### ASSIGNMENT, SUBLETTING AND FINANCING

11.1 **Assignment.** Obligations or rights of PRT under this Lease Agreement may be assigned or otherwise transferred by PRT, upon the prior written consent of CITY, which consent shall not be unreasonably withheld. The assignment or transfer of this Lease Agreement without such consent shall constitute an Event of Default. In the event of any proposed assignment or transfer of this Lease Agreement, PRT shall cause to be delivered to CITY simultaneously with such proposed assignment or transfer, an instrument in writing, executed by the assignee, in which the assignee shall assume and agree to accept all the terms and conditions of this Lease Agreement.

11.2 **Liens and Encumbrances.** PRT shall keep the Facility and any Operator Improvements free and clear of any liens and encumbrances and shall include the same obligation in any agreement for any renter or user. At CITY's request, PRT shall furnish CITY copies of such renter and user obligations and written proof of payment of any items that would or might constitute the basis for such a lien on the Facility.

## ARTICLE 12

### GENERAL PROVISIONS

12.1 **Administration.** This Lease Agreement shall be administered on behalf of PRT by the Board of Directors of PRT, which may appoint the Executive Director or any Director for such purpose.

12.2 **CITY's Right to Enter.** At any time, CITY and its agents shall have the right to enter the Facility for the purpose of maintenance, repairs, inspection, posting notices of any kind

permitted or required by law, performing CITY's obligations hereunder or taking possession in the event of a default by PRT in accordance with the provisions of this Lease Agreement.

**12.3 Government Compliance, Licenses and Similar Authorization.** PRT, its officers, agents and employees shall comply with all federal, state, local and municipal regulations, ordinances, statutes, rules, laws, and constitutional provisions applicable to PRT's operation and management of the Facility hereunder. PRT, at no expense to CITY, shall secure and maintain in full force and effect during the term of this Lease Agreement all required licenses, permits and similar legal authorizations, and comply with all requirements thereof relating to the services to be performed by PRT. CITY shall have no obligation to issue such licenses, permits, or authorizations. CITY shall issue such licenses, permits, or authorizations in accordance with applicable CITY rules and regulations.

**12.4 Attendance and Safety Standards.**

12.4.1 PRT agrees to conduct its activities with full regard to public safety and will observe and abide by all applicable regulations and requests by duly authorized governmental agencies responsible for public safety to assure such safety. The Fire Chief or his/her designee shall have the authority to determine, in the reasonable exercise of his/her discretion, the number of persons that may be admitted to, and safely and freely move about in the Facility.

12.4.2 PRT shall not, nor shall PRT allow any renter or user group to, sell or issue tickets or credentials for admission to the Facility in an aggregate number that exceeds the CITY Fire Chief's determined number or, in any event, that exceeds the historic seating capacity of Five Hundred Forty (540) seats. PRT shall not admit, nor shall PRT allow any renter or user group to admit to the Facility more people than the number so determined by the CITY'S Fire Chief.

12.4.3 PRT shall not permit, nor shall PRT allow any renter or user group to permit any chair or movable seat or other obstruction to be erected or placed in any passageway that is not designed as an area for disabled seating or any fire exit. Sidewalks, grounds, entries, passages, vestibules, abutting streets and all ways of access to the Facility shall not be obstructed by PRT or used for any purpose other than for ingress and egress to the Facility for persons or property. The

CITY shall be responsible for assuring compliance with each of the foregoing requirements during periods of CITY use of the Facility under this Lease Agreement.

12.5 **No Waiver.** No consent or waiver by any of the Parties to any breach or default by another Party under this Lease Agreement shall be valid unless given in writing and shall not be deemed or construed to be a consent or waiver to any other breach or default under this Lease Agreement, whether with respect to the same obligation or any other obligation. Furthermore, failure on the part of any Party to act or to complain or to declare another Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder. The giving of consent by any Party in any one instance shall not limit or waive the necessity to obtain such Party's consent in any future instances.

12.6 **Removal from the Facility.** Immediately prior to the expiration, or upon sooner termination of this Lease Agreement, PRT shall remove from the Facility any personal property belonging to PRT and ensure that the Facility is in reasonably good condition, normal reasonable wear and tear excepted, except that PRT shall not be responsible for any Facility conditions that are due to failure of maintenance that are the CITY's responsibility under this Lease Agreement.

12.7 **Contract Representatives.** Except as otherwise agreed in writing by the Parties, PRT's Executive Director and the CITY'S City Administrator, or his/her designee, shall be the individuals to whom all communications regarding authorizations provided for under this Lease Agreement may be given in writing by the City Administrator except as to such consents or authorizations that are reserved to the City Council by this Lease Agreement, State law or local ordinance.

12.8 **Notices.** Any notice required under this Lease Agreement must be in writing, and may be given either personally, by facsimile, by registered or certified mail, return receipt requested. If by facsimile, a notice shall be deemed to have been given and received at the time and date the facsimile is received at the number provided below. If personally delivered, a notice shall be deemed to have been given and received when delivered to the party to whom it is addressed. If given by registered or certified mail, the same shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter

containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. Such notices or communications shall be given to the parties at their addresses set forth below:

**CITY:**

City Administrator  
City of Carmel-by-the-Sea  
P.O. Box CC  
Carmel, CA 93921  
Telephone: (831) 620-2000  
Facsimile: (831) 620-2004

**PRT:**

Executive Director  
Pacific Repertory Theatre  
P.O. Box 222035  
Carmel, CA 93922  
Telephone: (831) 622-0700  
Facsimile: (831) 622-0703

12.9 **Address Change.** Either party may change its address for receipt of reports, notices or payments without the formal amendment of this Lease Agreement by giving the other party written notice of such change not less than fifteen (15) days prior to the effective date thereof.

12.10 **Dispute Resolution.** The Parties are fully committed to working with each other throughout the term of this Lease Agreement and agree to communicate regularly with each other at all times so as to avoid or minimize disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a question or controversy. If any dispute arises between the parties relating to or arising under this Lease Agreement, the Parties each commit to resolving such dispute in an amicable, professional, and expeditious manner and agree to use the following procedure for resolving the dispute: (a) either party may give notice to the other of the dispute and the City Administrator and the PRT Executive Director or their designees will meet within three (3) CITY business days to attempt to resolve the dispute; (b) a meeting or meetings between representatives of the parties regarding the dispute to attempt in good faith to negotiate a resolution of the dispute; (c) if within thirty (30) days after a dispute has arisen, the parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to mediation; (d) the mediator shall be jointly selected by the parties, or failing agreement on the selection of a mediator within thirty (30) days after the parties fail to negotiate an informal resolution of any dispute, the mediator shall be a retired judge or justice selected by the supervising judge of the Civil Division of the Monterey County California Superior Court. In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 shall be applicable to limit the admissibility of evidence disclosed by the parties in the course of the

mediation; and (e) if the parties are not successful in resolving the dispute through the mediation, then the parties agree that the dispute shall be submitted to binding arbitration to a single arbitrator in accordance with the existing Rules of Practice and Procedure of Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

**12.11 Equal Availability.** PRT shall, and shall require that all renters or user groups, make the Facility and all events, performances, shows, available and open to the public on a fair, equal and non-discriminatory basis, and further agrees and promises not to discriminate against or segregate any person or group of persons on account of race, color, creed, religion, sex, sexual orientation, age, handicap, marital status, ancestry or national origin in the operation of the Facility, including without limitation Title III of the Americans with Disabilities Act (ADA) and the provision of such auxiliary aids or alternate services as may be required by the ADA.

**12.12 Royalties, License Fees and Similar Payments.** Unless PRT is the booking agency for copyright material, PRT shall not be responsible for payment, before delinquency, of any royalties, license fees, and other charges due and payable to any person or entity as the consequence of any public performance(s) or display(s) of copyrighted work(s) during its use of the Facility but shall include such obligation in the rental or user group contracts that are entered into for performances at the Facility.

**12.13 Conflict of Interest.** No member, official, or employee of the CITY shall have any personal interest, direct or indirect, in this Lease Agreement, nor shall any such member, official, or employee of the CITY participate in any decision relating to this Lease Agreement, which affects their personal interests or interests in any corporation, partnership, or association in which they are directly or indirectly interested.

**12.14 Severability.** Should any provision hereof prove to be invalid or illegal, such invalidity shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

**12.15 Time is of the Essence.** Time is of the essence with respect to the performance of every provision hereof in which time of performance is a factor.



12.16 **Binding on Successor and Assigns.** This Lease Agreement shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of CITY and PRT.

12.17 **California Law.** This Lease Agreement shall be construed and enforced in accordance with the laws of the State of California.

12.18 **Warranties and Indemnities.**

12.18.1 PRT's Representations and Warranties. PRT hereby represents and warrants to CITY that it has full power and authority to enter into this Lease Agreement and perform in accordance with its terms and provisions; that the Parties signing this Lease Agreement on behalf of the PRT have the authority to bind PRT and to enter into this transaction; and that PRT has taken all requisite actions and steps to legally authorize the execution, delivery, and performance of this Lease Agreement.

12.18.2 CITY's Representations and Warranties. CITY hereby represents and warrants to PRT that it has full statutory right, power, and authority to enter into this Lease Agreement and perform in accordance with its terms and provisions; that the individuals signing this Lease Agreement on behalf of CITY have the authority to bind CITY and to enter into this transaction; and that CITY has taken all requisite action and steps to legally authorize the execution, delivery, and performance of this Lease Agreement.

12.19 **Construction.** The language in all parts of this Lease Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either CITY or PRT. The captions used in this Lease Agreement are for convenience only and shall not be considered in the construction or interpretation of any provision hereof. The terms "shall," "will," and "agree" are mandatory. The term "may" is permissive. When a party is required to do something by this Lease Agreement, it shall do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefore. All Parties hereto acknowledge that they have been represented by independent counsel of their own choice through all of the negotiations that preceded the execution of this Lease Agreement. This Lease Agreement shall be construed fairly as to all Parties and not in favor of or against any of the Parties, regardless

of which Party actually prepared this Lease Agreement in its final form. The Parties further agree that California Civil Code Section 1654 will not apply in the event of uncertainty with respect to this Lease Agreement as asserted or identified.

**12.20 Days/Dates.** Unless otherwise stated herein, as used in this Lease Agreement, the term “days” shall mean calendar days which shall include all Saturdays, Sundays and State or National Holidays, provided that if the last date or last date to perform any act or give any notice with respect to this Lease Agreement shall fall on a Saturday, Sunday or State or National holiday, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or State or National Holiday. If the term “business days” is used, all Saturdays, Sundays and State or National Holidays shall be excluded.

**12.21 Entire Agreement.** This Lease Agreement and the exhibits attached hereto, if any, constitute the entire agreement between the parties, and there are no other binding agreements or representations between the parties relating to PRT’s obligations to perform services in connection with the Facility. Neither CITY nor CITY’s agents has made any representation or warranty as to (a) whether the Facility may be used for the services required to be performed by PRT under existing Law, or (b) the suitability of the Facility for the conduct of PRT’s responsibilities. PRT expressly waives all claims for damage by reason of any statement, representation, warranty, promise, or other agreements of CITY or CITY’s agents, whether written or oral, express or implied if any, not contained in this Lease Agreement or in any addendum or amendment hereto. No subsequent change or addition to this Lease Agreement shall be binding unless in writing and signed by the parties hereto.

**12.22 Survival.** The provisions of this Lease Agreement with respect to representations, warranties and indemnifications, and obligations which may or must be performed after termination or expiration of this Lease Agreement shall survive the termination or expiration of this Lease Agreement and shall be enforceable in accordance with their terms, covenants and conditions.

**12.23 Acceptance by CITY.** This Lease Agreement shall not be valid or binding unless and until accepted by CITY upon approval of CITY’s City Council and a fully executed copy delivered to PRT.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement as of the dates set forth below.

**CITY OF CARMEL-BY-THE-SEA,**  
A Municipal Corporation

\_\_\_\_\_  
**Chip Rerig, City Administrator**

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

**ATTEST**

\_\_\_\_\_  
**Yashin Abbas, Interim City Clerk**

**PACIFIC REPERTORY THEATRE**  
A Nonprofit 501(c)3 California Corporation

By \_\_\_\_\_  
Signature

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

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

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



**EXHIBIT B  
PROPOSED EXPENDITURES AND COST SHARING**

**Forest Theater Lease Agreement**

January 10, 2022

**Proposed Expenditures and Cost Sharing**

No.	Name of Fund	Pac Rep Share	City Share	Examples	Estimated Annual Cost	Primary Funding Sources	Notes
<b>OPERATIONS AND MAINTENANCE EXPENSES:</b>							
1	Ongoing Theatrical and Facility Management	100%	0%	Staffing, Insurance, Overhead	<b>\$100,000 Pac Rep</b>	Rental Income, Ticket Surcharges	No City subsidy City gets \$1/Ticket = Facility Use Fee (< +\$10,000/yr)
2	Utilities	Electrical, Gas, Water	Sewer, Trash	Utilities	<b>NTE \$10,000/yr Pac Rep, effective Jan 2023</b> , Varies City	Rental Income, Ticket Surcharges, City Operating Budget	
3	Ongoing General Expenses	0%	100%	ADA Toilets/Sink Rentals, Pest Control, Alarm Service, Janitorial Service, Waste Removal, Fire System, Extinguishers Testing, Backflow Testing, Landscaping	Toilets \$10k, Janitorial \$9k, Fire Svcs \$1,350, Pest \$600, Misc. \$4k <b>Rounded Total = \$25k City</b>	PW Operating Budget	City Rejects Proposed 15% to Pac Rep to manage vendors
4	Minor Services 1st \$5,000	1st \$5,000	0%	Urgent Repairs: Storm Damage, Plumbing, Electrical, Mechanical, Architectural, etc.	<b>\$5,000 Pac Rep</b>	Rental Income, Ticket Surcharges	Based on City Annual Inspections and Post Storm Inspections
5	Minor Services Over \$5,001	0%	100%	Urgent Repairs: Storm Damage, Plumbing, Electrical, Mechanical, Architectural, etc.	<b>\$5,000 +/- City</b>	PW Operating Budget	Based on City Annual Inspections and Post Storm Inspections
<b>CAPITAL PROJECTS:</b>							
6	One Time Initial Upgrades	\$15,000	Up to \$60,000	Stage Floor/Subfloor, Rigging, Lighting Truss/Towers, Prefab Box Office (\$10k), Picnic Tables	<b>\$15,000 Pac Rep Up to \$60,000 City</b>	CIP Fund	If approved with Lease Agreement, or in Subsequent CIP Budget(s)
7	Annual Minor Capital Projects (Under \$25k)	Grants	Competes with City-wide CIP Needs	Surround Sound, Gas Line to Fire Pits	Varies	Grants, Facility Use Fee, CIP Fund	Joint Annual Review of Minor Capital Needs
8	Annual Major Capital Projects (Over \$25k) (Formal Bids)	\$25,000 Start, Grants	Competes with City-wide CIP Needs	Complete 2000 Master Plan, Construct ADA Restrooms, Relocate Concession Stand	<b>\$25,000 Pac Rep</b>	Grants, Facility Use Fee, CIP Fund	Jointly Prepare 5-Year CIP, Annually



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Brandon Swanson, Community Planning & Building Director
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Consider a resolution awarding a Professional Services Agreement to Winter & Company, for a not-to-exceed fee of \$139,330, to provide consultant support for the "Design Traditions 1.5" project to update the City's Design Guidelines and Zoning Code

## RECOMMENDATION:

Adopt a resolution awarding a Professional Services Agreement to Winter & Company, for a not-to-exceed fee of \$139,330, to provide consultant support for the "Design Traditions 1.5" project to update the City's Design Guidelines and Zoning Code.

## BACKGROUND/SUMMARY:

### Project History

It has been nearly 20 years since the City's Residential and Commercial Design Guidelines were established through the 'Design Traditions Project'. The guiding documents that were created by this project have served the City well, but they are in need of updating due to their age and the ever evolving nature of architecture and design. The consulting firm that successfully supported this effort 20 years ago is Winter & Company. In an effort to retain the knowledge that they gained of the Village from the first Design Traditions Project, staff seeks to once again partner with them. Over the last 20 years, Winter & Company has continued to be active in the field of planning and urban design by consulting nationwide to public agencies, downtown improvement committees and private property owners. Their staff are frequently featured as speakers at conferences and conventions, including the National Trust for Historic Preservation, the Western Planners Association, the American Planning Association and statewide preservation organizations. Additionally, the Company's principal and owner, Noré Winter has agreed to be the project lead for the Design Traditions 1.5 project. Since Noré was the lead for the original Design Traditions Project, this will provide an even greater level of continuity for this update.

In addition to the Design Guidelines, this project will also include an update to the City's Zoning Code. This is an important component of the project, since the Zoning Code and Design Guidelines are not mutually exclusive. Although it may add time and effort to the process, the final product will be much more cohesive and ultimately serve the Village better. Winter & Company will also assist with this part of the project.

Winter & Company's scope of services are included in the Professional Services Agreement, but generally will be:

- Scoping and review of existing regulations
- Developing and assisting with public workshops
- Preparing presentation materials
- Developing work plan
- Drafting updates to Zoning and Design Guidelines
- Create illustrations and visual exhibits for final product
- Assist in preparation of adoption documents (Resolution, ordinance, etc.)

### Prior Council Meeting

On February 1st, 2022, Council considered a sole source contract for Winter & Company to assist the City with updates to the Zoning Code and Design Guidelines. After being pulled from the consent agenda for discussion, direction was given to work with Councilmember Ferlito to review and enhance the scope of work. Staff met with Councilmember Ferlito to look at the scope in detail, and ultimately added more in-person meetings to provide additional opportunity for public input during the process. The scope was also expanded to ensure that external factors such as housing needs, climate change, new building materials, and water scarcity are included in the assessment of existing conditions. The expanded scope also includes travel time for Winter & Company's Urban Designer to accompany Noré Winter for in-person meetings to ensure that public input is gathered and coalesced into the final product. With these enhancements to the scope of services, total cost for the effort has increased from approximately \$83K to \$139K. Keeping in mind that these updates are intended to last for another 10-20 years, staff feels that this increase in cost is justified relative to the additional services that will be provided. Most notably, these additional costs will guarantee ample opportunity for residents to participate, have their voices heard, and be a part of the final product. The revised scope of work and fee schedule can be found as exhibits to the Professional Services Agreement (Attachment 2).

### Sole Source Contract

Pursuant to section 3.12.140 of the City's Purchasing Ordinance the competitive bidding process may be foregone if entering into a sole source contract would be in the best interest of the City. In this case, given the unique knowledge and experience of Winter & Company, a competitive bidding process was not appropriate/required for this procurement. Section 3.12.140 provides certain criteria a sole source contract, and requires that at least one of them is met. In this case, there are two criteria/exceptions that apply:

- **3.12.140.D:** When a professional service, such as that available from an attorney, accountant, architect or specialized consultant, involves a specialized knowledge or personal skill;
    - **Rationale:** Winter & Co. possesses the specialized skill of having drafted and implemented the existing Design Guidelines and certain portions of the Zoning code approximately 20 years ago as part of the "Design Traditions Project". The same staff member that supported the city 20 years ago, Noré Winter, will be available for this project as well. This intimate knowledge makes them uniquely qualified due to the continuity of work that would be provided.
  - **3.12.140.G:** When specific used supplies, materials or equipment will best serve the City's needs;
    - **Rationale:** In addition to the specialized skills better serving the City through a high quality product, utilizing Winter & Co. again will give the City access to information remaining in their files from 20 years ago that will not need to be replicated by a new consultant, therefore saving the City money in the overall project scope.
-

## **FISCAL IMPACT:**

This project was partially funded as part of the FY2021-22 Capital Improvement Plan budget (\$15,000). The remainder of the required funds to support this effort are part of a mid-year budget adjustment. Initially, the concept was to have a consultant provide minimal support to the update efforts, but upon further analysis, it was determined that more support was needed to ensure the desired quality of the final product.

