



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

Mayor Dale Byrne, Councilmembers Jeff Baron, Hans Buder, Bob Delves, and Alissandra Dramov  
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, February 4, 2025

4:30 PM

#### HYBRID MEETING ATTENDANCE OPTIONS

This meeting will be held in person and via teleconference ("hybrid"). The public is welcome to attend the meeting in person or remotely via Zoom, however, the meeting will proceed as normal even if there are technical difficulties accessing Zoom. The City will do its best to resolve any technical issues as quickly as possible. To view or listen to the meeting from home, you may also watch the live stream on the City's YouTube page at: <https://www.youtube.com/@CityofCarmelbytheSea/streams>. To participate in the meeting via Zoom, copy and paste the link below into your browser.

<https://ci-carmel-ca-us.zoom.us/j/86890317537> Webinar ID: 868 9031 7537 Passcode: 100836 (253) 215-8782

#### HOW TO OFFER PUBLIC COMMENT

The public may give public comment at this meeting in person, or using the Zoom teleconference module, provided that there is access to Zoom during the meeting. Zoom comments will be taken after the in-person comments. The public can also email comments to [cityclerk@ci.carmel.ca.us](mailto:cityclerk@ci.carmel.ca.us). Comments must be received at least 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 made part of the record.

### OPEN SESSION 4:30 PM

#### CALL TO ORDER AND ROLL CALL

#### PLEDGE OF ALLEGIANCE

#### EXTRAORDINARY BUSINESS

- A. Carmel High School Report Out (Estimated time - 5 min)
- B. Introduction of New City Employees (Estimated time - 20 min)
- C. Non-Profit Spotlight - Harmony at Home (Estimated time - 10 min)

#### 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. Persons are not required to provide their names, however, it is helpful for speakers to state their names so they may be identified in the minutes of the meeting. Under the Brown Act, public comment for matters on the agenda must relate to that agenda item and public comments for matters not on the agenda must relate to the subject matter jurisdiction of this legislative body. If a member of the public attending the meeting remotely violates the Brown Act by failing to comply with these requirements of the Brown Act, then that speaker will be muted.

## **ANNOUNCEMENTS (Estimated time - 10 min)**

- A.** City Administrator Announcements
- B.** City Attorney Announcements
- C.** Councilmember Announcements

## **ORDERS OF BUSINESS**

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

- 1.** Receive the Ad Hoc Committee report from staff and provide direction regarding the future of the Flock camera system, and consider adoption of Resolution 2025-015 authorizing the City Administrator to execute a modified agreement with Flock Safety Group Inc. for the continued use of Automated License Plate Reader (ALPR) technology, with provisions for the new number of cameras leased, and language added to the agreement that protects the privacy of Carmel-by-the-Sea residents, in an amount not to exceed \$30,000 over two years (Estimated time - 30 min)
- 2.** Resolution 2025-016, authorizing the City Administrator to execute a Professional Services Agreement with Moffatt & Nichol, Inc. for coastal engineering and environmental services related to the Carmel Beach Coastal Protection and Access Improvement Projects, with a not-to-exceed budget of \$399,013 (Estimated time - 5 min)
- 3.** Resolution 2025-017, authorizing the City Administrator to execute Amendment No. 1 to the Professional Services Agreement with Advance Design Consultants, Inc. for Electric Panel Upgrades and Electric Vehicle Charging related projects, for a not-to-exceed fee of \$58,020 (Estimated time - 5 min)
- 4.** Resolution 2025-018, authorizing the City Administrator to execute Amendment No. 3 to the Professional Services Agreement (PSA) with AUSONIO, INC. for Project Management Services for a fee increase of \$50,000 and a not-to-exceed fee of \$175,000 for Fiscal Year 2024/25 (Estimated time - 10 min)
- 5.** Resolution 2025-019 ratifying appointments to the Planning Commission, and Forest and Beach Commission (Estimated time - 10 min)
- 6.** Discussion of Draft Agreement with Carmel Public Library Foundation Regarding Harrison Memorial Library Centennial Restoration and Request for Direction (Estimated time - 30 min)