## **PRIOR CITY COUNCIL ACTION:**

## **ATTACHMENTS:**

Attachment 1 - Resolution

Attachment 2 - Professional Services Agreement with Exhibits



**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL**

**RESOLUTION NO. 2022-014**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A PROFESSIONAL SERVICES  
AGREEMENT WITH WINTER & COMPANY, FOR A NOT-TO-EXCEED AMOUNT OF \$139,330  
TO SUPPORT UPDATES TO THE CITY'S DESIGN GUIDELINES AND ZONING CODE**

WHEREAS, the City's Residential and Commercial Design Guidelines, in concert with the City's Zoning code are key to maintaining the character and charm of Carmel-by-the-Sea; and

WHEREAS, the City wishes to keep these guiding and regulatory documents current and relevant as to be the most beneficial to the City; and

WHEREAS, pursuant to section 3.12.140 of the City's Purchasing Ordinance the competitive bidding process may be foregone if entering into a sole source contract would be in the best interest of the City; and

WHEREAS, pursuant to 3.12.140.D, a project qualifies for sole source issuance when a professional service, such as that available from an attorney, accountant, architect or specialized consultant, involves a specialized knowledge or personal skill; and

WHEREAS, Winter & Co. possesses the specialized skill of having drafted and implemented the existing Design Guidelines and certain portions of the Zoning code approximately 20 years ago as part of the "Design Traditions Project"; and

WHEREAS, the same staff member that supported the city 20 years ago, Noré Winter, will be the lead for this project; and

WHEREAS, this intimate knowledge makes Winter & Company uniquely qualified due to the continuity of work that would be provided.

**NOW THEREFORE, BE IT RESOLVED THAT THE CITY COUNCIL OF THE CITY OF  
CARMEL-BY-THE-SEA DOES HEREBY:**

Authorize the City Administrator to execute a Professional Services Agreement with Winter & Company, for a not-to-exceed amount of \$139,330, to support updating the City's Design Guidelines and Zoning Code.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY  
THE-SEA this 1st day of March, 2022, by the following vote:**

Resolution 2022-014  
Page 2

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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Dave Potter  
Mayor

---

Yashin Abbas  
Interim City Clerk

**PROFESSIONAL SERVICES AGREEMENT  
for the  
Design Traditions Project 1.5**

**THIS AGREEMENT** is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and Winter & Company, (hereinafter "Consultant"), collectively referred to herein as the "parties".

**WHEREAS**, the City wishes to engage Consultant to perform the services required by this Agreement; and

**WHEREAS**, Consultant is willing to render such professional services, as hereinafter defined, on the following terms and conditions; and

**WHEREAS**, Consultant represents that it is trained, experienced and competent and holds all necessary licenses and certifications to perform the services required by this Agreement.

**NOW, THEREFORE**, in consideration of the terms and conditions herein contained, the parties hereby covenant and agree as follows:

**1. SERVICES**

- A. **Scope of Services.** Consultant agrees to provide to the City, as the scope of services ("Scope of Services") under this Agreement, the following: Assist in the process of development, preparation and adoption of updates to the City's Design Guidelines (residential and commercial) and Zoning Code. The Scope of Services is attached hereto as Exhibit "A." The Scope of Services under this Agreement should include, but is not limited to, a project description, project phases, task descriptions, identification of key personnel, identification of subconsultants, their key personnel and general description of services that will be performed, as further set forth in this Agreement and attachments hereto. Consultant agrees to all of the following:
- i. Consultant will furnish all of the labor, technical, administrative, professional and other personnel, all supplies and materials, equipment, printing, vehicles, transportation, office space and facilities, and all tests, testing and analyses, calculations, and all other means whatsoever, except as otherwise expressly specified in this Agreement, necessary to perform the services required of Consultant under this Agreement.
  - ii. Consultant's designated representative(s) who are authorized to act on its behalf and to make all decisions in connection with the performance of services under this Agreement are listed in Exhibit "B" [Key Personnel], which is made a part of this Agreement.
  - iii. Consultant must make every reasonable effort to maintain the stability and continuity of Consultant's key personnel and subcontractors, if any, listed in Exhibit B to perform the services required under this Agreement. Consultant must notify City and obtain City's written approval with respect of any changes in key personnel prior to the performance of any services by replacement personnel.

- iv. Consultant must obtain the City Administrator's prior written approval before utilizing any subcontractors to perform any services under this Agreement. This written approval must include the identity of the subcontractor and the terms of compensation.
- v. Consultant represents that it has the qualifications, experience and facilities necessary to properly perform the services required under this Agreement in a thorough, competent and professional manner. Consultant will at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described in this Agreement. In meeting its obligations under this Agreement, Consultant must employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of Consultant under this Agreement.
- vi. City may inspect and accept or reject any of Consultant's work under this Agreement, either during performance or when completed. Acceptance of any of Consultant's work by City will not constitute a waiver of any of the provisions of this Agreement.
- vii. The Consultant must maintain any work site in the City in a safe condition, free of hazards to persons and property resulting from its operations.

**B. Change Orders.**

- i. Agreements and Change Orders exceeding \$24,999 require City Council approval to be valid.
- ii. The City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by the City Council and any service provided by Consultant in the absence of such approval are at Consultant's sole risk.
- iii. Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- iv. If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Administrator with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.

**C. Familiarity with Services and Site.**

- i. By executing this Agreement, Consultant represents that Consultant:

- a. has thoroughly investigated and considered the Scope of Services to be performed;
  - b. has carefully considered how the services should be performed;
  - c. understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and
  - d. possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement.
- ii. If services involve work upon any site, Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, before commencing its services. Should Consultant discover any latent or unknown conditions that may materially affect the performance of services, Consultant will immediately inform District of such fact and will not proceed except at Consultant's own risk until written instructions are received from City.

## 2. COMPENSATION

- A. **Total Fee.** Subject to any limitations set forth in this Agreement, the City agrees to pay and Consultant agrees to accept as full and fair consideration for the performance of this Agreement, hourly fees as set forth in Consultant's Compensation & Fee Schedule (Exhibit "C"), in a total amount not-to-exceed One Hundred Thirty-Nine Thousand, Three Hundred and Thirty Dollars (\$139,330.00). Such compensation is the "Maximum Authorized Expenditure" under this Agreement. Any charges over this amount would be considered a change order, and would need to be approved pursuant to Section 1.B of this agreement. The Fee Schedule includes, but is not limited to, fees for each phase and task, not-to-exceed total fee, hourly rates, reimbursable rates and subconsultant mark-up rates. The use of subconsultants will not be considered a reimbursable expense, and such costs must be applied towards the approved budgeted amount. Payment of any compensation to Consultant is contingent upon performance of the terms and conditions of this Agreement to the satisfaction of the City. If the City determines that the Services set forth in the written invoice have not performed in accordance with the terms of this Agreement, the City is not responsible for payment until the Services have been satisfactorily performed.
- B. **Invoicing.** Consultant must submit to the City monthly written invoices to the City's Project Representative, identified in Section 5 below. Invoices must be prepared in a form satisfactory to the City, describing the services rendered and associated costs for the period covered by the invoice. The City will provide invoicing format upon request. Consultant may not bill the City for duplicate services performed by more than one person. Consultant's invoices must include, but are not limited to, the following information:
- i. Project Title, the City's Purchase Order number and City's Project Code(s) for each project;
  - ii. Invoice number and date;
  - iii. A brief description of services performed for each project phase and/or task;
  - iv. The budgeted amount for each phase, task and item, including the total amount, with the same for approved Change Orders, if any;

- v. Amount invoiced to date divided by the agreed total compensation, expressed as a percentage, with the same for approved Change Orders, if any;
- vi. The amount earned and invoiced to date for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- vii. The amount previously invoiced for each phase, task and/or item, including the total amount, with the same for approved Change Orders, if any;
- viii. The amount due for the period covered by this invoice for each phase, task, and/or item, including the total amount, with the same for approved Change Orders, if any;
- ix. For time and materials authorizations, the number of hours spent, by whom and their hourly rate for each phase, task and/or item, including the total amount;
- x. The costs incurred, including reimbursables, for each phase, task, and/or item for the agreed total compensation and approved Change Orders, if any, along with a brief description of those costs;
- xi. The total amount due for the period covered by this invoice, including subconsultants and vendors of services or goods;
- xii. Copies of subconsultant, vendor, and reimbursable invoices including hourly breakdowns when requested by City.
- xiii. Copies of subconsultant and vendor lien releases.

Any such invoices must be in full accord with any and all applicable provisions of this Agreement. Consultant must submit invoices to the City on or before the sixteenth (16<sup>th</sup>) day of each month for services performed in the preceding month.

The City will review each invoice submitted by Consultant to determine whether the work performed and expenses incurred are in compliance with this Agreement. In the event that no charges or expenses are disputed, the invoice will be approved and paid.

Except as to any charges for work performed or expenses incurred by Consultant that are disputed by City, the City will pay on each such invoice within thirty (30) days of receipt; provided, however, that if Consultant submits an invoice which is incorrect, incomplete, or not in accord with the provisions of this Agreement. If any charges or expenses are disputed by City, the invoice will be returned by City to Consultant for correction and resubmission, and the City will not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant. Payment to Consultant for services performed under this Agreement may not be deemed to waive any defects in the services performed by Consultant, even if such defects were known to City at the time of payment. City reserves the right to withhold future payment to Consultant if any aspect of the Consultant's work is found to be non-conforming to the terms of this Agreement.

The City is not obligated to pay Consultant a greater percentage of the Maximum Authorized Expenditure than the actual percentage of services completed as of the invoice date.

Consultant agrees to remit and is responsible for all withholding taxes, income taxes, unemployment insurance deductions, and any other deductions required by applicable federal, state or local laws and regulations for Consultant, its employees, subconsultants and vendors of services or goods.

- C. **Adjustment of Maximum Authorized Expenditure.** The City may increase or decrease the Maximum Authorized Expenditure by issuing a Change Order to the Agreement in accordance with Section 1.B “Change Orders” above. Should Consultant consider that any request or instruction from the City’s Project Representative constitutes a change in the scope of services, Consultant will advise the City’s Project Representative, in writing, within fourteen (14) calendar days of such request or instruction. Without said written advice within the time period specified, the City is not obligated to make any payment of additional compensation to Consultant.
- D. **Hourly Rates.** Payment for all authorized services, including payment for authorized on-call, as-needed services, will be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant’s Compensation & Fee Schedule (Exhibit “C”).
- E. **Subconsultants and Vendors.** Invoices for subconsultants and vendors of services or goods will be paid by the City to Consultant in accordance with the various rates as set forth in the Consultant’s Compensation & Fee Schedule (Exhibit “C”). All reimbursable expenses will be considered as included within the Maximum Authorized Expenditure. Consultant is solely responsible for payment to subconsultants and vendors of services or goods, and the City is not responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.
- F. **Audit and Examination of Accounts:**
- i. Consultant must keep and will cause any assignee or subconsultant under this Agreement to keep accurate books of records and accounts, in accordance with sound accounting principles, which pertain to services to be performed under this Agreement.
  - ii. Any audit conducted of books of records and accounts must be kept in accordance with generally accepted professional standards and guidelines for auditing.
  - iii. Consultant must disclose and make available any and all information, reports, books of records or accounts pertaining to this Agreement to the City and any city of the County of Monterey, or other federal, state, regional or governmental agency which provides funding for these Services.
  - iv. Consultant must include the requirements of Section 2F, “Audit and Examination of Accounts”, in all contracts with assignees or subconsultants under this Agreement.

- v. All records provided for in this Section are to be maintained and made available throughout the performance of this Agreement and for a period of not less than four (4) years after full completion of the Services. All records, which pertain to actual disputes, litigation, appeals or claims, must be maintained and made available for a period of not less than four (4) years after final resolution of such disputes, litigation, appeals or claims.

### 3. AGREEMENT TERM

- A. **Term.** The work under this Agreement will commence on February 2<sup>nd</sup>, 2022 and must be completed by December 31<sup>st</sup>, 2022, unless sooner terminated or the City grants an extension of time in writing pursuant to the terms of this Agreement, except for provisions in this Agreement that will survive the termination or completion of this Agreement. Consultant will perform Change Order services as set out in Section 1.B, "Amendment of Services (Change Orders)", in a timely manner or in accordance with the agreed upon Change Order Project Schedule.
- B. **Timely Work.** Consultant will perform all Services in a timely fashion, as set forth more specifically in Section 3.A, "Term", and Section 3.C, "Project Schedule", of this Agreement. Failure to perform is deemed a material breach of this Agreement, and the City may terminate this Agreement with no further liability hereunder, or may authorize, in writing, an extension of time to the Agreement.
- C. **Project Schedule.** Services must be completed by Consultant in accordance with the Project Schedule set forth in Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant will provide the Services pursuant to the Project Schedule or any applicable Project Schedule Change Order. If at any time Consultant discovers that the Project Schedule cannot be met, Consultant must promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.
- D. **Notice to Proceed.** Upon execution of this Agreement by both parties and the receipt of all documentation required by this Agreement to be provided by Consultant to the City, including proof of insurance and tax identification numbers, the City will issue a written Notice to Proceed to the Consultant. The City may, in its sole discretion, issue subsequent notices from time to time regarding further portions or phases of the work. Upon receipt of such notices, Consultant will diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant will not proceed with any of the Services unless they have received a Notice to Proceed from the City.

### 4. CONSULTANT'S EMPLOYEES AND SUBCONSULTANTS

- A. **Listed Employees and Subconsultants.** Consultant will perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "B".
- B. **Substitution of Employees or Subconsultants:**
  - i. Consultant may not substitute any key employee or subconsultant listed in Exhibit "B" without the prior written approval of the City, and such approval will not be unreasonably withheld. The City will not approve removal or substitution of employees or subconsultants



for the reason that Consultant or its affiliates has called on such individuals to perform services for another client of the Consultant.

- ii. If, at any time, the City reasonably objects to the performance, experience, qualifications or suitability of any of Consultant's employees or subconsultants, then Consultant may, upon written request from the City, replace such employee or subconsultant. Consultant must, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.
  - iii. Whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City will not be liable to pay additional compensation to Consultant for any replacement or substitution.
- C. **Sub-agreements with Subconsultants.** Consultant will incorporate the terms and conditions of this Agreement into all sub-agreements with subconsultants in respect of the Services necessary to preserve all rights of the City under this Agreement. Consultant is fully responsible to the City of all acts and omissions of subconsultants and of persons employed by any subconsultant.
- D. **Not an Agent of the City.** Nothing in this Agreement will be interpreted to render the City the agent, employer, or partner of Consultant, or the employer of anyone working for or subcontracted by Consultant, and Consultant must not do anything that would result in anyone working for or subcontracted by Consultant being considered an employee of the City. Consultant is not, and must not claim to be, an agent of the City.
- E. **Independent Contractor:**
- i. Consultant is an independent contractor. This Agreement does not create the relationship of employer and employee, a partnership, or a joint venture. The City may not control or direct the details, means, methods or processes by which Consultant performs the Services. Consultant is responsible for performance of the Services and may not delegate or assign any Services to any other person except as provided for in this Agreement. Consultant is solely liable for the work quality and conditions of any partners, employees and subconsultants.
  - ii. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and Consultant may not become entitled by virtue of this Agreement to receive from the City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. Consultant will be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Consultant's performance of Services under this Agreement. Consultant will defend, indemnify and hold the City harmless from any and all liability, which the City may incur because of Consultant's failure to pay such taxes.

## 5. REPRESENTATIVES AND COMMUNICATIONS

- A. **City's Project Representative.** The City appoints the individual named below as the City's Project Representative for the purposes of this Agreement ("City's Project Representative"). The City may unilaterally change its project representative upon notice to Consultant.

Name: Brandon Swanson  
 Title: Director of Community Planning and Building  
 Address: PO Box CC, Carmel-by-the-Sea, CA, 93921  
 Telephone: 831-620-2024  
 Email: bswanson@ci.carmel.ca.us

- B. **Consultant's Project Manager.** Consultant appoints the person named below as its Project Manager for the purposes of this Agreement ("Consultant's Project Manager").

Name: Noré Winter  
 Title: Principal and Owner  
 Company: Winter & Company  
 Address: 3980 Broadway Street, Suite 103, PMB 140, Boulder, CO 80304  
 Telephone: 303-440-8445  
 Email: nore@winterandcompany.net

- C. **Meet and Confer.** Consultant agrees to meet and confer with the City's Project Representative, its agents or employees with regard to Services as may be required by the City to insure timely and adequate performance of this Agreement.

- D. **Communications and Notices.** All communications between the City and Consultant regarding this Agreement, including performance of Services, will be between the City's Project Representative and Consultant's Project Manager. Any notice, report, or other document that either party may be required or may wish to give to the other must be in writing and will be validly given to and received by the addressee, if delivered personally, on the date of such personal delivery, if delivered by email, on the date of transmission, or if by mail, seven (7) calendar days after posting.

## 6. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs,

reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, Consultant agrees to indemnify and hold harmless the City from and against all claims, demands, defense costs, liability, expense, or damages arising out of or in connection with damage to or loss of any property belonging to Consultant or Consultant's employees, subconsultants, representatives, patrons, guests or invitees.

In no event will the obligation of the Consultant exceed the limitations on the duty to defend and indemnify as set forth in Civil Code Sections 2782, 2782.6, and 2782.8.

## 7. **INSURANCE**

Consultant must submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant must maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

- A. Commercial General Liability Insurance including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. Professional Liability Insurance with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will have a policy for professional liability coverage that provides coverage on an occurrence basis or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.
- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
  - i. All insurance required under this Agreement must be written by an insurance company either:
    - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or

- b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.
- ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.
- iii. All liability and auto policies must:
  - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
  - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Carmel-by-the-Sea is excess to the Consultant's insurance and will not contribute with it.
  - c. Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
  - d. Provide for a waiver of any subrogation rights against the City via an ISO CG 24 01 10 93 or its equivalent.
- iv. Prior to the start of work under this Agreement, Consultant will file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant will file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- v. Neither the insurance requirements hereunder, nor acceptance or approval of Consultant's insurance, nor whether any claims are covered under any insurance, may in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which will continue in full force and effect. All coverage available to the Consultant as named insured will also be available and applicable to the additional insured. Notwithstanding these insurance requirements, Consultant is financially liable for its indemnity obligations under this Agreement.
- vi. All policies must be written on a first dollar coverage basis or contain a deductible provision. Any deductibles or self-insured retentions ("SIR") must be declared to and approved by the City. At the option of the City, either: the insured will reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant will provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event will any SIR or insurance policy contain language, whether

added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured, or by any means including other insurance, or which is intended to defeat the intent or protection of an additional insured.

- vii. City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- viii. Consultant must require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements in this Agreement.
- ix. If Consultant, for any reason, fails to have in place at all times during the term of this Agreement all of the required insurance coverage, the City may, but is not obligated to, obtain such coverage at Consultant's expense and deduct the cost from the sums due Consultant. Alternatively, City may terminate the Agreement.
- x. The existence of the required insurance coverage under this Agreement will not be deemed to satisfy or limit Consultant's indemnity obligations under this Agreement. Consultant acknowledges that the insurance coverage and policy limits set forth in this Agreement constitute the minimum coverage and policy limits required. Should any coverage carried by the Consultant or any subcontractor of any tier have limits of liability that exceed the limits or have broader coverage than required in this Agreement, those higher limits and that broader coverage are deemed to apply for the benefit of any person or organization included as an additional insured and those limits and broader coverage will become the required minimum limits and insurance coverage in all sections of this Agreement. Any insurance proceeds available to City in excess of the limits and coverages required by this Agreement, and which is applicable to a given loss, must be made available to City to compensate it for such losses.
- xi. Consultant must give City prompt notice of claims made of lawsuits initiated that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability insurance policies.
- xii. The Consultant hereby waives any right of subrogation that any of its insurers may have or that they may accrue out of the payment of any claim related to the Consultant's performance of this Agreement, regardless of whether any endorsements required by this section are obtained.