## **FUTURE AGENDA ITEMS**

## **ADJOURNMENT**

This agenda was posted at City Hall, Monte Verde Street between Ocean Avenue and 7th Avenue, Harrison Memorial Library, located on the NE corner of Ocean Avenue and Lincoln Street, 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 Staff Report

February 4, 2025  
ORDERS OF BUSINESS

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

**SUBMITTED BY:** Paul Tomasi, Chief of Police & Public Safety Director

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

**SUBJECT:**

Receive the Ad Hoc Committee report from staff and provide direction regarding the future of the Flock camera system, and consider adoption of Resolution 2025-015 authorizing the City Administrator to execute a modified agreement with Flock Safety Group Inc. for the continued use of Automated License Plate Reader (ALPR) technology, with provisions for the new number of cameras leased, and language added to the agreement that protects the privacy of Carmel-by-the-Sea residents, in an amount not to exceed \$30,000 over two years (Estimated time - 30 min)

## RECOMMENDATION:

Receive the Ad Hoc Committee report from staff, provide direction regarding the future of the Flock camera system, and adopt Resolution 2025-015 authorizing the City Administrator to execute a modified agreement with Flock Safety Group Inc. for the continued use of Automated License Plate Reader (ALPR) technology, with provisions for the new number of cameras leased, and language added to the agreement that protects the privacy of Carmel-by-the-sea residents, in an amount not to exceed \$30,000 over two years.

## BACKGROUND/SUMMARY:

In April 2023, the city entered into an agreement with Flock camera system for 30 license plate reader cameras (**Attachment 2**) via Resolution 2023-031 (**Attachment 3**). Twenty-four (24) of those cameras being "Falcon" pole mounted cameras and 6 being "Wing" style cameras. Wing style cameras use existing camera systems rather than being a newly installed camera on poles like the Falcon cameras. The wing cameras were added to the existing six locations where the city in 2017 placed perimeter cameras at various entry/exit point in and out of the Village.

Shortly after installing the Flock cameras, several community members raised concerns about the cameras. In July 2023, The City Council created an Ad Hoc Committee, comprised of Councilmember Alissandra Dramov and then Councilmember Bobby Richards. During 2024, several Ad Hoc Committee meetings were held and the concerns raised focused on four specific concerns.

- **Privacy:** How do we protect the community's personal data (license plate information) from a cloud-based system owned and managed by a corporation?

- **Number of Cameras:** Do we need 30 cameras in Carmel-by-the-Sea? What is an appropriate number?
- **Aesthetic:** Can we change the look, size, location of the cameras to lessen the visual impact on our village?
- **Expense vs Safety:** What is the cost of the cameras and how do we better manage the cost while improving safety?

### **Privacy:**

The camera records license plates and the storage are via a cloud-based storage system. Flock does not have the ability to obtain registration or owner information from license plates. This type of information is obtained by the Police Department. Flock does not have the ability to access any local, state, or federal systems.

For example: If the Police Department is doing an investigation and searching for a vehicle, we enter the license plate into the system as a search. If we receive a match, we run the vehicle through our various databases to confirm it is the wanted vehicle, before acting. If another agency adds a license plate to the system, commonly referred to as a Hotlist, we receive a notification when that vehicle goes by one of our cameras. We then required to run that license plate through our database systems to confirm that we have the right vehicle. All data recorded by Carmel cameras is owned by Carmel and is never sold to 3rd parties.

### **Number of Cameras:**

This number should be based on how safe we want to make the Village and at what cost. We could place a camera on each corner but that would be a lot of cameras and very expensive. Given our crime rates, we may not need 30 cameras. We have had six cameras on the perimeter of the City which have provided us with useful data for the prevention and capture of criminals. Having additional cameras in the downtown area and scattered throughout the residential area helps the Police track movement of wanted vehicles and prosecute cases against subjects who commit crimes by providing evidence they were in specific locations. The City Council should make the decision about how many cameras it would like to have with the input from the Chief of Police.

### **Aesthetic:**

The look of the poles, size of the camera boxes, and solar panels take away from the view of scenery in the village. The cameras were placed in areas that have raised a lot of concern with some residents. There are options to consider with the Flock cameras, or any camera we use. These options include direct power to existing light poles, which would eliminate the need for additional poles and large solar panels. Like the perimeter cameras we installed in 2017, the city was able to negotiate with PG&E for use of their existing poles to mount our camera system. Should the City elect to install cameras downtown, we could work with PG&E to directly install the cameras to their existing light poles in specific areas downtown. This would eliminate the poles and solar panels making these cameras much less obtrusive.

### **Expense vs Safety:**

The Falcon cameras (Pole) are \$2500, and the Wing cameras (existing on our perimeter cameras) are \$1500 each year. Our initial contract was for two years, with 24 Falcon cameras (\$60,000) and 6 Wing cameras (\$9000) per year. Year 1 cost the City \$77,900 due to a one-time \$8,900 for Implementation fees and the second year cost the city \$69,000. We may see an increase due to inflation and a change in cost for the cameras in subsequent years, but these were the costs in 2023 when the City signed the contract. The City Council needs to decide how many cameras are needed and what expense we are willing to pay.

### **Options to Consider:**

The Ad Hoc developed a series of options for Council to consider in their decision making for future use of the cameras.

1. Make no changes to the Flock Camera System: Our current contract which expires in April 2025, is a two-year agreement for 30 ALPR cameras, consisting of 24 Falcon cameras and 6 Wing cameras. If Council elects this option, the contract will automatically renew on March 30<sup>th</sup>.
2. Cancel the contract with Flock and remove all of the Flock cameras, leaving the city with the six 2017 perimeter cameras. Cancellation of modification of the contract is required prior to 30 days before the automatic renewal. Dependent on councils decision, written notification to terminate or amend the existing contract would need to be made prior to March 4, 2025.
3. Renegotiate a new contract with Flock with staff recommendations or modifications of staffs recommendation. Should council select this option, we would need to contact Flock no less than 30 days prior to the end of the existing contract and advise them of our intention to modify the existing contract.
4. Start over and research other companies that also provide this type of service. There are other camera systems we could explore. Consideration for this option should include the fact that almost all of our agency partners use the Flock camera system which creates a network of cameras that Carmel can use.

### **Recommendation from Staff:**

It is the professional opinion of the Chief of Police that the Flock cameras are a benefit to the safety of the Village. Although our crime rates aren't as high as some cities, we still have a history of significant crimes taking place and we remain a prime target for criminals who are looking to victimize both our residents and businesses. Our Village contains several high-end retail shops and vacant residences, both of which make us a desirable location for criminal activity. These cameras act as both a preventative precaution as well as a enforcement tool to deter and prosecute crime.

Cameras are a visual deterrent for criminals who are looking for easy targets. The use of the Flock cameras connects us to other peninsula cities, who use the Flock cameras. Being a part of this regional camera system has helped us multiple times in 2024, solve and prevent serious criminal activity in our village.

Being a part of a broader network of Flock cameras that can directly alert the officers in the field of a wanted vehicle helps us protect the Village. This greatly increases the ability of police officers to do their jobs of protecting the village. These cameras act as extra eyes for officers, essentially expanding the effectiveness of our police force without actually expanding our police force.

Flock has developed several safeguards for use with these cameras, including adding the Transparency Portal, which we have placed on our city webpage. The portal requires that any data retrieved from the Flock cameras is associated with an existing case. Random checks of license plates are not allowed and violate our City and Department use policy, which is also located on our city webpage along with Flock's Policies.

Flock also does not run any license plates through any databases. Only Police Department officials can retrieve license plate data and run those plates through our database. Access to any license plate data is only through the Transparency portal and requires a case number be assigned as justification. This security of people's personal information is far more secure with the Transparency portal than other operating systems.

The Flock cameras, even though we have only had a handful of them active, have helped us continue to protect this village despite the very low staffing numbers. The balance between Safety and Expense cannot adequately be provided with a certain number of cameras. The goal is to find a balance between a cost-effective way to improve the safety of the community, while addressing the issues of Aesthetics and Privacy

for our village.