## **8. PERFORMANCE STANDARDS**

- A. Consultant warrants that Consultant and Consultant's agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.
- B. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill

ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant's performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.

- C. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City's Project Representative or his or her designee will evaluate the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

## 9. CITY INFORMATION AND RESOURCES

- A. **Available Information.** The City will make available to Consultant all relevant information, plans, maps, reports, specifications, standards and pertinent data which is in the hands of the City and is required by Consultant to perform the Services. Consultant may rely upon the accuracy and completeness of such information and data furnished by the City, except where it is stated otherwise or unreasonable.
- B. **City Resources.** The City acknowledges that Consultant's ability to provide the Services in accordance with this Agreement may be dependent on the City providing available information and resources in a prompt and timely manner as reasonably required by Consultant. To the extent that the City fails to provide City resources, Consultant will not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event will such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor will Consultant be entitled to extra compensation for same. Consultant's sole remedy shall be an extension of time to complete the Scope of Services.
- C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City will derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services will be and remain with Consultant.

## 10. OWNERSHIP AND USE OF MATERIALS

- A. **Ownership of the Materials.** All data, studies, reports, calculations, field notes, sketches, designs, drawings, plans, specifications, cost estimates, manuals, correspondence, agendas, minutes, notes, audio-visual materials, photographs, models, software data, computer software (if purchased on the City's behalf) and other documents or products produced by Consultant under this Agreement (collectively, "the Materials") are and will remain the property of the City even though Consultant or another party may have physical possession of them or a portion

thereof. Consultant hereby waives, in favor of the City, any moral rights Consultant, its employees, subconsultants, vendors, successors or assignees may have in the Materials.

- B. **No Patent or Copyright Infringement.** Consultant guarantees that in its creation of the Materials produced under this Agreement, no federal or state patent or copyright laws were violated. Consultant agrees that all copyrights, which arise from creation of the work or Services pursuant to this Agreement, will be vested in the City and waives and relinquishes all claims to copyright or intellectual property rights in favor of the City. Consultant covenants that it will defend, indemnify and hold City harmless from any claim or legal action brought against the City for alleged infringement of any patent or copyright related to City's use of Materials produced by Consultant and its employees, agents and subconsultants under this Agreement.
- C. **Delivery and Use of the Materials.** All Materials will be transferred and delivered by Consultant to the City without further compensation following the expiration or sooner termination of this Agreement, provided that the City may, at any time prior to the expiration or earlier termination of this Agreement, give written notice to Consultant requesting delivery by Consultant to the City of all or any part of the Materials in which event Consultant must forthwith comply with such request. The Materials created electronically must be submitted in a format and medium acceptable to the City. The Materials may be used by the City in any manner for the intended purpose or as part of its operations associated with the Materials.
- D. **Survival of Ownership and Use Provisions.** The provisions contained in Section 10, Ownership and Use of Materials survives the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

## 11. CONFIDENTIALITY

- A. **No Disclosure.** Consultant must keep confidential and may not disclose, publish or release any information, data, or confidential information of the City to any person other than representatives of the City duly designated for that purpose in writing by the City. Consultant may not use for Consultant's own purposes, or for any purpose other than those of the City, any information, data, or confidential information Consultant may acquire as a result of the performance of the Services under this Agreement. Consultant must promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section will survive the expiration or earlier termination of this Agreement.
- B. **California Public Records Act.** Consultant acknowledges that the City is subject to the California Public Records Act (Government Code Section 6250 et seq.), known as the "PRA", and agrees to any disclosure of information by the City as required by law. Consultant further acknowledges that it may have access to personal information as defined under the PRA, and Consultant will not use any such personal information for any purposes other than for the performance of Services under this Agreement without the advance written approval of the City.

All Scopes of Services and related documents received will be public records, with the exception of those elements, identified by the Consultant as business trade secrets and are plainly marked "Trade Secret", "Confidential" or "Proprietary". If disclosure is required under the PRA or

otherwise by law, the City will not be liable or responsible for the disclosure of any such records and the Consultant will indemnify, defend, and hold the City harmless for any such disclosure.

## 12. CONFLICT OF INTEREST

Consultant covenants that neither Consultant, nor any officer, principal or employee of its firm, has or will acquire any interest, directly or indirectly, that would conflict in any manner with the interests of City relating to this Agreement or that would in any way hinder Consultant's performance of services under this Agreement. Consultant's attention is directed to the conflict of interest rules applicable to governmental decision-making contained in the Political Reform Act (California Government Code Section 87100 and following) and its implementing regulations (California Code of Regulations, Title 2, Section 18700 et seq.), and California Government Code section 1090.

In addition, Consultant, Consultant's employees, and subconsultants agree as follows:

- A. That they will conduct their duties related to this Agreement with impartiality, and must, if they exercise discretionary authority over others in the course of those duties, disqualify themselves from dealing with anyone with whom a relationship between them could bring the impartiality of Consultant or its employees into question;
- B. May not influence, seek to influence, or otherwise take part in a decision of the City knowing that the decision may further their private interests;
- C. May not accept any commission, discount, allowance, payment, gift, or other benefit connected, directly or indirectly, with the performance of Services related to this Agreement, that causes, or would appear to cause, a conflict of interest;
- D. May have no financial interest in the business of a third party that causes, or would appear to cause, a conflict of interest in connection with the performance of the Services related to this Agreement, and if such financial interest is acquired during the term of this Agreement, Consultant must promptly declare it to the City, and;
- E. May not, during the term of this Agreement, perform a service for, or provide advice to, any person, firm, or corporation, which gives rise to a conflict of interest between the obligations of Consultant under this Agreement and the obligations of Consultant to such other person, firm or corporation.

## 13. DISPUTE RESOLUTION

- A. **Dispute Resolution Procedures.** The parties will make reasonable efforts to promptly resolve any dispute, claim, or controversy arising out of or related to this Agreement ("Dispute") using the Dispute Resolution Procedures set forth in this Section.
- B. **Negotiations.** First, the City's Project Representative and Consultant's Project Manager will make reasonable efforts to resolve any Dispute by amicable negotiations and will provide frank, candid, and timely disclosure of all relevant facts, information, and documents to facilitate negotiations. Should these negotiations be unsuccessful in resolving the Dispute, the matter will



be promptly referred to the City Administrator or designee, and the Consultant's Principal, who will meet and confer, in good faith, to resolve the Dispute to mutual satisfaction of the parties.

- C. **Mediation.** If all or any portion of a Dispute cannot be resolved by good faith negotiations as set forth above within thirty (30) days of the date that the matter was referred to the City Administrator pursuant to subsection B above, either party may, by notice to the other party, submit the Dispute for formal mediation to a mediator selected mutually by the parties from the Monterey Superior Court's Court-Directed Mediator Panel list. The duration of any such mediation may not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) will be borne equally by the parties, and each party will bear its own costs of participating in mediation. The mediation will take place within or in close proximity to the City of Carmel-by-the-Sea.

In any mediation conducted pursuant to this section, the provisions of California Evidence Code section 1152 will be applicable to limit the admissibility of evidence disclosed by the parties in the course of the mediation. In the event the parties are unsuccessful in resolving the dispute through the mediation process, then the parties agree that the dispute will be submitted to Binding Arbitration to a single Arbitrator in accordance with the existing Rules of Practice and Procedure of the Judicial Arbitration and Mediation Services, Inc. (JAMS) within thirty (30) days of the close of mediation as declared by the mediator.

- D. **Arbitration.** The submission to Mediation and Arbitration in accordance with the requirements of this section of any and all agreements, differences, or controversies that may arise hereunder is made a condition precedent to the institution of any action or appeal at law or in equity with respect to the controversy involved. The award by the arbitrator will have the same force and effect and may be filed and entered, as a judgment of the Superior Court of the State of California and is subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A "Prevailing Party" will be determined in the Arbitration, and the prevailing party will be entitled to reasonable attorney's fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs will include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees will be considered costs recoverable in that proceeding, and be included in any award.

#### 14. TERMINATION OF AGREEMENT

- A. **Termination for Cause or Default.** The City reserves the right to immediately terminate this Agreement, in whole or in part, if Consultant or any subconsultant defaults or fails to deliver the Services in accordance with the terms and conditions of this Agreement. Such termination must be in writing, setting forth the effective date of termination, and will not result in any penalty or other charges to the City, and may be issued without any prior notice. Without limitation, Consultant is in default of its obligations contained in this Agreement if Consultant, or any subconsultant:
- i. Fails to perform the required Services within the term and/or in the manner provided under this Agreement;

- ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
  - iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
  - iv. Fails to observe or comply with the City's reasonable instructions;
  - v. Breaches the Conflict of Interest provisions of this Agreement; or
  - vi. Otherwise violates any provision of this Agreement.
- B. **Termination for Convenience.** The City may, at its option and sole discretion, terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term for the convenience of the City, upon ten (10) days written notice to the Consultant.
- C. **Steps after Termination:**
- i. Upon termination of this Agreement by the City for any reason, the City will pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.
  - ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant must:
    - a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and
    - b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.
  - iii. If this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

## 15. LEGAL ACTION / VENUE

- A. Should either party to this Agreement bring legal action against the other, the validity, interpretation and performance of this Agreement will be controlled by and construed under the laws of the State of California, excluding California's choice of law rules.
- B. Venue for any such action relating to this Agreement will be in Monterey County.
- C. If any legal action or proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing party may recover reasonable attorneys' fees as may be determined by the Arbitrator, experts' fees, and other costs, in addition to any other relief to which the party may be entitled.

## 16. MISCELLANEOUS PROVISIONS

- A. **Non-discrimination**. During the performance of this Agreement, Consultant, and its subconsultants, may 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, or sexual orientation, either in Consultant's employment practices or in the furnishing of services to recipients. Consultant further acknowledges that harassment in the workplace is not permitted in any form, and will take all necessary actions to prevent such conduct.
- B. **Acceptance of Services Not a Release**. Acceptance by the City of the Services to be performed under this Agreement does not operate as a release of Consultant from professional responsibility for the Services performed.
- C. **Force Majeure**. Either party is absolved from its obligation under this Agreement when and to the extent that performance is delayed or prevented, and in the City's case, when and to the extent that its need for vehicles, materials, or Services to be supplied hereunder are reduced or eliminated by any course, except financial, for reasons beyond its control. Such reasons include, but are not limited to: earthquake, flood, epidemic, fire, explosion, war, civil disorder, act of God or of the public enemy, act of federal, state or local government, or delay in transportation to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent that they are beyond the party's reasonable control.
- D. **Headings**. The headings do not govern, limit, modify, or in any manner affect the scope, meaning or intent of the provisions of this Agreement. The headings are for convenience only.
- E. **Entire Agreement**. This Agreement, including the Exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the terms, conditions, and Services and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof pursuant to Section 1B, "Change Order of Services". Any Change Order to this Agreement will be effective only if it is in writing signed by both parties hereto and will prevail over any other provision of this Agreement in the event of inconsistency between them.

- F. **Conflict between Agreement and Exhibits.** In the event of a conflict between a provision in this Agreement and a provision in an Exhibit attached to this Agreement, the provisions in this Agreement will take precedence.
- G. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and may be signed in counterparts, but all of which together will constitute one and the same Agreement.
- H. **Multiple Copies of Agreement.** Multiple copies of this Agreement may be executed, but the parties agree that the Agreement on file in the office of the City's City Clerk is the version of the Agreement that governs should any difference exist among counterparts of this Agreement.
- I. **Authority.** Any individual executing this Agreement on behalf of the City or Consultant represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- J. **Severability.** If any of the provisions contained in this Agreement are held illegal, invalid or unenforceable, the enforceability of the remaining provisions will not be impaired thereby. Limitations of liability and indemnities will survive termination of the Agreement for any cause. If a part of the Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.
- K. **Non-exclusive Agreement.** This Agreement is non-exclusive and both the City and Consultant expressly reserve the right to enter into agreements with other Consultants for the same or similar services, or may have its own employees perform the same or similar services.
- L. **Assignment of Interest.** The duties under this Agreement are not assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer constitutes a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.
- M. **Laws.** Consultant agrees that in the performance of this Agreement it will comply with all applicable federal, state and local laws and regulations. This Agreement will be governed by and construed in accordance with the laws of the State of California and the City of Carmel-by-the-Sea.

IN WITNESS WHEREOF, the parties enter into this Agreement hereto on the day and year first above written in Carmel-by-the-Sea, California.

CITY OF CARMEL-BY-THE-SEA

CONSULTANT

\_\_\_\_\_  
Mayor, City Administrator, or Designee Signature

Nore V. Winter  
Consultant Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

NORÉ V. WINTER Feb. 22, 2022  
Printed Name Date

\_\_\_\_\_  
Title

President  
Title

Winter and Company  
Consultant Legal Company Name

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Brian Pierik, City Attorney

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

**ATTEST:**

By: \_\_\_\_\_  
Yashin Abbas, Interim City Clerk

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

**ATTACHMENTS**

- Exhibit "A" - Scope of Services
- Exhibit "B" - Key Personnel & Compensation
- Exhibit "C" - Fee Schedule
- Exhibit "D" - Project Schedule

# Exhibit A

## **Carmel, CA – Design Traditions Project Version 1.5**

### **Professional Services**

Revised: February 18, 2022

#### **Project Approach**

This scope of services describes the steps for an update to the city's design guidelines and zoning code as they apply to the downtown commercial core and central residential neighborhoods.

The scope is organized into a series of Steps, each of which has more specific tasks. This scope of services assumes that work tasks are shared among the consultant and city planning staff.

The tasks are then organized into two Phases: The first phase is designed to confirm the scope of the amendments. It includes a review of existing conditions, startup meetings with staff and decision-makers as well as community engagement. The second Phase then focuses on producing the formal revisions to the code and guidelines.

#### **Project Objectives:**

To assist the community in updating

- Residential design guidelines (which apply to the Residential zone districts)
- Commercial design guidelines (which apply to the Commercial districts)
- Zoning code for the related zone districts

### **PHASE ONE: CONFIRMING THE SCOPE OF THE AMENDMENTS**

#### **1. Start-up and orientation**

Objectives:

1. To establish a shared understanding of the expectations for the project
2. To establish a working relationship with staff and decision makers
3. To gain an understanding of existing character in the project area

Format:

This step includes a series of start-up meetings, all of which would be on site. These will be informal meetings, with a simple agenda of questions and a short PowerPoint presentation. It also includes a tour of the project area.

Trips: Trip #1, 3 days on site, for Noré Winter & Julie Husband

## Tasks:

1. Develop a PowerPoint presentation as a project introduction, summarizing scope, approach and schedule.
2. Conduct a 3-day retreat work session with staff to:
  - a. Develop an understanding of existing conditions.
    - i. Review recent projects
    - ii. Review current regulations
  - b. Confirm steps in the project process.
  - c. Build a team working relationship.
3. Review existing character.
  - a. Staff will assist in planning an on-site tour focusing on commercial, residential, and right-of-way design/character. This will include driving and walking portions.
  - b. Consultant will tour the area following the staff-designed tour.
4. Conduct an information meeting with a citizen steering committee appointed by the City Council to review the project scope and discuss observations from the site tour.
5. Conduct a virtual work session with the Planning Commission.
6. Conduct a virtual work session with the City Council.
7. Write up summary of meetings and field inspection observations.

**2. Assess existing conditions**

This is a “technical” analysis step, which includes a review of existing regulations and an on-site work session with staff to confirm the interpretation of those existing regulations. It also includes an on-site strategy session with staff to outline the forthcoming community workshop.

## Objectives:

- To establish a shared understanding of how current guidelines and standards shape development in the area
- To establish an understanding of how change and state regulations may (or may not) be influencing the character of the community (i.e.: RHNA, SB-9, Fire Resistant materials, water allocations, Climate change, green building materials, etc.)
- To outline the agenda for upcoming community workshop(s)

## Format:

On-site work sessions

Trips: Trip #2, 2 days on site, for Noré Winter

## Tasks:

1. Develop computer models illustrating massing permitted under current zoning standards and design guidelines (with and without bonuses).
  - a. These also can be used later in community outreach.
  - b. They also will serve later in the project as a base for modeling the impacts of potential changes that may be proposed.



2. Review recent development projects.
  - a. Staff will assemble images of project documents of some recent projects for review and discussion.
  - b. Consultants will join in an on-site meeting with staff to:
    - i. Review the recent projects materials.
    - ii. Brainstorm community workshop/ outline.
    - iii. Brainstorm modeling alternatives.
3. Conduct a check-in meeting with the steering committee to discuss the upcoming workshop design.
4. Summarize findings in an illustrated memo.
  - a. This will be provided to inform public outreach and later discussions with decision makers.

### **3. Additional community engagement**

#### Objectives:

1. To provide participants the opportunity to help to define the design features that are valued in the designated areas of the city.
2. To provide participants an opportunity to identify issues (focusing on design topics) that should be addressed in the updates.

#### Format:

This step includes a more focused community workshop to gain additional public opinion. It will include hands-on activities and an online counterpart meant to give residents the opportunity to participate and be part of the solution.

Trips: Trip #3, 2 days on site, for Noré Winter & Julie Husband

#### Tasks:

1. Develop workshop materials. This includes a “visual character” survey that has images related to:
  - a. Identifying key features of the study areas that are valued by the community
  - b. Identifying images of buildings (from Carmel and elsewhere) that would be appropriate
  - c. Computer models illustrating alternative massing scenarios for new buildings in different contexts
2. Conduct community workshop #1.
  - a. This will be a hybrid format, with on-site and online participation concurrently.
3. Analyze findings from the workshop (including some on site with staff).
4. Write summary of findings.

#### **4. Develop a Strategy (Work Plan)**

In this step, the changes to the standards and guidelines will be outlined based on information and analysis gathered during steps 1 through 3. These will include sufficient detail such that the community understands the nature of the revisions to be made. For example, where numbers are involved (such as FAR and height), those numbers will be shown. If necessary, some alternative choices for amendments to specific topics will be included.

Objectives:

- To describe in detail the changes that are to be made
- This will serve as a policy document that decision makers will consider in providing direction for Phase Two of the project, in which the actual revisions are executed.

Format: Meetings will be conducted online.

Tasks:

1. Define the level of detail that the amendments will have.
2. Define the topics that will be addressed.
3. Develop computer model illustrations of the potential effects of the proposed changes.
4. Write a strategy memo that describes the changes to be made.
5. Conduct a check-in meeting with staff (virtual).
6. Conduct a check-in meeting with steering committee (virtual).

#### **5. Confirm the project direction**

In this step, the team will review the Strategy (work plan) with the community, planning commission and the city council to receive their guidance on moving forward. (Includes Julie)

Objective:

- To gain formal direction from decision makers to move forward into Phase Two

Format: Onsite meetings with PowerPoint presentations, including a hybrid community workshop. Virtual follow-up meetings with Planning Commission and City Council.

Trips: Trip #4, 2 days on site, for Noré Winter & Julie Husband

Tasks:

1. Prepare presentation summarizing the strategy report.
2. Conduct a hybrid community workshop (Workshop #2).
3. Meet with the Planning Commission to review strategy (virtual).
4. Meet with the City Council to review strategy (virtual).
5. Review recommendations with staff in a virtual conference meeting.