It is my recommendation that the City continue with the Flock Camera system, and adopt the Resolution (**Attachment 1**) which includes the following conditions:

1. Advise Flock of our intention to modify the existing contract to include the following.
  - Keep the six wing cameras that have been integrated into our existing perimeter camera system.
2. Keep the option of adding 6-10 additional cameras during the term of the contract, once PG&E approval is obtained for installation on existing light poles in our business district. Payment of these additional cameras won't begin until they are able to be installed on existing city light poles. Installing cameras on existing light poles greatly reduces the visual appearance while still providing the same security.
3. Incorporate a yearly Police Department Council report showing the use and effectiveness of the camera system. This data would help navigate potential changes to the camera system. It is suggested we incorporate the yearly report in with the already required yearly report of the use and acquisition of Military Equipment (AB481) and include other relevant police data for the public.
4. Work with Flock to ensure language preventing the sharing of personal data by Flock is clearly stated in the contract.
5. Have Flock clearly state in our contract language that any expansion of the system beyond our agreed upon terms to include the use of facial recognition must be approved by the City of Carmel-by-the-Sea prior to implementation.

During the past year, we have worked with Flock on one additional suggested condition for the village:

*\* Create an Opt-out program for residents to 'self-remove' from the system. The opt out means the person who opted out will not have their license plate data stored in the system.*

Since presenting this option at our last Ad Hoc meeting, we have been in contact with Flock who have stated that this option would be problematic to implement for any city. Due to potential legal problems associated with this option we are no longer including it as a recommendation.

#### **FISCAL IMPACT:**

Fiscal Impact is dependent on Council Direction and the number of cameras staff is directed to maintain or install.

Each pole mounted camera "Falcon" \$2500 per year lease.

Each wing camera "Wing" \$1500 per year lease.

The current agreement, which was a two year agreement entered into on April 5th 2023, was for a total amount of \$146,900.

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

April 4, 2023, Council Adopted Resolution 2023-031 - Authorizing the City Administrator to execute a 24-month service agreement with Flock Safety Group Inc. for the lease of twenty-four (24) Falcon automated license plate reader (ALPR) cameras and six (6) wing (ALPR) software overlays onto existing city cameras, for a year 1 cost of \$77,900 and authorize the city manager to extend into a two-year renewal agreement to maintain the program, not to exceed \$69,000 annually.

## ATTACHMENTS:

Attachment 1) Resolution 2025-015

Attachment 2) Flock Professional Service Agreement (current PSA)

Attachment 3) 2023 Resolution



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

**RESOLUTION NO. 2025-015**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A MODIFIED AGREEMENT WITH FLOCK SAFETY GROUP INC. FOR THE CONTINUED USE OF AUTOMATED LICENSE PLATE READER (ALPR) TECHNOLOGY, WITH PROVISIONS FOR THE NEW NUMBER OF CAMERAS LEASED, AND LANGUAGE ADDED TO THE AGREEMENT THAT PROTECTS THE PRIVACY OF CARMEL-BY-THE-SEA RESIDENTS, IN AN AMOUNT NOT TO EXCEED \$30,000 OVER TWO YEARS**

WHEREAS, Flock Safety is a recognized leader in the provision of Automated License Plate Reader (ALPR) technology, utilized by numerous municipalities throughout California, including many within Monterey County; and

WHEREAS, in April 2023, the City entered into a two year agreement with Flock Safety Group Inc. for the lease of twenty-four (24) Falcon ALPR cameras and six (6) Wing (ALPR) software overlays onto existing city cameras, and is due to be renewed again soon; and

WHEREAS, the City has received community input regarding the use of ALPR technology, including concerns related to aesthetics, privacy, and the number of deployed cameras; and

WHEREAS, the City has actively engaged with the community through public meetings to address these concerns; and

WHEREAS, the City Council desires to continue the use of ALPR technology while addressing community concerns and optimizing the program; and

WHEREAS, the City Council authorizes the City Administrator to negotiate and execute a modified agreement with Flock Safety Group, Inc., incorporating appropriate terms and conditions to address community concerns regarding privacy.

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

1. Authorize the City Administrator to execute a modified Professional Services Agreement with Flock Safety Group, Inc., for the continued lease of six (6) Wing software overlays on existing city cameras, with any future expansion requiring Council approval.
2. The modified agreement shall explicitly prohibit Flock Safety from sharing any personal data collected by the ALPR system or expanding the camera capabilities without authorization of the City, to include facial recognition.
3. The modified agreement shall include a provision for adding cameras during the term of the contract, providing Council approves of the number and location of the cameras.

4. The total contract amount for the duration of the agreement shall not exceed \$30,000 with any addition of cameras requiring Council approval of an amended amount.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of February 2025, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dale Byrne, Mayor

\_\_\_\_\_  
Nova Romero, MMC, City Clerk

PSD-FLOCK-21-22-23

**FLOCK GROUP INC.  
SERVICES AGREEMENT  
ORDER FORM**

This Order Form together with the Terms (as defined herein) describe the relationship between Flock Group Inc. ("Flock") and the customer identified below ("Agency") (each of Flock and Customer, a "Party"). This order form ("Order Form") hereby incorporates and includes the "GOVERNMENT AGENCY AGREEMENT" attached (the "Terms") which describe and set forth the general legal terms governing the relationship (collectively, the "Agreement"). The Terms contain, among other things, warranty disclaimers, liability limitations and use limitations.

The Agreement will become effective when this Order Form is executed by both Parties (the "Effective Date").

<b>Agency:</b> CA – City of Carmel, Police Department	<b>Contact Name:</b> Jeff Watkins
<b>Legal Entity Name:</b> City of Carmel by the Sea, a municipal corporation	<b>Phone:</b> (831) 624-6403
<b>Address:</b> 4th Ave Carmel by the Sea, California 93921	<b>E-Mail:</b> jwatkins@cl.carmel.ca.us
<b>Expected Payment Method:</b>	<b>Billing Contact:</b> (if different than above)

<b>Initial Term:</b> 24 months <b>Renewal Term:</b> 24 months	<b>Billing Term:</b> Billing Term: Invoice Plan payment due Net 30 per terms and conditions <b>Billing Frequency:</b> 1 year invoices broken into 3 payments. 1st invoice: All professional services/implementation costs and 50% of Annual Recurring Subtotal. 2nd Invoice: 25% of Annual Recurring Subtotal. 3rd Invoice: 25% of Annual Recurring Subtotal. Annual payment at annual subscription term date invoiced for the remainder subscription term after initial 12 months.
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**Professional Services and One-Time Purchases**

<b>Name</b>	<b>Price/Usage Fee</b>	<b>QTY</b>	<b>Subtotal</b>
Professional Services - Standard Implementation Fee	\$350.00	24.00	\$8,400.00
Professional Services - Advanced Implementation Fee	\$500.00	1.00	\$500.00

**Hardware and Software Products**

Annual recurring amounts over subscription term

<b>Name</b>	<b>Price/Usage Fee</b>	<b>QTY</b>	<b>Subtotal</b>
Falcon	\$2,500.00	24.00	\$60,000.00
Wing LPR	\$1,500	6.00	\$9,000.00

<b>Subtotal Year 1:</b>	\$77,900.00
<b>Subscription Term:</b>	24 Months
<b>Annual Recurring Total:</b>	\$69,000.00
<b>Estimated Sales Tax:</b>	\$0.00
<b>Total Contract Amount:</b>	\$146,900.00

I have reviewed and agree to the Customer Implementation Guide on Schedule B at the end of this agreement.

By executing this Order Form, Agency represents and warrants that it has read and agrees all of the terms and conditions contained in the Terms attached. The Parties have executed this Agreement as of the dates set forth below.