## **PHASE TWO: EXECUTING THE UPDATES**

### **6. Develop Draft #1 of the Updates to the design guidelines**

This Task includes updating the design guidelines documents for the downtown and the core residential areas. It will require re-formatting the existing design guidelines into InDesign desktop publishing software, using a standardized page design.

Objective:

- To prepare a working draft of the updates for review by the community and decision makers

Tasks:

1. Draft text, including edits as appropriate.
2. Develop new illustrations for the guidelines.
  - a. Some existing illustrations will be adapted, but new ones are also anticipated, particularly for the downtown design guidelines.
3. Lay out the document in InDesign.

### **7. Develop Draft #1 of the zoning amendments**

This includes revisions to residential and commercial zone districts. We anticipate that staff will “control” the zoning document and will enter the revisions as needed. Winter & Company will provide staff with a redline markup of suggested edits. Winter & Co. also will provide new graphics to illustrate the code provisions.

Objective:

- To prepare a working draft of the updates for review by the community and decision makers

Tasks:

1. Draft zoning text changes.
2. Develop illustrations.
3. Mark up code for inserts.
4. Staff inserts into code.

### **8. Present the draft revisions to the community**

In this step, the consultants will join staff on site to conduct another community workshop, in which the draft revisions to the code and guidelines will be presented. It also includes a joint work session with the Planning Commission and City Council. This could occur on site, if the schedule permits, or could be online.

Objectives:

- To keep the community informed of the progress of the project

- To gain detailed direction from decision makers for potential revisions to the draft documents

Trips: Trip #5, 2 days on site, for Noré Winter & Julie Husband

Tasks:

1. Prepare presentation materials.
2. Conduct on-site/hybrid community meeting (meeting #3).
3. Conduct on-site joint study session with PC and CC.
4. Write summary of findings (other edits to make).

## **9. Develop Draft #2 of the Design Guidelines**

In this step, revisions will be made to prepare an adoption draft of the design guidelines.

Tasks:

1. Execute text revisions.
2. Develop additional illustrations.
3. Update the InDesign document.

## **10. Develop Draft #2 of the zoning amendments**

In this step, revisions will be made to prepare an adoption draft of the zoning code.

Tasks:

1. Revise zoning text.
2. Develop additional illustrations.
3. Staff inserts revisions into the code.

## **11. Implementation**

In this step, the revised documents would be adopted. Staff will lead this effort. The consultants will provide assistance and participate in the hearing (on line) if appropriate.

Tasks:

1. Prepare adoption hearing presentation materials.
2. Participate in the planning commission hearing (virtual).
3. Participate in the city council hearing (virtual).

## Exhibit B

## **Carmel, CA - Design Traditions Project 1.5**

### **Noré Winter, Principal in Charge**

Winter is an urban design and planning consultant with extensive experience nationwide. He focuses on design strategies that promote the distinctive characteristics of individual communities and neighborhoods while enhancing economic vitality, sustainability and heritage conservation.

Noré will direct the project and will serve as primary contact with the client. He also will lead public outreach tasks.

### **Julie Husband - Urban Designer**

Julie Husband offers twenty-five years of experience in architecture, urban design and related fields. She has worked for Winter & Company for the past twenty years on master plans, design guidelines, design review, urban design and historic preservation, and architectural rehabilitation projects.

Julie will assist the Principal-in-Charge in drafting updates to the design guidelines and zoning code.

### **Christopher Ball - Graphics and Computer Modeling**

Christopher Ball plays an integral role in the creation of graphic content for the company. He has a strong knowledge of 3D modeling, graphic software and architectural practices.

Chris will generate computer models to illustrate potential impacts of revised design guidelines and zoning standards. He also will assist in developing surveys and other outreach tools that may be generated for the project.

### **Betsy Shears – Administration and Desktop Publishing**

Betsy has managed administrative tasks for all projects at Winter & Company and leads desktop publishing efforts.

Betsy will take the lead in desktop publishing for the Carmel design guidelines update.

# Exhibit C

	A	B	C	D	E	F	G	H	I
1	π	<b>Exhibit C: Fee Schedule</b>							
2		<b>Carmel, CA - Design Traditions Project 1.5</b>							
3		Feb. 18, 2022							
4		(Note that the individually numbered tasks do NOT align with specific staff members.)		Tasks are generally in chronological order, but not in every case					
5	<b>Step 1: Start-up &amp; Orientation</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>	<b>Task Total</b>		
6	1.1	Develop Powerpoint presentations	• Principal (N Winter)	50	\$185	\$9,250.00			
7	1.2	Conduct work session with staff	• Urban Designer	44	\$125	\$5,500.00			
8	1.3	Review existing character (site tour)	• Admin/Desktop publisher	4	\$90	\$360.00			
9	1.4	Meet with steering committee	• Graphic designer (Sketchup)	0	\$75	\$0.00			
10	1.5	Conduct work session with PC							
11	1.6	Conduct work session with City Council							
12	1.7	Write up meetings summary in a memo							
13			<b>Step 1 FEES</b>			<b>\$15,110.00</b>			
14	<b>EXPENSES</b>								
15		(Trip #1; 3 days on site; NW & JH))		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
16		Airfare		\$600	2	\$1,200			
17		Ground transportation (car rental, taxis)		\$730	1	\$730			
18		Accommodations		\$250	8	\$2,000			
19		Meals		\$85	6	\$510			
20		Technical/Printing		\$100	1	\$100			
21			<b>Step 1 EXPENSES</b>				\$ 4,540.00		
22		<b>TOTAL Step 1</b>						\$19,650.00	
23									
24	<b>Step 2: Assess Existing Conditions</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>			
25	2.1	Develop computer models illustrating massing permitted							
26	2.2	Review recent projects with staff	• Principal (N Winter)	42	\$185	\$7,770.00			
27	2.3	Meet with steering committee	• Urban Designer	16	\$125	\$2,000.00			
28	2.4	Summarize findings in a memo	• Admin/Desktop publisher	8	\$90	\$720.00			
29			• Graphic designer (Sketchup)	20	\$75	\$1,500.00			
30			<b>Step 2 FEES</b>				\$11,990.00		
31	<b>EXPENSES</b>								
32		(Trip #2; 2 days on site; NW)		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
33		<b>Travel expenses</b>							
34		Airfare		\$600	1	\$600			
35		Ground transportation (car rental, taxis)		\$550	1	\$550			
36		Accommodations		\$250	3	\$750			
37		Meals		\$85	2	\$170			
38		Technical/Printing		\$100	1	\$100			
39			<b>Step 2 EXPENSES</b>				\$2,170.00		
40		<b>TOTAL Step 2</b>						\$14,160.00	
41									
42	<b>Step 3: Additional Community Engagement</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>			
43	3.1	Develop on-site workshop materials							
44	3.2	Conduct hybrid workshop #2	• Principal (N Winter)	60	\$185	\$11,100.00			
45	3.3	Analyze workshop findings	• Urban Designer	62	\$125	\$7,750.00			
46	3.4	Write summary of findings	• Admin/Desktop publisher	20	\$90	\$1,800.00			
47			• Graphic designer (Sketchup)	20	\$75	\$1,500.00			
48			<b>Step 3 FEES</b>				\$22,150.00		



	A	B	C	D	E	F	G	H	I
49	<b>EXPENSES</b>								
50		Trip #3 (2 days on site; NW & JH)		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
51		<b>Travel expenses</b>							
52		Airfare		\$600	2	\$1,200			
53		Ground transportation		\$550	1	\$550			
54		Accommodations		\$250	6	\$1,500			
55		Meals		\$85	6	\$510			
56		Technical/Printing		\$100	1	\$100			
57				<b>Step 3 EXPENSES</b>			\$3,860.00		
58		<b>TOTAL Step 3</b>						\$26,010.00	
59									
60	<b>Step 4: Develop the Strategy for the revisions</b>		<b>Personnel</b>		<b>Hours</b>	<b>Rate</b>	<b>Amount</b>		
61	4.1	Define level of detail for amendments							
62	4.2	Define topics to address	• Principal (N Winter)		16	\$185	\$2,960.00		
63	4.3	Model results of alternatives (Sketchup)	• Urban Designer		10	\$125	\$1,250.00		
64	4.4	Write strategy memo	• Admin/Desktop publisher		10	\$90	\$900.00		
65	4.5	Virtual check-in meeting with staff	• Graphic designer (Sketchup)		40	\$75	\$3,000.00		
66	4.6	Virtual check-in meeting with steering committee					\$8,110.00		
67	<b>EXPENSES</b>								
68				<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
69		<b>Travel expenses</b>							
70		Airfare (No travel this step)		\$600	-	\$0			
71		Ground transportation		\$500	-	\$0			
72		Accommodations		\$250	-	\$0			
73		Meals		\$85	-	\$0			
74		Technical/Printing		\$100	1	\$100			
75				<b>Step 4 EXPENSES</b>			\$100.00		
76		<b>TOTAL Step 4</b>						\$8,210.00	
77									
78	<b>Step 5. Confirm the project direction</b>		<b>Personnel</b>		<b>Hours</b>	<b>Rate</b>	<b>Amount</b>		
79	5.1	Prepare presentation materials							
80	5.2	Conduct hybrid community workshop #2	• Principal (N Winter)		40	\$185	\$7,400.00		
81	5.3	Meet with Planning Commission (virtual)	• Urban Designer		48	\$125	\$6,000.00		
82	5.4	Meet with City Council (virtual)	• Admin/Desktop publisher		4	\$90	\$360.00		
83	5.5	Review recommendations with staff	• Graphic designer (Sketchup)		0	\$75	\$0.00		
84							\$13,760.00		
85	<b>EXPENSES</b>								
86		(Trip #4, 2 days on site NW & JH)		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
87		<b>Travel expenses</b>							
88		Airfare		\$600	2	\$1,200			
89		Ground transportation		\$550	1	\$550			
90		Accommodations		\$250	6	\$1,500			
91		Meals		\$85	6	\$510			
92		Technical/Printing		\$100	1	\$100			
93				<b>Step 5 EXPENSES</b>			\$3,860.00		
94		<b>TOTAL Step 5</b>						\$17,620.00	
95									
96		<b>Subtotal, Phase 1</b>						<b>\$85,650.00</b>	
97									

	A	B	C	D	E	F	G	H	I
98	<b>Step 6: Develop draft #1 of the Design Guidelines</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>			
99	6.1	Draft the text	• Principal (N Winter)	20	\$185	\$3,700.00			
100	6.2	Develop illustrations	• Urban Designer	30	\$125	\$3,750.00			
101	6.3	Lay out in InDesign	• Admin/Desktop publisher	40	\$90	\$3,600.00			
102			• Graphic designer (Sketchup)	20	\$75	\$1,500.00			
103			<b>Step 6 FEES</b>			<b>\$12,550.00</b>			
104	<b>EXPENSES</b>								
105				<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
106		<b>Travel expenses</b>							
107		Airfare		\$600	-	\$0			
108		Ground transportation		\$500	-	\$0			
109		Accommodations		\$250	-	\$0			
110		Meals		\$85	-	\$0			
111		Technical/Printing		\$100	1	\$100			
112			<b>Step 6 EXPENSES</b>				\$100.00		
113		<b>TOTAL Step 6</b>						\$12,650.00	
114									
115	<b>Step 7: Develop Draft #1 of the zoning amendments</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>			
116	7.1	Draft zoning text changes	• Principal (N Winter)	20	\$185	\$3,700.00			
117	7.2	Develop illustrations	• Urban Designer	10	\$125	\$1,250.00			
118	7.3	Mark up the code for inserts	• Admin/Desktop publisher	10	\$90	\$900.00			
119	7.4	Staff inserts revisions into code document	• Graphic designer (Sketchup)	20	\$75	\$1,500.00			
120			<b>Step 7 FEES</b>			<b>\$7,350.00</b>			
121	<b>EXPENSES</b>								
122				<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
123		<b>Travel expenses</b>							
124		Airfare		\$600	-	\$0			
125		Ground transportation		\$500	-	\$0			
126		Accommodations		\$250	-	\$0			
127		Meals		\$85	-	\$0			
128		Technical/Printing		\$100	1	\$100			
129			<b>Step 7 EXPENSES</b>				\$100.00		
130		<b>TOTAL Step 7</b>						\$7,450.00	
131									
132	<b>Step 8: Present the drafts to the community</b>		<b>Personnel</b>	<b>Hours</b>	<b>Rate</b>	<b>Amount</b>			
133	8.1	Develop presentations & feedback materials							
134	8.2	Conduct community workshop (on-site and online)	• Principal (N Winter)	50	\$185	\$9,250.00			
135	8.3	Conduct online workshop	• Urban Designer	60	\$125	\$7,500.00			
136	8.4	Joint study session with PC and CC	• Admin/Desktop publisher	10	\$90	\$900.00			
137	8.5	Write summary of findings (edits to make)	• Graphic designer (Sketchup)	10	\$75	\$750.00			
138									
139			<b>Step 8 FEES</b>			<b>\$18,400.00</b>			
140	<b>EXPENSES</b>								
141		(Trip #5; 2 days on site; NW & JH)		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
142		<b>Travel expenses (Trip #2)</b>							
143		Airfare		\$600	2	\$1,200			
144		Ground transportation		\$550	1	\$550			
145		Accommodations		\$250	6	\$1,500			
146		Meals		\$85	6	\$510			

	A	B	C	D	E	F	G	H	I
147		Technical/Printing		\$100	1	\$100			
148			<b>Step 8 EXPENSES</b>				\$3,860.00		
149		<b>TOTAL Step 8</b>						\$22,260.00	
150									
151	<b>Step 9: Develop draft #2 of the Design Guidelines</b>		<b>Personnel</b>		<b>Hours</b>	<b>Rate</b>	<b>Amount</b>		
152	9.1	Execute text revisions	• Principal (N Winter)		10	\$185	\$1,850.00		
153	9.2	Develop additional illustrations	• Urban Designer		10	\$125	\$1,250.00		
154	9.3	Update InDesign document	• Admin/Desktop publisher		20	\$90	\$1,800.00		
155			• Graphic designer (Sketchup)		10	\$75	\$750.00		
156			<b>Step 9 FEES</b>				<b>\$5,650.00</b>		
157	<b>EXPENSES</b>								
158				<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
159		<b>Travel expenses</b>							
160		Airfare		\$550	-	\$0			
161		Ground transportation		\$500	-	\$0			
162		Accommodations		\$250	-	\$0			
163		Meals		\$85	-	\$0			
164		Technical/Printing		\$100	1	\$100			
165			<b>Step 9 EXPENSES</b>				\$100.00		
166		<b>TOTAL Step 9</b>						\$5,750.00	
167									
168	<b>Step 10: Develop Draft #2 of the zoning amendments</b>		<b>Personnel</b>		<b>Hours</b>	<b>Rate</b>	<b>Amount</b>		
169	10.1	Revise zoning text	• Principal (N Winter)		8	\$185	\$1,480.00		
170	10.2	Develop additional illustrations	• Urban Designer		4	\$125	\$500.00		
171	10.3	Staff inserts revisions into code	• Admin/Desktop publisher		10	\$90	\$900.00		
172			• Graphic designer (Sketchup)		10	\$75	\$750.00		
173			<b>Step 10 FEES</b>				<b>\$3,630.00</b>		
174	<b>EXPENSES</b>								
175		(No travel this step)		<b>Unit cost</b>	<b>Quantity</b>	<b>Sub-total</b>	<b>Amount</b>		
176		<b>Travel expenses</b>							
177		Airfare		\$550	-	\$0			
178		Ground transportation		\$500	-	\$0			
179		Accommodations		\$250	-	\$0			
180		Meals		\$85	-	\$0			
181		Technical/Printing		\$100	1	\$100			
182			<b>Step 10 EXPENSES</b>				\$100.00		
183		<b>TOTAL Step 10</b>						\$3,730.00	
184									
185	<b>Step 11: Implementation (Adoption)</b>		<b>Personnel</b>		<b>Hours</b>	<b>Rate</b>	<b>Amount</b>		
186	11.1	Prepare presentations	• Principal (N Winter)		8	\$185	\$1,480.00		
187	11.2	Planning commission hearing (virtual)	• Urban Designer		0	\$125	\$0.00		
188	11.3	City Council hearing (virtual)	• Admin/Desktop publisher		4	\$90	\$360.00		
189			• Graphic designer (Sketchup)		0	\$75	\$0.00		
190			<b>Step 11 FEES</b>				<b>\$1,840.00</b>		
191	<b>EXPENSES</b>								
192		(No travel this step)		<b>Unit cost</b>	<b>Qty.</b>	<b>Sub-total</b>	<b>Amount</b>		
193		<b>Travel expenses</b>							
194		Airfare		\$550	-	\$0			
195		Ground transportation		\$500	-	\$0			
196		Accommodations		\$250	-	\$0			

	A	B	C	D	E	F	G	H	I
197		Meals		\$85	-	\$0			
198		Technical/Printing		\$0	-	\$0			
199				<b>Step 11 EXPENSES</b>			\$0.00		
200		<b>TOTAL Step 11</b>						\$1,840.00	
201									
202		<b>TOTAL PROJECT COSTS</b>						<b>\$139,330.00</b>	
203									

## Exhibit D

	A	B	C
1		<b>Schedule for Carmel Design Traditions Project 1.5</b>	
2		Schedule updated: 2/18/2022	
3			
4	<b>Step 1: Start-up &amp; Orientation (Trip #1)</b>		<b>Date completed by:</b>
5		Contract signed	
6		Authorization to proceed	
7	1.1	Develop Powerpoint presentations	
8	1.2	Conduct work session with staff to review existing conditions	
9	1.3	Review existing character (site tour)	
10	1.4	Information meeting with steering committee	
11	1.5	Virtual work session with Planning Commission	
12	1.6	Virtual work session with City Council	
13	1.7	Write up meetings summary in a memo	March 31, 2022
14			
15	<b>Step 2: Assess Existing Conditions (Trip #2)</b>		
16	2.1	Develop computer models illustrating current regulations	
17	2.2	Review recent development projects with staff (Trip #2)	
18	2.3	Meet with steering committee to discuss upcoming workshop (Trip #2)	
19	2.4	Summarize findings in illustrated memo	April 29, 2022
20			
21	<b>Step 3: Additional Community Engagement (Trip #3)</b>		
22	3.1	Develop workshop #1 materials	
23	3.2	Conduct on-site hybrid workshop (WS #1)	
24	3.3	Analyze workshop findings	
25	3.4	Write summary of findings	June 30, 2022
26			
27	<b>Step 4: Develop a Strategy (Work Plan)</b>		
28	4.1	Define level of detail for amendments	
29	4.2	Define topics to address	
30	4.3	Model results of alternatives (Sketchup)	
31	4.4	Write strategy memo	
32	4.5	On-line meeting with staff to review strategy	
33	4.6	Conduct virtual meeting with steering committee	Aug. 8, 2022
34			
35	<b>Step 5. Confirm the project direction (Trip #4)</b>		
36	5.1	Prepare presentation materials for workshop #2	
37	5.2	Conduct hybrid community workshop #2 to review strategy	
38	5.3	Meet with Planning Commission to review strategy (virtual)	
39	5.4	Meet with City Council to review strategy (virtual)	
40	5.5	Review recommendations with staff	Aug. 29-31, 2022

	A	B	C
41			
42	<b>Step 6: Develop draft #1 of the updates to the Design Guidelines</b>		
43	6.1	Draft the text	
44	6.2	Develop illustrations	
45	6.3	Lay out in InDesign	Sept. 30, 2022
46			
47	<b>Step 7: Develop Draft #1 of the zoning amendments</b>		
48	7.1	Draft zoning text changes	
49	7.2	Develop illustrations	
50	7.3	Mark up the code for inserts	
51	7.4	Staff inserts revisions into code document	Oct. 14, 2022
52			
53	<b>Step 8: Present the drafts to the community (Trip #5)</b>		
54	8.1	Develop presentations & feedback materials	
55	8.2	Conduct community workshop (hybrid)	
56	8.3	Joint study session with PC and CC	
57	8.4	Write summary of findings (edits to make)	Nov. 28, 2022
58			
59	<b>Step 9: Develop draft #2 of the Design Guidelines</b>		
60	9.1	Execute text revisions	
61	9.2	Develop additional illustrations	
62	9.3	Update InDesign document	Dec. 30, 2022
63			
64	<b>Step 10: Develop Draft #2 of the zoning amendments</b>		
65	10.1	Revise zoning text	
66	10.2	Develop additional illustrations	
67	10.3	Staff inserts revisions into code	Dec. 30, 2022
68			
69	<b>Step 11: Implementation (Adoption)</b>		
70	11.1	Prepare presentations	
71	11.2	Planning commission hearing (virtual)	
72	11.3	City Council hearing (virtual)	Mar. 7, 2023
73			



# CITY OF CARMEL-BY-THE-SEA CITY COUNCIL Staff Report

March 1, 2022  
PUBLIC HEARINGS

**TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Marnie Waffle, AiCP, Senior Planner

**APPROVED BY:** Chip Rerig, City Administrator

**SUBJECT:** Consideration of a recommendation from the Historic Resources Board to the City Council that the City Council enter into a Mills Act Historical Property Contract (MA 21-238, L'Auberge Carmel) with Esperanza Carmel Commercial, LLC for the historic 'Sundial Lodge' now known as L'Auberge Carmel located on Monte Verde 2 northeast of 7th Avenue (APN 010-191-005).