**FLOCK GROUP, INC.**

**Agency: CA – City of Carmel by the Sea**

By: DocuSigned by:  
Mark Smith  
AC5C031454C24F3

By: DocuSigned by:  
Chip Rerig  
36880EEECAD81A

Name: Mark Smith

Name: chip Rerig

Title: General Counsel

Title: City Administrator

Date: 4/5/2023

Date: 4/5/2023

# flock safety

## GOVERNMENT AGENCY AGREEMENT

This Government Agency Agreement (this "Agreement") is entered into by and between Flock Group, Inc. with a place of business at 1170 Howell Mill Rd NW Suite 210, Atlanta, GA 30318 ("Flock") and the government agency identified in the signature block of the Order Form ("Agency") (each a "Party," and together, the "Parties").

### RECITALS

**WHEREAS**, Flock offers a software and hardware situational awareness solution for automatic license plates, video and audio detection through Flock's technology platform (the "Flock Service"), and upon detection, the Flock Services are capable of capturing audio, video, image, and recording data and can provide notifications to Agency upon the instructions of Non-Agency End User (as defined below) ("Notifications");

**WHEREAS**, Agency desires access to the Flock Service on existing cameras, provided by Agency, or Flock provided Flock Hardware (as defined below) in order to create, view, search and archive Footage and receive Notifications, including those from Non-Agency End Users of the Flock Service (where there is an investigative or bona fide lawful purpose) such as schools, neighborhood homeowners associations, businesses, and individual users;

**WHEREAS**, Flock deletes all Footage on a rolling thirty (30) day basis, excluding Wing Replay which is deleted after seven (7) days. Agency is responsible for extracting, downloading and archiving Footage from the Flock System on its own storage devices for auditing for prosecutorial/administrative purposes; and

**WHEREAS**, Flock desires to provide Agency the Flock Service and any access thereto, subject to the terms and conditions of this Agreement, solely for the awareness, prevention, and prosecution of crime, bona fide investigations by police departments, and archiving for evidence gathering ("Permitted Purpose").

### AGREEMENT

**NOW, THEREFORE**, Flock and Agency agree that this Agreement, and any addenda attached hereto or referenced herein, constitute the complete and exclusive statement of the Agreement of the Parties with respect to the subject matter of this Agreement, and replace and supersede all prior agreements, term sheets, purchase orders, correspondence, oral or written communications and negotiations by and between the Parties.

### 1. DEFINITIONS

Certain capitalized terms, not otherwise defined herein, have the meanings set forth or cross-referenced in this Section 1.

1.1 "Advanced Search" means the provision of Services, via the web interface using Flock's software applications, which utilize advanced evidence delivery capabilities including convoy analysis, multi-geo search, visual search, cradlepoint integration for automatic vehicle location, and common plate analysis.

1.2 "Agency Data" means the data, media and content provided by Agency through the Services. For the avoidance of doubt, the Agency Data will include the Footage.

1.3 "Agency Generated Data" means the messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, other information or materials posted, uploaded, displayed, published, distributed, transmitted, broadcasted, or otherwise made available on or submitted through the Wing Suite.

- 1.17 "**Footage**" means still images, video, audio and other data captured by the Flock Hardware or Agency Hardware in the course of and provided via the Services.
- 1.18 "**Hotlist(s)**" means a digital file containing alphanumeric license plate related information pertaining to vehicles of interest, which may include stolen vehicles, stolen vehicle license plates, vehicles owned or associated with wanted or missing person(s), vehicles suspected of being involved with criminal or terrorist activities, and other legitimate law enforcement purposes. Hotlist also includes, but is not limited to, national data (i.e. NCIC) for similar categories, license plates associated with AMBER Alerts or Missing Persons/Vulnerable Adult Alerts, and includes manually entered license plate information associated with crimes that have occurred in any local jurisdiction.
- 1.19 "**Implementation Fee(s)**" means the monetary fees associated with the Installation Services, as defined below.
- 1.20 "**Installation Services**" means the services provided by Flock for installation of Agency Hardware and/or Flock Hardware, including any applicable installation of Embedded Software on Agency Hardware.
- 1.21 "**Non-Agency End User(s)**" means any individual, entity, or derivative therefrom, authorized to use the Services through the Web Interface, under the rights granted to pursuant to the terms (or to those materially similar) of this Agreement.
- 1.22 "**Services**" or "**Flock Services**" means the provision, via the Web Interface, of Flock's software applications for automatic license plate detection, alerts, audio detection, searching image records, video and sharing Footage.
- 1.23 "**Support Services**" means Monitoring Services, as defined in Section 2.10 below.
- 1.24 "**Usage Fee**" means the subscription fees to be paid by the Agency for ongoing access to Services.
- 1.25 "**Web Interface**" means the website(s) or application(s) through which Agency and its Authorized End Users can access the Services, in accordance with the terms of this Agreement.
- 1.26 "**Wing Suite**" means the Flock interface which provides real-time access to the Flock Services, location of Flock Hardware, Agency Hardware, third-party cameras, live-stream video, Wing Livestream, Wing LPR, Wing Replay, alerts and other integrations.
- 1.27 "**Wing Livestream**" means real-time video integration with third-party cameras via the Flock interface.
- 1.28 "**Wing LPR**" means software integration with third-party cameras utilizing Flock's Vehicle Fingerprint Technology™ for license plate capture.
- 1.29 "**Wing Replay**" means enhanced situational awareness encompassing Footage retention, replay ability, and downloadable content from Hot Lists integrated from third-party cameras.

- 1.4. "**Agency Hardware**" means the third-party camera owned or provided by Agency and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Services.
- 1.5. "**Aggregated Data**" means information that relates to a group or category of individuals, from which any potential individuals' personal identifying information has been permanently "anonymized" by commercially available standards to irreversibly alter data in such a way that a data subject (i.e., individual person or impersonal entity) can no longer be identified directly or indirectly.
- 1.6. "**Authorized End User(s)**" means any individual employees, agents, or contractors of Agency accessing or using the Services through the Web Interface, under the rights granted to Agency pursuant to this Agreement.
- 1.7. "**Deployment Plan**" means the strategic geographic mapping of the location(s) and implementation of Flock Hardware, and/or other relevant Services required under this Agreement.
- 1.8. "**Documentation**" means text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Services which are provided by Flock to Agency in accordance with the terms of this Agreement.
- 1.9. "**Embedded Software**" means the software and/or firmware embedded or preinstalled on the Flock Hardware or Agency Hardware.
- 1.10. "**Falcon Flex**" means an infrastructure-free, location-flexible license plate reader camera that enables the Agency to self-install.
- 1.11. "**Flock Hardware**" means the Flock cameras or device, pole, clamps, solar panel, installation components, and any other physical elements that interact with the Embedded Software and the Web Interface to provide the Flock Services.
- 1.12. "**Flock IP**" means the Services, the Documentation, the Embedded Software, the Installation Services, and any and all intellectual property therein or otherwise provided to Agency and/or its Authorized End Users in connection with the foregoing.
- 1.13. "**Flock Safety Falcon™**" means an infrastructure-free license plate reader camera that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.
- 1.14. "**Flock Safety Raven™**" means an audio detection device that provides real-time alerting to law enforcement based on programmed audio events such as gunshots, breaking glass, and street racing.
- 1.15. "**Flock Safety Sparrow™**" means an infrastructure-free license plate reader camera for residential roadways that utilizes Vehicle Fingerprint™ technology to capture vehicular attributes.



1.30 "**Vehicle Fingerprint™**" means the unique vehicular attributes captured through Services such as: type, make, color, state registration, missing/covered plates, bumper stickers, decals, roof racks, and bike racks.

## 2. SERVICES AND SUPPORT

**2.1 Provision of Access.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right to access the features and functions of the Services via the Web Interface during the Term, solely for the Authorized End Users. The Footage will be available for Agency's designated administrator, listed on the Order Form, and any Authorized End Users to access and download via the Web Interface for thirty (30) days. Authorized End Users will be required to sign up for an account and select a password and username ("**User ID**"). Flock will also provide Agency with the Documentation to be used in accessing and using the Services. Agency shall be responsible for all acts and omissions of Authorized End Users, and any act or omission by an Authorized End User which, if undertaken by Agency, would constitute a breach of this Agreement, shall be deemed a breach of this Agreement by Agency. Agency shall undertake reasonable efforts to make all Authorized End Users aware of the provisions of this Agreement as applicable to such Authorized End User's use of the Services and shall cause Authorized End Users to comply with such provisions. Flock may use the services of one or more third parties to deliver any part of the Services, (such as using a third party to host the Web Interface for cloud storage or a cell phone provider for wireless cellular coverage) which makes the Services available to Agency and Authorized End Users. Warranties provided by said third party service providers are the agency's sole and exclusive remedy and Flock's sole and exclusive liability with regard to such third-party services, including without limitation hosting the Web Interface. Agency agrees to comply with any acceptable use policies and other terms of any third-party service provider that are provided or otherwise made available to Agency from time to time.