## RECOMMENDATION:

Adopt Resolution 2022-024 (Attachment 1) approving a Mills Act Historical Property Contract (MA 21-238, L'Auberge Carmel) for the historic 'Sundial Lodge' now known as the L'Auberge Carmel hotel located on Monte Verde 2 northeast of 7th Avenue (APN 010-191-005).

## BACKGROUND/SUMMARY:

The project site is located on Monte Verde 2 northeast of 7<sup>th</sup> Avenue in the Residential and Limited Commercial (RC) District. The existing hotel is known as L'Auberge Carmel. It is a three-story, wood-framed hotel surrounding an open interior courtyard, designed by architect Albert Farr in the Medieval Revival style and constructed in 1930 by M.J. Murphy.

A Department of Parks and Recreation (DPR) Form 523A was completed for the property in 2002 by Kent L. Seavey (Attachment 2) and added to the Carmel Inventory on May 25, 2005. A Resolution Designating a Historic Resource for the 'Sundial Lodge' was recorded with the County Recorder on October 19, 2006 (Document #2006092967).

On July 2, 2021, David Fink, on behalf of Esperanza Carmel Commercial, LLC, applied for a Mills Act Historical Property Contract. The Mills Act is an incentive program available to owners of historic resources listed on the Carmel Inventory and the local Register of Historic Resources. The property was placed on the local register on September 15, 2003, and the local inventory on May 25, 2005.

On January 24, 2022, the Historic Resources Board adopted Resolution 2022-001-HRB (Attachment 2), recommending that the City Council enter into a Mills Act Contract with Esperanza Carmel Commercial, LLC for the historic 'Sundial Lodge' property.



## STAFF ANALYSIS

A Mills Act contract under State law is an agreement between the City of Carmel and a property owner of a historic building listed on the Carmel Register. In exchange for reduced property taxes, the property owner is contractually obligated to perform annual maintenance on the building. The property owner benefits from a reduction in property taxes. The City benefits from assurance, via contract, that the historic building is rehabilitated, maintained, and preserved with a portion of those property taxes that the city is giving up.

The primary purpose for offering Mills Act contracts in the City of Carmel-by-the-Sea is to assist in and ensure the rehabilitation or restoration and long-term maintenance of historic resources.

All properties listed on the City's Historic Register in all districts that have and be, preserved in their historical size, form, and design without significant alterations are eligible for Mills Act contracts.

All Mills Act contracts have a term of 10 years, and one year is added to this term annually upon each anniversary date of the contract unless one or both parties (City and property owner) have taken action to terminate the contract. The City Administrator is authorized to initiate contract termination on behalf of the City based on recommendations of the Planning Department. The contract rights and obligations are binding upon all successive owners of the property during the life of the contract. The property retains the lower Mills Act tax rate when sold. To end a contract, either party may submit a notice of non-renewal to the other party. Such notices shall cause the contract to terminate at the end of the then-current 10-year contract period. Cancellation of a contract by the City due to non-compliance requires a public hearing and, if canceled, results in the immediate termination of the contract and a penalty equal to 12.5 percent of the assessed market value of the property.

The contract requires that the historical elements of the property are maintained in good condition. This includes a plan for rehabilitation and maintenance and may include a program to restore deteriorated features. All recipients of Mills Act contracts are required to implement a rehabilitation/restoration and maintenance plan prepared by a qualified professional. An annual report is submitted to the Planning Department specifying all work that has been done to maintain and preserve the historic resource over the year in compliance with the approved rehabilitation/restoration and maintenance plan. All rehabilitation/restoration and maintenance work must be completed in conformance with the Secretary of Interior's Standards for Rehabilitation. All Mills Act contracts must specify that the rehabilitation/restoration and maintenance plan shall be updated at least every ten years by a qualified professional and approved by both parties.

The Historic Resources Board considers each application for a Mills Act contract and provides a recommendation to the City Council to approve, approve with conditions, or deny the application.

The City Council considers the recommendations from the Historic Resources Board at a public hearing and resolves to approve, approve with conditions, or deny the proposed contract with sufficient time for action by the City Clerk so that recordation of approved contracts occurs before December 31st of the year in which the application is received.

To approve a Mills Act contract, the Historic Resources Board and the City Council must both make all of the following findings:

- i. The building is designated as an historic resource by the City and is listed on the Carmel Register.*

Staff Response: The property was designated as a historic resource on May 25, 2005, and a Resolution was recorded with Monterey County on October 19, 2006. According to a September 15,

2003 staff report to the Historic Preservation Committee, the property was voluntarily placed on the local historic inventory by then-owner, Auberge Carmel, LLC, represented by Mr. David Fink. The application meets this finding.

*ii. The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.*

Staff Response: The proposed plan includes rehabilitation and maintenance activities that will protect the integrity of the resource by replacing aging infrastructures such as plumbing and heating, ventilation, and air conditioning systems and repairing character-defining features such as the original wood windows. On-going maintenance activities include foundation inspections, roof maintenance, cleaning and inspecting all chimneys and flues, and termite testing. All exterior modifications are subject to Design Review approval and a determination of consistency with the Secretary's Standards. Therefore, the application meets this finding.

*iii. Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that:*

*(A) Comply with the Secretary's Standards (future additions only); and*

*(B) Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and*

*(C) Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and*

*(D) Do not result in any second-story addition to a single-story historic resource.*

Staff Response: After purchasing the property in 2002, Mr. Fink submitted an application to the City to remodel the hotel. The renovation was reviewed by Ms. Sheila McElroy of **Circa: History Property Development** for consistency with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The renovation was found consistent with the Secretary's Standards by the Historic Preservation Committee and did not include any increase in floor area. The primary elevation and character-defining features of the hotel were preserved, and the project was approved by the Planning Commission. The application meets this finding.

*iv. The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource.*

Staff Response: Construction was completed on the hotel in 1930 and renovated 20 years ago. A rehabilitation and maintenance plan prepared by Mr. Christopher Barlow, AIA, EDAC, LEED AP, NCARB, with input from historic preservation professional Mr. Kent Seavey, proposes the following rehabilitation work: replace existing plumbing throughout the building; replace the existing heating, ventilation, and air conditioning systems; repair and rehabilitate existing windows for thermal performance; and, repair and replacement of insulation. Proposed maintenance activities include foundation inspections and repairs; exterior paint; roof maintenance; cleaning, inspecting, repairing chimneys and flues; and termite testing/treatment. The total cost of rehabilitation and maintenance is estimated to be \$850,000 over the next ten years. The savings in property taxes would aid in

offsetting these costs. The application meets this finding.

*v. Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.*

Staff Response: Approval of the Mills Act Contract would be consistent with Goal 1-5 and Objective 1-16 of the Land Use & Community Character Element of the General Plan, which encourages providing incentives for property owners to preserve and rehabilitate historic resources. Although the adoption of a Mills Act Contract would decrease property tax revenue to the City, the financial impact would be minimal because:

- 1) The number of Mills Act contracts is limited to 15 over a three-year period, and only one Mills Act contract has been recorded in the last three years.
- 2) Carmel currently has 283 historic resources, and since the adoption of the Mills Act program in 2004, the City has entered into only ten contracts.
- 3) The City would continue to receive a portion of the property tax revenue, and the investment in rehabilitation and maintenance support local tourism, which benefits both private and public interests.

The value of preserving the historic hotel offsets the loss of property tax revenue.

#### **FISCAL IMPACT:**

The City will have a diminished tax base from the property at Monte Verde 2 northeast of 7th Avenue for the term of the contract. At the time of writing this report, staff was unable to estimate the total annual reduction in property tax collection. Staff is working with the County of Monterey to estimate the amount, and will be prepared to share any information that is obtained during the March 1st meeting.

#### **PRIOR CITY COUNCIL ACTION:**

On March 3, 2020, the City Council adopted standard contract language for Mills Act Contracts.

#### **ATTACHMENTS:**

Attachment 1 - Resolution 2022-024

Attachment 1 - Attachment A - Standard Mills Act Contract

Attachment 1 - Attachment A - Exhibit A - Legal Description

Attachment 1 - Attachment A - Exhibit B - DPR 523A 'Sundial Lodge'

Attachment 1 - Attachment A - Exhibit C - Maintenance Plan 01.04.22

Attachment 2 - Resolution 2022-001-HRB

Attachment 3 - Photographs

CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL

RESOLUTION NO. 2022-024

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA APPROVING A MILLS ACT HISTORICAL PROPERTY CONTRACT FOR THE HISTORIC 'SUNDIAL LODGE' NOW KNOWN AS THE L'AUBERGE CARMEL HOTEL LOCATED ON MONTE VERDE 2 NORTHEAST OF 7<sup>TH</sup> AVENUE (APN 010-191-005)

WHEREAS, David Fink ("Applicant") submitted an application on behalf of property owner Esperanza Carmel Commercial, LLC requesting to enter into a Mills Act historical property contract (MA 21-238, L'Auberge Carmel) described herein as ("Application"); and

WHEREAS, the Application has been submitted for the property located on Monte Verde 2 northeast of 7<sup>th</sup> Avenue in the Residential and Limited Commercial (R-C) District (Block 74, Lots 18 & 20); and

WHEREAS, in accordance with Carmel Municipal Code (CMC) Section 17.32.100.B.6 (Review Process), the Historic Resources Board shall consider the application and make recommendations to the City Council to approve, approve with conditions, or deny applications for a Mills Act historical property contract; and

WHEREAS, on January 24, 2022, the Historic Resources Board held a public meeting to consider the application for a Mills Act historical property contract, including without limitation, information provided to the Historic Resources Board by City staff and through public testimony; and

WHEREAS, the Historic Resources Board adopted Resolution 2022-001-HRB recommending that the City Council enter into a Mills Act historical property contract with Esperanza Carmel Commercial, LLC; and

WHEREAS, on March 1, 2022, the City Council held a public meeting to consider the application for a Mills Act historical property contract, including without limitation, information provided to the City Council by City staff and through public testimony; and

WHEREAS, notice of the City Council public hearing was published on February 18, 2022 in compliance with State law (California Government Code 65091), and was posted on the project site and hand-delivered by the Applicant to each property within a 100-foot radius of the project site at least 10 days prior to the public hearing indicating the date and time of the public hearing; and

WHEREAS, on March 1, 2022, the City Council conducted a duly noticed public hearing to receive the Historic Resources Board recommendation and consider the request for a Mills Act historical property contract; and

WHEREAS, at the March 1, 2022 hearing, the City Council received public testimony regarding the Mills Act historical property contract, including without limitation, information provided to the City Council by City staff and through public testimony; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the City Council at the March 1, 2022 hearing including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the City Council did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the **Mills Act Historical Property Contract**:

<b>FINDINGS REQUIRED FOR A MILLS ACT CONTRACT</b>		
For each of the required findings listed below, staff has indicated whether the application supports adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Historic Resources Board decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
<b>CMC 17.32.100.B.6.c</b>	<b>YES</b>	<b>NO</b>
i. The building is designated as an historic resource by the City and is listed on the Carmel Register.	✓	
ii. The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.	✓	
iii. Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that: (A) Comply with the Secretary’s Standards (future additions only); and (B) Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and	✓	

(C) Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and (D) Do not result in any second-story addition to a single-story historic resource.		
iv. The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource..	✓	
v. Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.	✓	

**BE IT FURTHER RESOLVED** that the City Council of the City of Carmel-by-the-Sea does hereby approve a Mills Act historical property contract (MA 21-238, L’Auberge Carmel) for the property located on Monte Verde 2 northeast of 7<sup>th</sup> Avenue (APN 010-191-005).

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA** this 1<sup>st</sup> day of March, 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
 Dave Potter  
 Mayor

\_\_\_\_\_  
 Yashin Abbas  
 Interim City Clerk

ATTACHMENT 1  
MILLS ACT HISTORICAL PROPERTY CONTRACT

RECORDING REQUESTED BY  
CITY OF CARMEL-BY-THE-SEA

AND WHEN RECORDED MAIL TO

Carmel City Hall  
Attn: Community Planning & Building  
P.O. Box CC  
Carmel-By-The-Sea, CA 93921

This space reserved for the Recorder’s use only

CITY OF CARMEL-BY-THE-SEA  
MILLS ACT HISTORIC PROPERTY PRESERVATION CONTRACT

**THIS AGREEMENT** is made and entered by and between the CITY OF CARMEL-BY-THE-SEA a municipal corporation (hereinafter referred to as “City”), and ESPERANZA CARMEL COMMERCIAL, LLC (hereinafter referred to as “Owner”).

RECITALS

- (i) California Government Code Section 50280, et seq. (known as the Mills Act) authorizes cities to enter into contracts with the owners of qualified historic properties to provide for their appropriate use, maintenance and restoration such that these historic properties retain their historic characteristics;
- (ii) The Owner possesses fee title in and to that certain real property, together with associated structures and improvements thereon, located at Monte Verde 2 northeast of 7<sup>th</sup> Avenue (APN: 010-191-005), Carmel-By-The-Sea, California, (hereinafter referred to as the “Historic Property”). A legal description of the Historic Property is attached hereto, marked as “**Exhibit A**” and is incorporated herein by reference;
- (iii) The property is identified as a historic resource on the City of Carmel-By-The-Sea’s Historic Inventory and Register of Historic Resources and is further described in the DPR 523A Form attached hereto, marked as “**Exhibit B**” and is incorporated herein by reference;
- (iv) City and Owner, for their mutual benefit, now desire to enter into this Agreement both to protect and preserve the characteristics of historical significance of the Historic Property, as it exists at the date of this contract and as described in the City’s Register of Historic Resources and the National Register of Historic Places, and to qualify the Historic Property for an assessment of valuation pursuant to the provisions of Article 1.9 (commencing with section 439) of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.



**NOW, THEREFORE**, City and Owner, in consideration of the mutual covenants and conditions contained herein, do hereby agree as follows:

1. **INCORPORATION OF RECITALS.** All recitals are incorporated into this Agreement.
2. **EFFECTIVE DATE AND TERM.** This Agreement shall be effective and commence on the date the Agreement is signed by the City, unless otherwise indicated by the County of Monterey, and shall remain in effect for a minimum term of ten (10) years thereafter.
3. **AUTOMATIC RENEWAL.** Each year, upon the anniversary of the effective date of this Agreement (hereinafter referred to as “annual renewal date”), one (1) year shall be added automatically to the term of this Agreement, unless timely notice of nonrenewal is given as provided in paragraph 4 of this Agreement. The total length of the contract shall not exceed twenty (20) years.
4. **NOTICE OF NONRENEWAL.** If City or Owner desires in any year not to renew this Agreement, that party shall serve written notice of nonrenewal in advance of the annual renewal date of this Agreement as follows: Owner must serve written notice of nonrenewal at least ninety (90) days prior to the annual renewal date; City must serve written notice of the nonrenewal at least sixty (60) days prior to the annual renewal date. If notice is not received, the Agreement shall automatically be renewed for another year. Upon receipt by Owner of a notice of nonrenewal from the City, Owner may make a written protest. At any time prior to the annual renewal date, City may withdraw its notice of nonrenewal.
5. **EFFECT OF NOTICE OF NONRENEWAL.** If either City or Owner serves timely notice of nonrenewal in any year, and this contract is not renewed, this Agreement shall remain in effect shall remain in effect for the balance of the period remaining since the original execution or the last annual renewal date.
6. **FEES.** The City may require that the Owner(s) of the Historic Property pay a fee that shall not exceed the reasonable cost of providing services, such as inspections, pursuant to Government Code Section 50281.1 (Article 12 of Chapter 1 of Part 1 of Division 1 of Title 5 of the Government Code), for which the fee is charged.
7. **VALUATION OF PROPERTY.** During the term of this Agreement, Owner is entitled to seek assessment of valuation of the Historic Property pursuant to the provisions of Chapter 3 of Part 2 of Division 1 of the California Revenue and Taxation Code.
8. **PRESERVATION OF PROPERTY.** Owner shall preserve and maintain the characteristics of historical significance of the Historic Property and agrees to complete rehabilitation and/or maintenance activities as defined in the Rehabilitation/Restoration and Maintenance Plan attached as “**Exhibit C**”. Requests for revisions to the Maintenance and

Rehabilitation plan shall be reviewed by the Historic Resources Board prior to implementation. In addition, Owner shall comply with the terms of the City's Historic Preservation Ordinance (CMC 17.32). Owners shall not be permitted to further impede any view corridor with any new structure, including but not limited to walls, fences, or shrubbery, so as to prevent the viewing of the Historic Property from the public right-of-way.

9. **RESTORATION OF PROPERTY.** Owner shall, where necessary, restore and rehabilitate the Historic Property to conform to the rules and regulations of the Office of Historic Preservation of the State Department of Parks and Recreation, U. S. Secretary of the Interior's Standards for Rehabilitation, the State Historical Building Code, and the City of Carmel-by-the-Sea, all as amended.
10. **INSPECTIONS.** Owner shall allow periodic examinations, at least every five (5) years, with reasonable notice thereof, of the interior and exterior of the Historic Property by representatives of the County of Monterey Assessor and the City of Carmel-By-The-Sea as may be necessary to determine Owner's compliance with the terms and provisions of this Agreement. The City will coordinate inspections by such other agencies that have jurisdiction and will keep them to the minimum necessary to determinate such compliance.
11. **PROVISION OF INFORMATION.** Owner shall furnish City with any and all information required by City, in order to determine the eligibility of the Historic Property, and that City deems necessary or advisable to determine compliance with the terms and provisions of this Agreement.
12. **ANNUAL REPORT.** Owner shall submit an annual report at least 90 days prior to each annual renewal date (October 1<sup>st</sup>) to the Department of Planning and Building specifying all work that has been done to maintain and preserve the historic resource over the preceding year in compliance with the approved maintenance plan.
13. **CANCELLATION.** The City has the right to cancel the contract if the owner allows the property to deteriorate to the point that it no longer meets the standards for a qualified historical property. The City also has the right to cancel this contract if the owner(s) breaches the provisions of paragraph's # 8, 9, 10 or 12 of this Agreement after the City has provided reasonable notice of any failure to comply with the agreement, and a public hearing. Notice of the hearing shall be mailed to the last known address of each owner of the property, with the notice conforming to the provisions of Government Code section 6061., If after notice and a hearing, the contract is cancelled, termination of the Agreement is immediate, and the owner shall pay a cancellation fee equal to 12.5 percent of the current fair market value of the property, as determined by the Monterey County Assessor as though the property were free of the contractual restriction. The cancellation fee shall be paid to the Assessor, at the time and in the manner that the Assessor shall prescribe. City's right to cancel this Agreement pursuant to this paragraph

shall in no way limit or restrict its rights or legal remedies arising from City's Historic Preservation Ordinance and Municipal Code.

14. **ENFORCEMENT OF AGREEMENT.** In lieu of and/or in addition to any provisions to cancel this Agreement as referenced herein, City may specifically enforce, or enjoin the breach of, the terms of this Agreement.
15. **WAIVER.** City does not waive any claim or default by Owner if City does not enforce or cancel this Agreement. All remedies at law or in equity, which are not otherwise provided for this Agreement or in City's regulations governing historic properties are available to City to pursue in the event there is a breach of this Agreement. No waiver by City of any breach or default under this Agreement shall be deemed to be a waiver of any other subsequent breach thereof or default hereunder.
16. **BINDING EFFECT OF AGREEMENT.** Owner hereby subjects the Historic Property to the covenants, reservations and restrictions set forth in this Agreement. City and Owner hereby declare their specific intent that the covenants, reservations, and restrictions as set forth herein shall be deemed covenants running with the land and shall pass to and be binding upon Owner's successors and assigns in title or interest to the Historic Property. A successor in interest shall have the same rights and obligations under this Agreement as the original owner who executed the Agreement. Each and every contract, deed or other instrument hereinafter executed, governing or conveying the Historic Property, or any portion thereof, shall conclusively be held to have been executed, delivered and accepted subject to the covenants, reservations and restrictions expressed in this Agreement regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument. City and Owner hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the land in that it restricts development of the Historic Property. City and Owner hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the land by enhancing and maintaining the cultural and historic characteristics and significance of the Historic Property for the benefit of the public and Owner.
17. **NOTICE.** Any notice required to be given by the terms of this Agreement shall be provided at the address of the respective parties as specified below, by personal delivery or United States mail, postage prepaid, addressed as follows:

City: Carmel-By-The-Sea  
 Community Planning & Building Department  
 Attn: Community Planning & Building Director  
 P.O. Box CC  
 Carmel-By-The-Sea, CA 93921

Owner: Esperanza Carmel Commercial, LLC  
PO Box 134  
Carmel, CA 93921

Notice to successors in interest to either party shall be sent to the appropriate address. In the case of future Owner(s) of the Historic Property, notice shall be sent to the address on file with the county property tax office in power at the time.

18. **RECORDATION.** No later than twenty (20) days after the parties execute and enter into this Agreement, the City shall cause this Agreement to be recorded in the Office of the County Recorder of the County of Monterey. From and after the time of the recordation, this Agreement shall impart a notice thereof to all persons as is afforded under state law.
19. **STATE LAW.** The Owner or agent of Owner shall provide written notice of this Agreement to the State Office of Historic Preservation within six (6) months of the date of this Agreement.
20. **GOVERNING LAW; VENUE.** This Agreement shall be constructed and governed in accordance with the laws of the State of California. Should either party to this agreement bring legal action against the other, the case shall be handled in Monterey County, California and the party prevailing in such action shall be entitled to a reasonable attorney fee which shall be fixed by the judge hearing the case and such fee shall be included in the judgment together with all costs.
21. **AMENDMENTS.** This agreement may be amended in whole or in part, only by a written-recorded instrument executed by the parties hereto.
22. **DESTRUCTION OF PROPERTY; EMINENT DOMAIN; CANCELLATION.** If the Historic Property is destroyed by earthquake, fire, flood, or other natural disaster such that in the opinion of the City Building Official more than sixty percent (60%) of the original fabric of the structure must be preplaced, this Agreement shall be cancelled because the historic value of the structure will have been destroyed. If the Historic Property is acquired in whole or in part by eminent domain or other acquisition by any entity authorized to exercise the power of eminent domain, and the acquisition is determined by the City Council to frustrate the purpose of this Agreement, this Agreement shall be cancelled. No cancellation fee pursuant to Government Code Section 50286 shall be imposed if the Agreement is cancelled pursuant to this paragraph. Such Agreement shall be null and void for all purposes of determining the value of the property so acquired.
23. **INDEMNIFICATION.** Owner shall defend, indemnify, and hold harmless City and its elected officials, officers, agents and employees from any actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any

federal, state or local government agency, arising out of or incident to the direct or indirect use, operation, or maintenance of the Historic Property by Owner or any contractor, subcontractor, employee, agent, lessee, licensee, invitee, or any other person; (ii) Owner’s activities in connection with the Historic Property; and (iii) any restriction on the use of development of the Historic Property, from application or enforcement of the City’s Municipal Code, or from the enforcement of this Agreement. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys’ fees, and related costs or expenses, and the reimbursement of the City, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. Owner’s obligation to indemnify shall survive the termination, cancellation, or expiration of this Agreement and shall not be restricted to insurance proceeds, if any, received by City, its elected officials, employees, or agents.

- 24. **SEVERABILITY.** In the event that any of the provisions of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, or by subsequent preemptive legislation, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

**IN WITNESS THEREOF,** the City and Owners have executed this Agreement on the day and year this Agreement is signed by the City, unless otherwise indicated by the County of Monterey.

**CITY OF CARMEL-BY-THE-SEA:**

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

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

Name: Richard L. Rerig (“Chip”)  
Title: City Administrator

**PROPERTY OWNER(S):**

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

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

Name: Patrice Pastor  
Esperanza Carmel Commercial, LLC  
Title: Property Owner

EXHIBIT A  
LEGAL DESCRIPTION

EXHIBIT B  
DPR 523A FORM for 'Sundial Lodge'

EXHIBIT C  
REHABILITATION/RESTORATION AND MAINTENANCE PLAN

**LEGAL DESCRIPTION**

Real property in the City of Carmel, County of Monterey, State of California, described as follows:

LOTS 18 AND 20 IN BLOCK 74, AS SAID LOTS AND BLOCK ARE SHOWN ON THAT CERTAIN MAP ENTITLED, MAP OF "CARMEL-BY-THE-SEA, MONTEREY COUNTY, CALIFORNIA", FILED MARCH 7, 1902 IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA, IN VOLUME 1 OF MAPS, "CITIES AND TOWN", AT PAGE 2.

APN: 010-191-005

Return to:  
Carmel City Hall  
Post Office Drawer G  
Carmel, CA 93921  
Attention, Brian Roseth

DOCUMENT: **2006092967**

Titles: 1/ Pages: 1



Fees....  
Taxes...  
Other...  
AMT PAID

## RESOLUTION

### DESIGNATING AN HISTORIC RESOURCE

The Department of Community Planning and Building of the City of Carmel-by-the-Sea completed intensive survey work, received approval from the California Coastal Commission and made an Administrative Determination that the property identified below meets the criteria for an historic resource as established in the City's General Plan, the Municipal Code and the Local Coastal Program for Carmel-by-the-Sea.

Based on this determination, effective 25 May 2005, the Department of Community Planning and Building resolved to designate the property described below as a local resource on the Carmel Inventory of Historic Resources.

This Resolution/Administrative Determination is recorded pursuant to section 5029(b) of the California Public Resources Code that requires the City to record all historic resource determinations. This action also is taken in furtherance of the Local Coastal Program certified by the California Coastal Commission and implemented by the City of Carmel-by-the-Sea Ordinances No. 2004-01 and 2004-02.

**Assessor's Parcel Number:** 010191005000

**Block:** 74    **Lot(s):** ALL LOTS 18 AND 20

**Current Owner:** AUBERGE CARMEL LLC

**Street Location:** E/S MONTE VERDE BET. OCEAN & 7TH

It is the purpose of this Resolution/Administrative Determination to alert the owner, successors and assigns to the existence of an historic resource on the property. This historic resource is protected under laws of the State of California and of the City of Carmel-by-the-Sea including the California Coastal Act, the California Public Resources Code, the Carmel-by-the-Sea Municipal Code and the Local Coastal Program. Specific regulations affecting remodels, alterations, additions and demolitions can be found in the City of Carmel-by-the-Sea planning documents referenced above.

Certified by:

Brian Roseth,  
Principal Planner, Carmel-by-the-Sea

END OF DOCUMENT



**PRIMARY RECORD**

Primary # \_\_\_\_\_ Attachment 4  
 HRI # \_\_\_\_\_  
 Trinomial \_\_\_\_\_  
 NRHP Status Code \_\_\_\_\_ 581  
 \_\_\_\_\_ SPI  
 Other Listings Review Code \_\_\_\_\_ Reviewer \_\_\_\_\_ Date \_\_\_\_\_

Page 1 of 3

Resource Name or #: (Assigned by recorder) *Sundial Lodge*

P1. Other Identifier:

P2. Location:  Not for Publication  Unrestricted a. County *Monterey*  
 and (P2b and P2c or P2d. Attach a Location Map as necessary.)

b. USGS 7.5' Quad \_\_\_\_\_ Date \_\_\_\_\_ T \_\_\_\_\_ ; R \_\_\_\_\_ ; 1/4 of \_\_\_\_\_ 1/4 of Sec \_\_\_\_\_ ; B.M. \_\_\_\_\_

c. Address: \_\_\_\_\_ City *Carmel by-the-Sea* Zip *93921*

d. UTM: (Give more than one for large and/linear resources) \_\_\_\_\_ ; \_\_\_\_\_ mE/ \_\_\_\_\_ mN

e. Other Locational Data (Enter Parcel #, legal description, directions to resource, elevation, etc., as appropriate)  
*2 NE of 7th, E/side Monte Verde (Blk 74, Lots 18, 20)*

Parcel No. *010-191-005*

P3. Description (Describe resource and its major elements. Include design, materials, condition, alterations, size, setting, and boundaries)

*A three-story, wood-framed hotel, rectangular in plan w/an open interior courtyard, resting on a concrete foundation. The exterior wall cladding is a smooth cement stucco, w/a rough textured veneer on the first floor of the west facing facade, built-up and scored as stone, in an ashlar pattern. The steep-pitched hipped roof is covered in a fiberglass, or cementitious shingle. The roof-planes on the north and south sides of the interior court extend down to the first floor level, and have a series of hipped roof dormers looking into the courtyard below. Four on the north side, and three on the south side. There are five interior type stucco-clad false chimneys on the intersecting roof system. Two appear on the west facing facade, one in the ridge line just north of the main entry, and the second just south of the main entry, placed in the roof-plane on the east side of this elevation. The one to the south has a pair of decorative chimney pots. Two more false chimneys appear centered in either side-elevation, both on the interior roof-planes, facing the open courtyard. The fifth chimney in on the ridge line of the east (rear) elevation, toward the SE cr. of the building. There are two towered components of the west facing facade. One at the SW cr is flush w/the building envelope and has a steeply-pitched pyramidal roof, w/a small dormer window facing west. The second, toward the NW cr. of the facade is one bay wide, and projects slightly over the ground floor. It also has a steeply-pitched pyramidal roof, but w/out a dormer window.*

P3b. Resource Attributes: (List attributes and codes) *HP5 - Hotel/Motel*

P4. Resources Present  Building  Structure  Object  Site  District  Element of District  Other (Isolates, etc.)



P5b. Description of Photo: (View, date, accession#)  
*Looking NE at the west facing facade, 11/9/01, #9219-5*

P6. Date Constructed/Age and Sources  
 Prehistoric  Historic  Both

*1930 Carmel bldg. records*

P7. Owner and Address

*Daiki (USA) Corporation  
 55 5th Street  
 San Francisco, CA 94103*

P8. Recorded by: (Name, affiliation, and address)

*Kent L. Seavey  
 Preservation Consultant  
 310 Lighthouse Ave.  
 Pacific Grove, CA 93950*

P9. Date Recorded: *12/5/2002*

P10. Survey Type: (Describe)  
*Carmel Historic resource Inventory - 2001*

P11. Report Citation: (Cite survey report and other sources, or enter "none")

*Carmel by-the-Sea Survey 1989-1996*

- Attachments  NONE  Continuation Sheet  District Record  Rock Art Record  Other: (List) \_\_\_\_\_  
 Location Map  Building, Structure, and Object Record  Linear Feature Record  Artifact Record  
 Sketch Map  Archaeological Record  Milling Station Record  Photograph Record

**BUILDING, STRUCTURE, AND OBJECT RECORD**

Page 2 of 3

NRHP Status Code

5S1

Resource Name or #: (Assigned by recorder) *Sundial Lodge*

B1. Historic Name: *Sundial Court*

B2. Common Name:

B3. Original Use: *hotel*

B4. Present Use: *hotel*

B5. Architectural Style: *Medieval revival (Czechoslovakian source)*

B6. Construction History: (Construction date, alterations, and date of alterations)

*Constructed 1930 (Cbp# 2231); interior alterations 1947 (Cbp# 2248); repair interior fire damage 1956 (Cbp# 2849); foundation work 1956 (Cbp# 2848); subdivide interior offices 1957 (Cbp# 3072); enlarge lobby 1968 (Cbp# 4861); add restaurant 1978 (78-19); interior remodel 1982 (Cbp# 82-52); interior remodel 1989 (Cbp# 89-216)*

B7. Moved?  No  Yes  Unknown Date:

Original Location:

B8. Related Features:

B9a. Architect: *Albert Farr*

b. Builder: *M.J. Murphy*

B10. Significance: Theme: *Architectural & Economic Development*

Area: *Carmel by-the-Sea*

Period of Significance: *1903-1940* Property Type: *hotel*

Applicable Criteria: *CR3*

(Discuss importance in terms of historical or architectural context as defined by theme, period and geographic scope. Also address integrity.)

The Sundial Lodge is significant under California Register criteria 3, in the area of architecture as one of the few remaining visitor accomodating facilities from the late 1920s and early 1930s that essentially maintains its original exterior appearance. It is also significant as the work of noted San Francisco architect Albert Farr. The design inspiration was that of Allen Knight, one of Carmel's most colorful figures. knight was an inveterate traveler, and had seen such buildings on a visit to eastern Europe. In 1929 a *Carmel Pine Cone* article on the proposed hotel noted that, "the architecture is European, probably more Bohemian than of any other national type, and fits in well with Carmel's general scheme". This refered to the concentration of Medieval influenced romantic revival commercial buildings in the general area of Monte Verde, Ocean Ave. & Lincoln that had helped define Carmel as a village in a forest during the 1920s. Other architectural influences from southern Europe were at work as well in the commercial district, adding to the eclectic character of the community. Allen Knight would later serve as both city councilman and mayor of Carmel.

Architect Albert Farr was a specialist in domestic architecture in the San Francisco Bay Area. His most well known commission was "Glen Allyn" in Sonoma County, the first home of Jack London. He had worked in the offices of Clinton Day and the Reid Bros. before going into practice on his own.

Michael J. Murphy was the builder. Murphy was one of the earliest and most prolific builders in Carmel, constructing as many as 350 structures in the village during his long career, from about 1902 to the early 1940s. He is credited with establishing the residential look of Carmel during the important period of develoment between 1904 and the mid 1920s. It is probable that much of the material for the Sundial Court came from Murphy's local building supply company. Noted artist Henrietta Shore used one of the commercial spaces on the north side of the building as her painting studio during the 1940s.

B11. Additional Resource Attributes: (List attributes and codes) *HP5 - Hotel/Motel*

**B12. References:**

Carmel bldg. records, Carmel Planning Dept., City Hall, Carmel

Carmel Historic Context Statement 1997

Fremier, Allene, *Allan Knight, Beloved Eccentric*, Boxwood

Press:Pacific Grove, 1984

Sanborn fire insurance maps of Carmel 1930-1930-62

Albert Farr. Obit.. *American Architect*. Oct. 1946

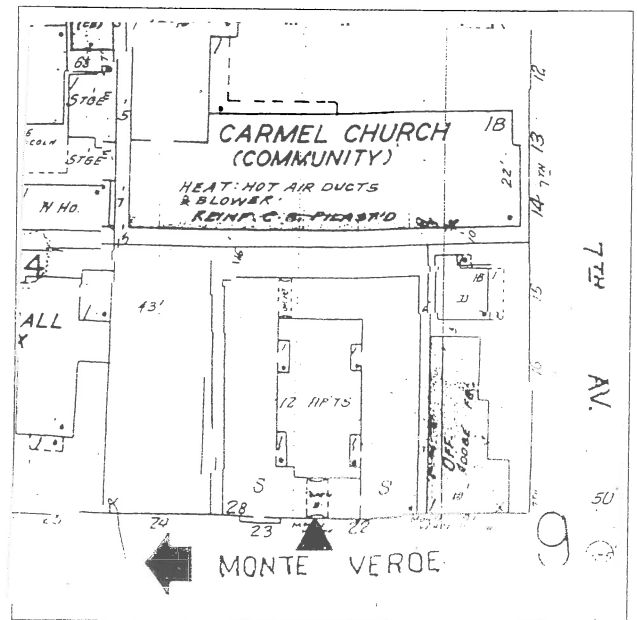
B13. Remarks: *Zoning RC*

*CHCS (AD/ED)*

B14. Evaluator: *Kent Seavey*

Date of Evaluation: *12/5/2002*

(This space reserved for official comments.)



**CONTINUATION SHEET**

Page 3 of 3 Resource Name or #: (Assigned by recorder) Sundial Lodge

Recorded by: Kent L. Seavey

Date 12/5/2002

Continuation  Update

P3. There is also a slightly projecting gabled bay on the facade, at the inside cr. of the tower to the SW. This feature has four exposed decorative brackets at its base. There are two tiny eyebrow vents in the roof-plane of the west (front) elevation, evenly spaced between the projecting bays, close to the eave line. The current gutter system conceals the exposed rafter-tails at the eave line. The first floor of the hotel, along Monte Verde was designed as retail space, and is characterized by wide, segmentally arched bays, paired on either side of the central round arched entry. The windows in the these bays are large, multi-paned glazed panels w/thick muntins. There are central doorways in the two bays closest to the hotel's arched entry passage. The bays to the south of the entry are capped by flase voussiers. A raised decorative Gothic ogee molding w/acorn details at its peak and ends, caps the principal entry. Fenestration is otherwise irregular w/a combination of single, paired and banked multi-paned wood casement type, w/planked wood shutters. The casement windows along the exterior of the building on the north, south and east elevations lack muntins, while the windows opening onto the interior courtyard do have them. This as per the original 1930 specifications, on file w/the Planning Dept.. The central windows in the third story of the west facing facade, above the entry, originally had diamond paned leaded glass windows, but now are single paned. The only other apparent change to the fenestration is the appearance of several wooden window boxes along the west facing facade. The interior court rises in a series of terraces, connected by open steps, all covered in red brick decking. The perimeter of the courtyard is planted w/low shrubbery and flower beds, w/deck furniture placed about. There is a round arched cloth canopy fronting the central entry, that does not appear in the original drawings. All in all the hotel looks essentially as it did when construted in 1930. Of interest is the fact that architect Farr had originally intended to use some false half-timbering on the building, but for some reason, probably economic, canceled their use in a change order attached to the original specifications.

B10. The Sundial Court was conceived and realized by one of Carmel's most colorful figures, Allen Knight. His ideas were realized by noted San Francisco architect Albert Farr, and the work was executed by Carmel's premier master-builder M.J. Murphy. The design of the building was clearly in keeping with the desired "old world" ambiance established in the lower portion of the business district in the early 1920s, to maintain the aesthetic sense of the place as a village in the forest. The success of that venture is visible today. That there has been little change to the exterior appearance of the Sundial Lodge is a credit to its designers who's understanding of the creative, individual and eclectic nature of the village continues to be appreciated for its aesthetic qualities, and economic benefits to the community. Sundial Lodge clearly reflects the findings of, and is consistant with the 1997 Carmel Historic Context Statement under the themes of architectural and economic development.

<b>City of Carmel</b>	
<b>Mills Act Rehabilitation and Maintenance Plan</b>	
Property Address:	Monte Verde St. at Seventh Ave.
Owner Name:	L'Auberge Carmel / David Fink
Owner Telephone No.:	(831) 917-2322
Plan Prepared by: Christopher Barlow AIA, EDAC, LEED AP, NCARB	

<b>L'Auberge Carmel, Monte Verde Street and Seventh Ave, Carmel-By-The-Sea, California</b>					
<b>Mills Act Rehabilitation and Maintenance Plan</b>					
<b>Maintenance/ Rehabilitation</b>	<b>Completed/ Proposed</b>	<b>Year of Completion</b>	<b>Building Feature</b>	<b>Description of Work</b>	<b>Cost</b>
<b>STRUCTURAL UPGRADES</b>					
Maintenance	Proposed	2029	Foundation	Foundation Inspection and localized repairs (as needed)	\$30,000
<b>Structural Upgrades Subtotal</b>					<b>\$30,000</b>
<b>BUILDING SYSTEMS UPGRADES</b>					
Rehabilitation	Proposed	2022	Plumbing	Replace existing aged interior plumbing piping throughout building	\$95,000
Rehabilitation	Proposed	2024	Mechanical	Repair and replace existing Heating, Ventilation and Air Condition system(s)	\$175,000
<b>Building Systems Upgrades Subtotal</b>					<b>\$270,000</b>
<b>EXTERIOR AND INTERIOR FEATURES, MATERIALS, AND FINISHES</b>					
Maintenance	Proposed	2027	Exterior walls	Paint exterior of all exterior walls (every six years)	\$45,000
Maintenance	Proposed	2022-2032	Exteriors	Maintain Roof, Clean Chimneys/Flues, Inspect and seal plaster (annually)	\$150,000
Rehabilitation	Proposed	2022	Windows	Conduct exterior window condition assessment and provide survey of repairs	\$10,000
Rehabilitation	Proposed	2023	Windows	Repair and Rehabilitate existing Windows for increased thermal performance	\$115,000
Rehabilitation	Proposed	2028	Roof, Ext. walls	Insulation repairs and replacement	\$75,000
Maintenance	Proposed	2030	Wood, thruout	Termite testing and repairs	\$75,000
<b>Exterior and Interior Features Upgrades Subtotal</b>					<b>\$470,000</b>
<b>HARDSCAPE AND LANDSCAPE</b>					
Rehabilitation	Proposed	2025	Hardscape	New drainage at courtyard (currently surface drainage only, see photo 16)	\$45,000
Rehabilitation	Proposed	2026	Hardscape	Retaining Wall repair at existing stairs and property line (see photo 15)	\$35,000
<b>Exterior and Interior Features Upgrades Subtotal</b>					<b>\$80,000</b>
Completed Work Total					<b>\$0</b>
Proposed Work Total					<b>\$850,000</b>
<b>REHABILITATION AND MAINTENANCE TOTAL</b>					<b>\$850,000</b>

Note: Frequency of Repairs continues beyond 2032 based on interval proposal.

Note: Dollar amounts will be review at 10 year intervals and adjusted for inflation.

CITY OF CARMEL-BY-THE-SEA  
HISTORIC RESOURCES BOARD

HISTORIC RESOURCES BOARD RESOLUTION NO. 2021-001-HRB

A RESOLUTION OF THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA  
RECOMMENDING THAT THE CITY COUNCIL ENTER INTO A MILLS ACT CONTRACT WITH ESPERANZA  
CARMEL COMMERCIAL, LLC FOR THE PROPERTY LOCATED ON MONTE VERDE 2 NORTHEAST OF 7<sup>TH</sup>  
AVENUE ALSO KNOWN AS L'AUBERGE CARMEL  
APN 010-191-005

WHEREAS, David Fink ("Applicant") submitted an application on behalf of Esperanza Carmel Commercial, LLC requesting to enter into a Mills Act contract (MA 21-238, L'Auberge Carmel) described herein as ("Application"); and

WHEREAS, the Application has been submitted for the property located on Monte Verde 2 northeast of 7<sup>th</sup> Avenue Residential and Limited Commercial (R-C) District (Block 74, Lots 18 & 20); and

WHEREAS, the Applicant is requesting to enter into a Mills Act contract with the City and in accordance with Carmel Municipal Code (CMC) Section 17.32.100.B.6 (Review Process), the HRB shall consider the application and make recommendations to the City Council to approve, approve with conditions, or deny the application; and

WHEREAS, the agenda for the Historic Resources Board Meeting was posted in three locations on January 21, 2022 in compliance with State law indicating the date and time of the public hearing; and

WHEREAS, on January 24, 2022, the Historic Resources Board held a public meeting to consider the application for a Mills Act contract, including without limitation, information provided to the Historic Resources Board by City staff and through public testimony; and

WHEREAS, this Resolution and its findings are made based upon evidence presented to the Board at the January 24, 2022 meeting including, without limitation, the staff report and attachments submitted by the Community Planning and Building Department; and

WHEREAS, the Historic Resources Board did hear and consider all said reports, attachments, recommendations and testimony herein above set forth and used their independent judgement to evaluate the project; and

WHEREAS, the facts set forth in the recitals are true and correct and are incorporated herein by reference.

**NOW, THEREFORE, BE IT RESOLVED**, that the Historic Resources Board of the City of Carmel-By-The-Sea does hereby make the following findings and determinations regarding the **Mills Act Contract**:

<b><u>FINDINGS REQUIRED FOR A MILLS ACT CONTRACT</u></b>		
For each of the required findings listed below, staff has indicated whether the application supports adoption of the findings. For all findings checked "no" the staff report discusses the issues to facilitate the Historic Resources Board decision-making. Findings checked "yes" may or may not be discussed in the report depending on the issues.		
<b>CMC 17.32.100.B.6.c</b>	<b>YES</b>	<b>NO</b>
i. The building is designated as an historic resource by the City and is listed on the Carmel Register.	✓	
ii. The proposed rehabilitation/restoration and maintenance plan is appropriate in scope and sufficient in detail to guide long-term rehabilitation/restoration and maintenance. Required maintenance and rehabilitation should be more significant than just routine maintenance that would be expected for any property.	✓	
iii. Alterations to the historic resource have been in the past, and will continue to be in the future, limited to interior work and to exterior rehabilitation and alterations that: (A) Comply with the Secretary’s Standards (future additions only); and (B) Do not significantly alter, damage or diminish any primary elevation or character-defining feature; and (C) Do not increase floor area on the property by more than 15 percent beyond the amount established in the documented original or historic design of the resource; and (D) Do not result in any second-story addition to a single-story historic resource.	✓	
iv. The Mills Act contract will aid in offsetting the costs of rehabilitating and maintaining the historic resource..	✓	
v. Approval of the Mills Act contract will represent an equitable balance of public and private interests and will not result in substantial adverse financial impact on the City.	✓	

**BE IT FURTHER RESOLVED** that the Historic Resources Board of the City of Carmel-by-the-Sea does hereby recommend that the City Council approve a Mills Act Contract (MA 21-238, L’Auberge Carmel) for the property located on Monte Verde 2 northeast of 7<sup>th</sup> Avenue (APN 010-191-005).

PASSED, APPROVED AND ADOPTED BY THE HISTORIC RESOURCES BOARD OF THE CITY OF CARMEL-BY-THE-SEA this 24<sup>TH</sup> day of January, 2022, by the following vote:

AYES: CHROMAN, DYAR, GUALTIERI, HALL, POMEROY

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

---

Erik Dyar  
Chair

---

Margi Perotti  
Historic Resources Board Secretary

# L'AUBERGE CARMEL

1 Monte Verde Street at Seventh Ave.



Photo #1, Main façade looking South along Monte Verde



Photo #2, Main façade looking North along Monte Verde

Photos by Jenna Tyndall from Wald, Ruhnke and Dost Architects (June 28, 2021)





Photo #3, North elevation looking from City Hall parking lot



Photo #4, Partial South elevation looking from Seventh Avenue



Photo #5, radial plaster cracking at Southwest building corner



Photo #6, holes in foundation, plaster and tile at Southwest corner



Photo #7, hairline cracking in plaster above double windows by main entry



Photo #8, radial cracking in plaster above main entry doors.



Photo #9, holes in foundation near Northwest building corner



Photo #10, cracked step/foundation at Northwest building corner



Photo #11 window sill at North side of building



Photo #12, bent/damaged flashing at second level opening



Photo #10, weathered/oxidized roofing at central courtyard



Photo #11, damaged rafter tails at roof as seen from courtyard



Photo #12, rotted supports at exterior planter box

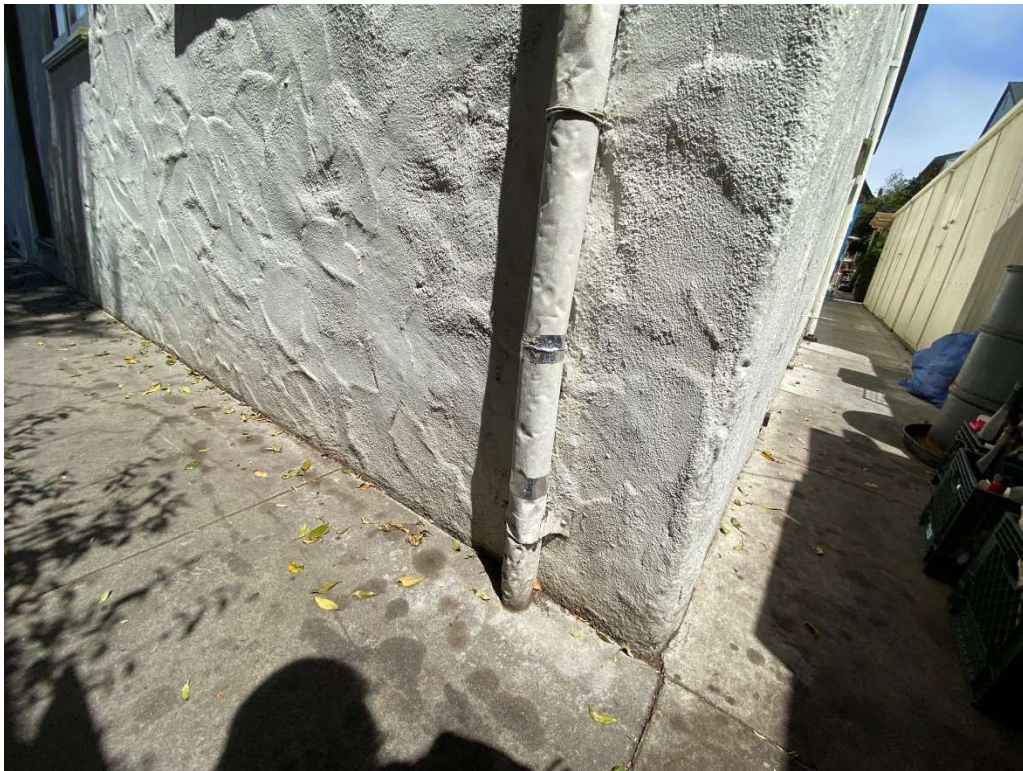


Photo #13, damaged downspout (typical condition at perimeter)



Photo 14, Water damage at upper-level balcony





Photo 15, Existing retaining wall



Photo 16, temporary surfact drainage at courtyard

REVISIONS	
1	OCTOBER 22, 2003
2	
3	
4	
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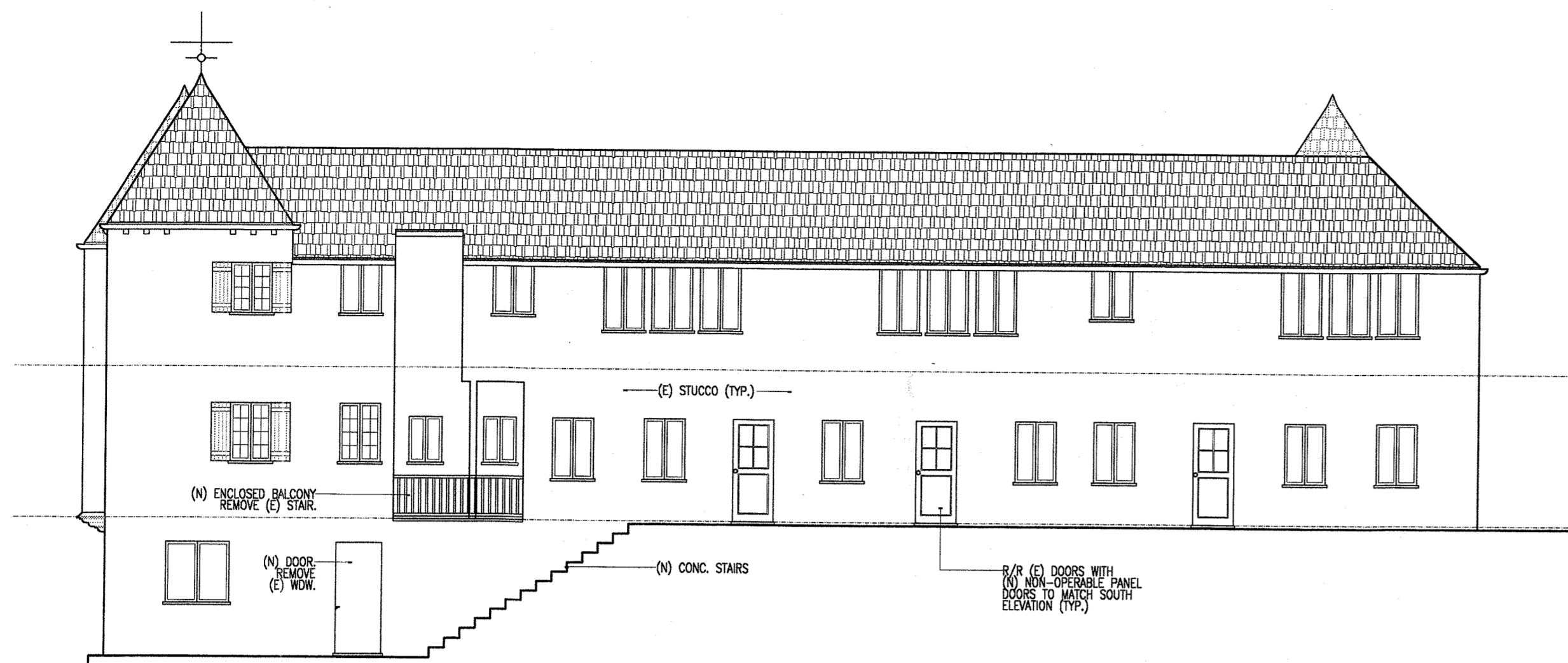
jeff fink and associates, architecture  
 1421 BLAIR LANE TUSTIN, CA 92780  
 tel 714 832-1103 fax 714 832-9185

AUBERGE CARMEL  
 CARMEL, CALIFORNIA

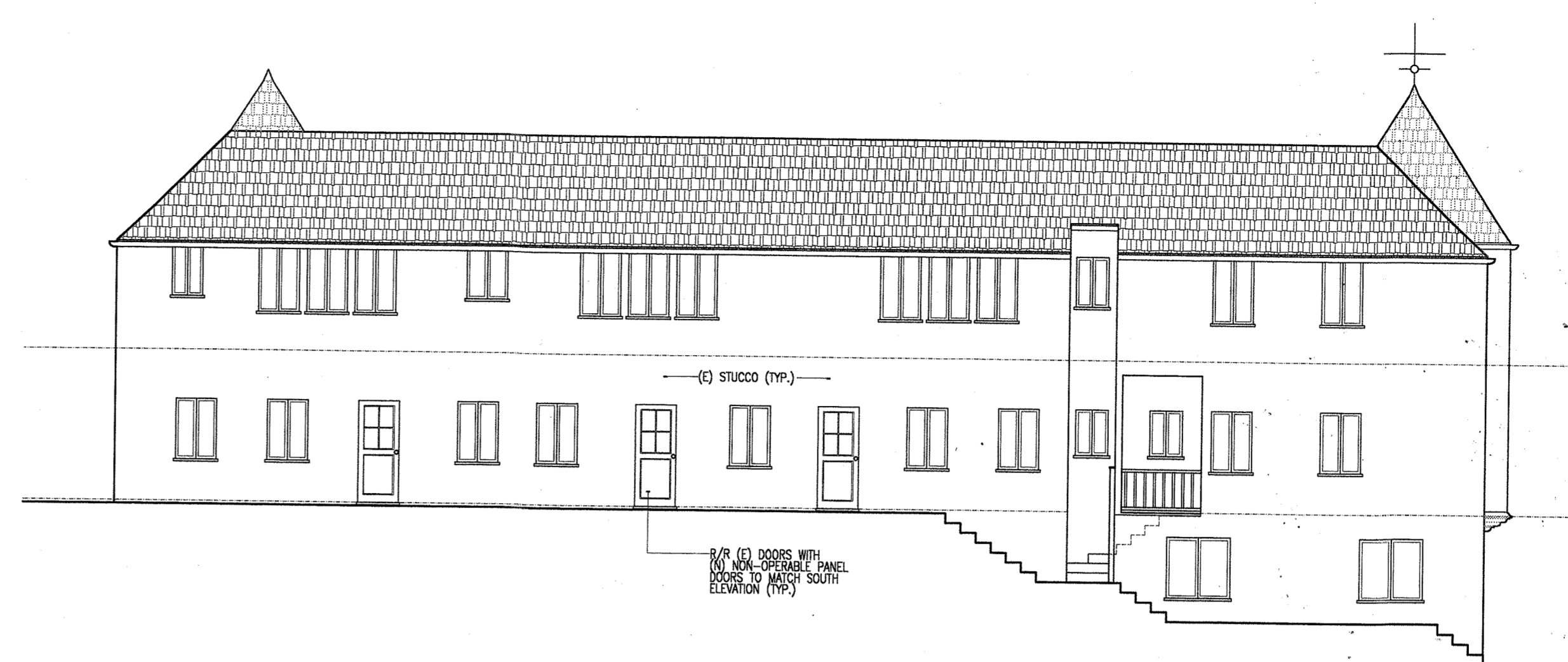
SECTIONS AND ELEVATIONS

SCALE: 1/8" = 1'-0"  
 APRIL 10, 2003

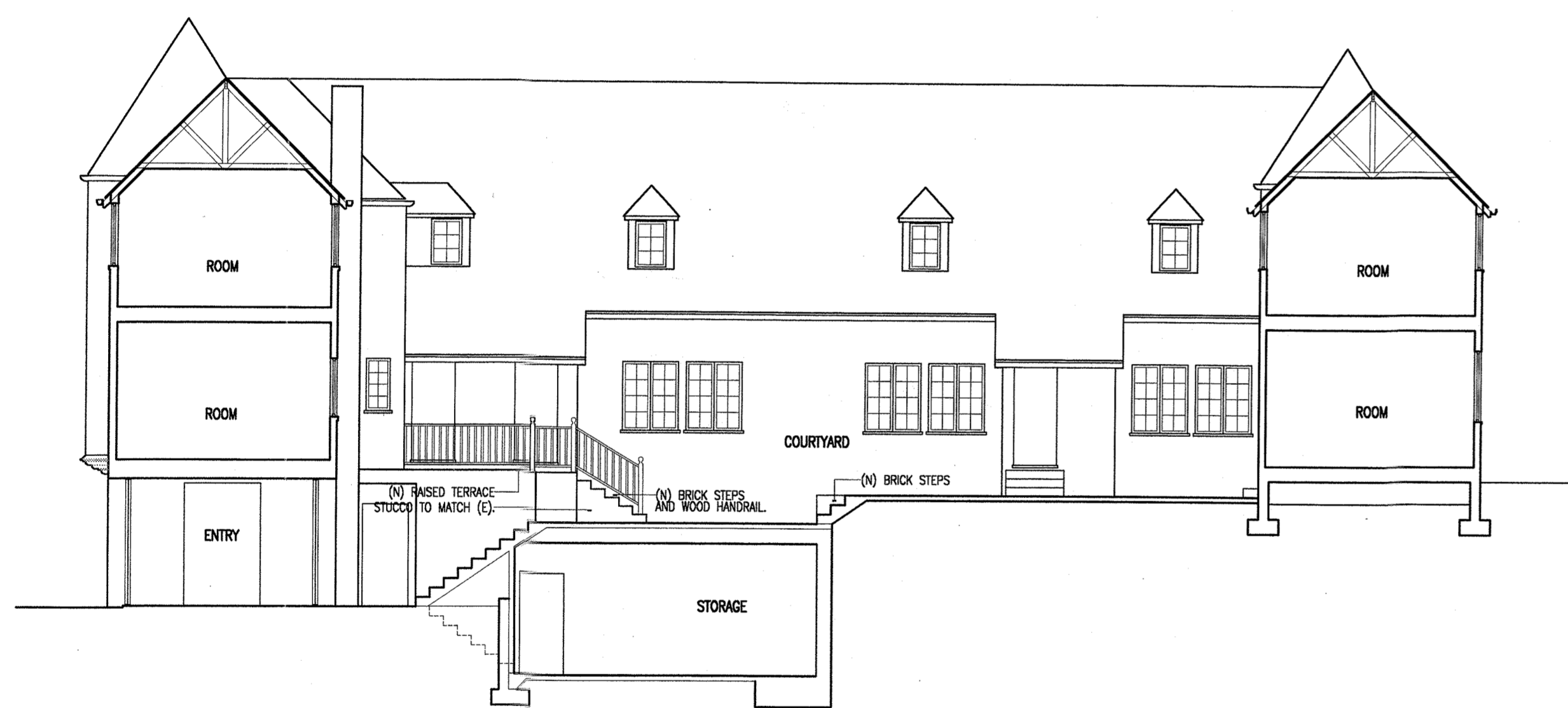
A5



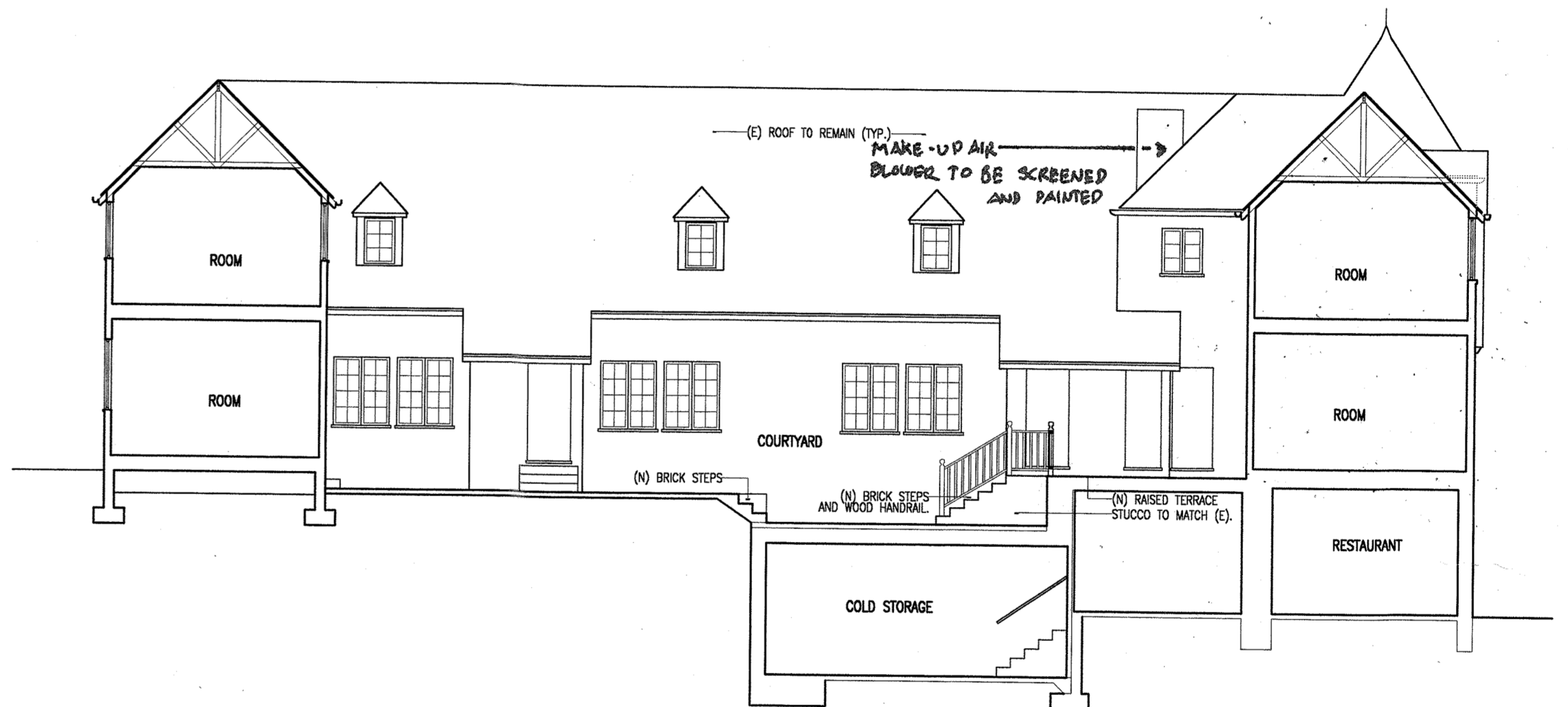
SOUTH ELEVATION



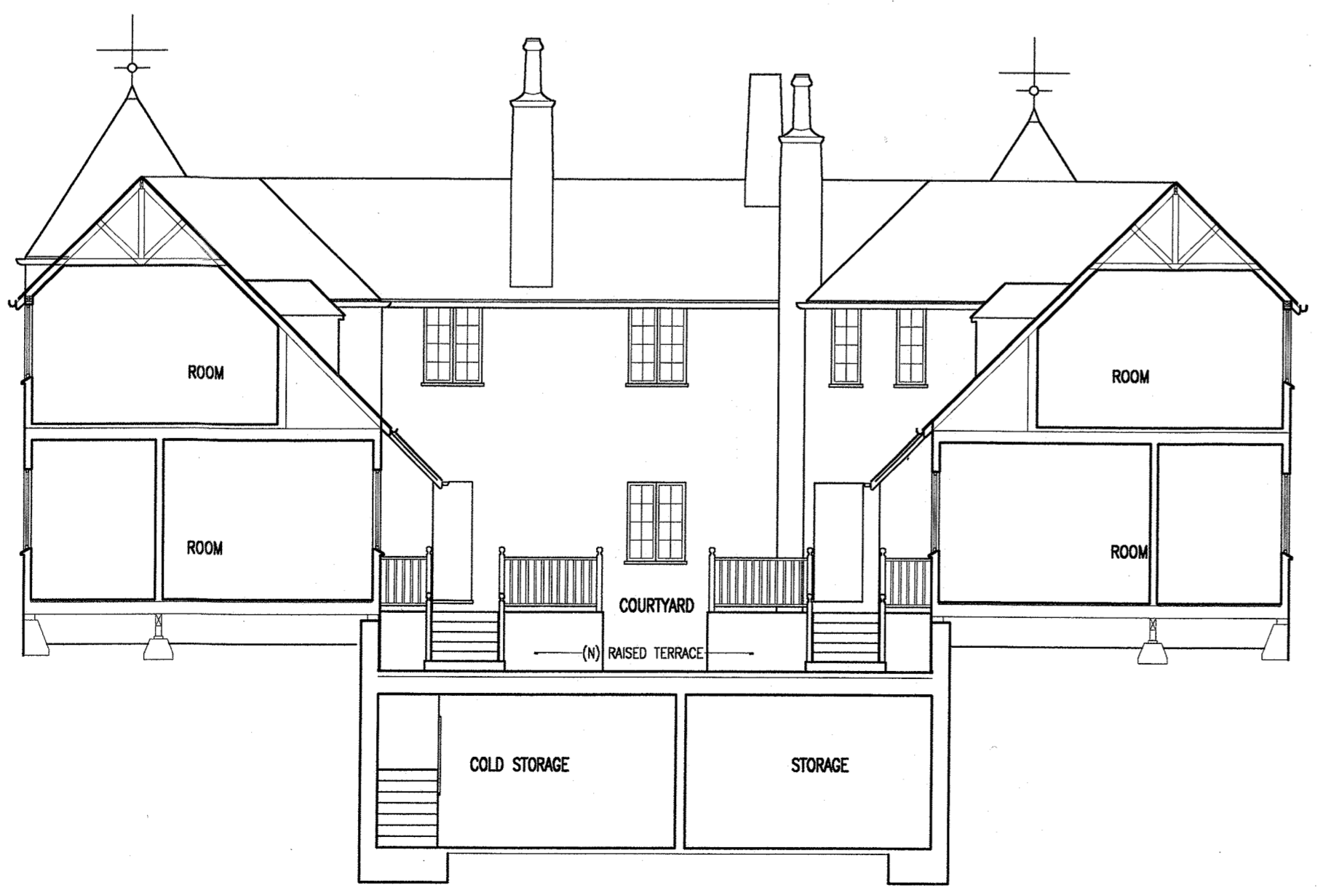
NORTH ELEVATION



SECTION 'A' AND SOUTH COURTYARD ELEVATION



SECTION 'B' AND NORTH COURTYARD ELEVATION

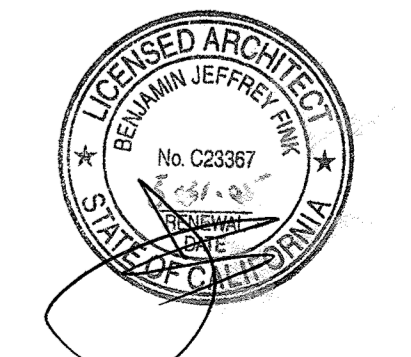


SECTION 'C' AND EAST COURTYARD ELEVATION



WEST ELEVATION

NOTE:  
 REMOVE ALL EXTERIOR CONDUIT WHERE POSSIBLE.





**CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL  
Staff Report**

**March 1, 2022  
ADJOURNMENT**

**TO:** Honorable Mayor and City Council Members

**SUBMITTED BY:** Yashin Abbas, Interim City Clerk

**APPROVED BY:** Chip Rerig, City Administrator

**SUBJECT:**

**RECOMMENDATION:**

**BACKGROUND/SUMMARY:**

**FISCAL IMPACT:**

**PRIOR CITY COUNCIL ACTION:**

**ATTACHMENTS:**

Correspondence Received #1  
Correspondence Received #2  
Correspondence Received #3



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**Please vote to approve consulting support contract outlined in item 9 on the 3/1/22 consent agenda**

1 message

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**paul j munsch** <pauljmunsch@gmail.com>  
To: cityclerk@ci.carmel.ca.us

Tue, Mar 1, 2022 at 8:33 AM

Council Members,

My Wife and I own a home in Carmel By-The-Sea at San Carlos 5 NE of Santa Lucia. Please vote to award a Professional Services Agreement to Winter & Company for Consulting Support as outlined in item 9 of the Consent Agenda for 3/1/22 Council Meeting.

We believe Carmel tax payers deserve better representation relating to preserving the architectural charm of Carmel.

Paul & Kathleen Munsch

Sent from my iPad

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**Emailed comments for the March Council Meeting — please distribute to City Council Members**

1 message

**'Laura Spiegelman' via cityclerk** <cityclerk@ci.carmel.ca.us>

Tue, Mar 1, 2022 at 8:09 AM

Reply-To: Laura Spiegelman &lt;laura.spiegelman@yahoo.com&gt;

To: cityclerk@ci.carmel.ca.us

City Council members,

Please do not approve the proposed Forest Theater lease, without important modifications to mitigate noise pollution and public safety issues:

1 - Please include in the lease a preference for acoustic performances, a limit on how loud the amplification can be at the theater, and a limit on how many amplified performances are permitted per week, with required monthly reports on the decibel level of amplification throughout the month and on which performances are and are not amplified. The level of amplification often used at the theater in pre-pandemic seasons (particularly in the more commercial productions) puts significant noise pollution into the surrounding neighborhood. For some it makes it impossible to enjoy performances at the theater at all, while subjecting the neighborhood to chaotic noise pollution. Unlike a concert or even a non-amplified musical theater production or a play, some of the over-amplified productions are a jumble of clips of different noises that are loud, chaotic, and disruptive in the surrounding area (no thread to follow just a jumble of loud noises amplified loudly into the surrounding residential zone). This is not like overhearing a concert (which also happens but is less of a concern because the sounds of concerts have been coherent). Instead, this is chaotic noise. It should be limited or eliminated.

2 - Please reduce the term of the lease to one or a maximum of two years (plus discretionary renewals). Five years and four months is far too long of a term when you consider how much greater the city's investment is in the improvements to the theater, and the issues surrounding excessive amplification and parking/public safety (see below). A shorter term would ensure that the city will have a greater ability to address community concerns with how the theater is being operated and its impact on the neighbors and the community (noise, parking/access for emergency vehicles in the surrounding area, etc.).

3 - I have personally observed emergency vehicles be hindered and delayed in responding to a health emergency of an elderly resident living in the immediate area surrounding the theater, due to theater parking blocking the road. Literally an ambulance was delayed (and the fire truck responding alongside it to the emergency was too) because of theater parking blocking its passage. I believe it should be an explicit term in the lease that the manager/lessee of the theater be required to devise, initiate, and fully support parking mitigation efforts in the interest of public safety. The theater could offer ticket discounts/rebates (for example) for proof of parking at Sunset Center instead of in the neighborhood, and other creative measures may be possible to encourage and reward walking, biking, etc. rather than clogging the neighborhood streets with cars. (This could also make it more likely that theatergoers driving from outside of town would patronize downtown businesses in connection with their theater visit.) Mitigating parking impacts outside the theater should be explicitly on the plate of the theater manager — as an obligation under the lease; otherwise, they do not have adequate incentive to manage this. In addition, the city should strongly consider banning non-resident parking within three blocks of the theater (or such longer radius as gets the cars over to the Sunset Center lot) during and in the hours surrounding performances.

4 - Do any of the improvements described in the lease whether city-funded or theater manager-funded involve making the sound system any louder? The city certainly should not commit to or make any such expenditure, and should prohibit this type of modification by the city-subsidized lease holder. The historic use of the theater cannot possibly have been so amplified as recent productions. We definitely should not be spending money on making the sound system louder, nor permitting a leaseholder to do so.

5 - Please include performance metrics in the lease related to noise and parking/public safety incidents and complaints to help align the subsidized leaseholder's interests with that of the community and ensure that the city is empowered to take action if community interests are not respected during the term of the lease. Metrics are important particularly in a longer-termed lease, but could also be used as criteria for extension in an appropriately shorter-termed lease.

Thank you for your time and attention in ensuring that the city's and its residents' vital interests are protected, by requiring modifications to the proposed lease as outlined above.

Best regards, Laura

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Sent from typographically limited device. Please excuse typos and brevity.



Mayor Dave Potter  
 City Council Members  
 Box CC  
 City Hall  
 Carmel by the Sea, CA. 93921

REC'D 122MAR1 AM 9:43:03

March 1, 2022

RE: FY 22-23 CIP Consideration for Mission Trail Nature Preserve

Dear Mayor Potter, and Members of the City Council,

On behalf of the Board of Friends of Mission Trail Nature Preserve, a City of Carmel-by-the-Sea support group, we are writing to ask for your endorsement for two priority Mission Trail Nature Preserve (MTNP) projects as part of the FY 22-23 Capital Improvement Plan (CIP). These projects are (1) Doolittle Trail repair including the addition of a new pedestrian bridge to address hiking hazards and erosion issues, and (2) Lester Rowntree Native Plant Garden restoration final design and construction drawings. Further description of these projects is as follows:

**Doolittle Trail Repair Including the Addition of a New Pedestrian Bridge (\$117,500)**

As recommended in the 2019 Streambed Stability Study, this project includes removing a section of concrete ford, decommissioning and restoring an existing trail segment, and rerouting the trail with a new pedestrian bridge spanning the seasonal creek adjacent to the Laiolo Memorial Redwood Grove (Redwood Grove). This project "provides significant ecological benefits as well as functional, safety, and aesthetic improvements" as noted in the study. Please see the 2019 Streambed Stability Study Project 4 and C5 Site Plan Map for details, and for the project cost estimate including design and implementation of \$117,500. The Friends of Mission Trail Nature Preserve recently invested \$24,807 in other improvements along the Doolittle Trail as advance work to this project including recontouring and reconstructing the trail, constructing 35 feet of new bridge decking, major ivy removal in the Redwood Grove and next to the Doolittle trailhead at Rio Rd., and removal of dead and invasive trees.

**Lester Rowntree Native Plant Garden Restoration Final Design and Construction Drawings (\$50,000)**

This project is to complete the Lester Rowntree Native Plant Garden restoration final design and construction drawings with a project cost estimate of \$50,000. It follows preparatory work and investment by the Friends of Mission Trail Nature Preserve including a \$25,000 conceptual design and \$5,000 topographical survey.

These two projects would build upon the City's progress in implementing the MTNP Master Plan while addressing an important hiking hazard, and access and erosion issues adjacent to the Redwood Grove in which we are seeing increasing visitation following this past year's invasive ivy removal and clean up. Visitation in the MTNP is at an all-time high with both residents and visitors enjoying the open space and recreational respite the Preserve provides.

WILLIAMSON  
NATIONAL TRAIL

Williamson National Trail  
P.O. Box 100  
Pahrump, NV 89049  
702-739-1111

Dear Mr. [Name]:  
Thank you for your letter of [Date] regarding [Topic].

The National Trail System is a collection of trails managed by the U.S. Forest Service, U.S. Department of the Interior. It includes the National System of Public Trails, the National System of Public Ranges, and the National System of Public Lands. The National System of Public Trails is the largest and most diverse of the three systems, and it includes a wide variety of trails for hiking, horseback riding, and other recreational activities. The National System of Public Ranges is a system of public lands that are managed for multiple uses, including grazing, recreation, and conservation. The National System of Public Lands is a system of public lands that are managed for a variety of purposes, including recreation, conservation, and resource management.

Regarding your request for information regarding the National Trail System, I would like to provide you with some additional information. The National Trail System is a collection of trails managed by the U.S. Forest Service, U.S. Department of the Interior. It includes the National System of Public Trails, the National System of Public Ranges, and the National System of Public Lands. The National System of Public Trails is the largest and most diverse of the three systems, and it includes a wide variety of trails for hiking, horseback riding, and other recreational activities. The National System of Public Ranges is a system of public lands that are managed for multiple uses, including grazing, recreation, and conservation. The National System of Public Lands is a system of public lands that are managed for a variety of purposes, including recreation, conservation, and resource management.

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The Friends of Mission Trail Nature Preserve greatly appreciates the ongoing attention the City has been providing to the Preserve and strongly encourages the City Council to build upon that track record by funding these two projects.

Sincerely,

Greg D'Ambrosio  
Vice President  
Friends of Mission Trail Nature Preserve  
(As authorized by the Board on February 28, 2022)

Marsha Zelus, Greg D'Ambrosio, Doug Schmitz, Mary Anne Lloyd, Skip Lloyd, Scott Lonergan, Laura Bowling

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