**2.2 Embedded Software License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Embedded Software as installed on the Flock Hardware or Agency Hardware; in each case, solely as necessary for Agency to use the Services.

**2.3 Documentation License.** Subject to the terms of this Agreement, Flock hereby grants to Agency a non-exclusive, non-transferable right and license to use the Documentation during the Term in connection with its use of the Services as contemplated herein, and under Section 2.5 below.

**2.4 Wing Suite License.** Subject to all terms of this Agreement, Flock grants Agency a limited, non-exclusive, non-transferable, non-sublicensable (except to the Authorized End Users), revocable right to use the Wing Suite software and interface.

## 2.5 Usage Restrictions.

**2.5.1 Flock IP.** The permitted purpose for usage of the Flock Hardware, Agency Hardware, Documentation, Services, support, and Flock IP are solely to facilitate gathering evidence that could be used in a lawful criminal investigation by the appropriate government agency ("*Permitted Purpose*"). Agency will not, and will not permit any Authorized End Users to, (i) copy or duplicate any of the Flock IP; (ii) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which any software component of any of the Flock IP is compiled or interpreted, or apply any other process or procedure to derive the source code of any software included in the Flock IP; (iii) attempt to modify, alter, tamper with or repair any of the Flock IP, or attempt to create any derivative product from any of the foregoing; (iv) interfere or attempt to interfere in any manner with the functionality or proper working of any of the Flock IP; (v) remove, obscure, or alter any notice of any intellectual property or proprietary right appearing on or contained within any of the Services or Flock IP; (vi) use the Services, support, Flock Hardware, Documentation, or the Flock IP for anything other than the Permitted Purpose; or (vii) assign, sublicense, sell, resell, lease, rent, or otherwise transfer, convey, pledge as security, or otherwise encumber, Agency's rights under Sections 2.1, 2.2, 2.3, or 2.4.

**2.5.2. Flock Hardware.** Agency understands that all Flock Hardware is owned exclusively by Flock, and that title to any Flock Hardware does not pass to Agency upon execution of this Agreement. Except for Falcon Flex products, which are designed for self-installation, Agency is not permitted to remove, reposition, re-install, tamper with, alter, adjust or otherwise take possession or control of Flock Hardware. Notwithstanding the notice and cure period set for in Section 6.3, Agency agrees and understands that in the event Agency is found to engage in any of the restricted actions of this Section 2.5.2, all warranties herein shall be null and void, and this Agreement shall be subject to immediate termination (without opportunity to cure) for material breach by Agency.

**2.6 Retained Rights; Ownership.** As between the Parties, subject to the rights granted in this Agreement, Flock and its licensors retain all right, title and interest in and to the Flock IP and its components, and Agency acknowledges that it neither owns nor acquires any additional rights in and to the foregoing not expressly granted by this Agreement. Agency further acknowledges that Flock retains the right to use the foregoing for any purpose in Flock's sole discretion. There are no implied rights.

## 2.7 Suspension.

**2.7.1 Service Suspension.** Notwithstanding anything to the contrary in this Agreement, Flock may temporarily suspend Agency's and any Authorized End User's access to any portion or all of the Flock IP or Flock Service if Flock reasonably determines that (a) there is a threat or attack on any of the Flock IP by Agency; (b) Agency's or any Authorized End User's use of the Flock IP disrupts or poses a security risk to the Flock IP or any other customer or vendor of Flock; (c) Agency or any Authorized End User is/are using the Flock IP for fraudulent or illegal activities; (d) Agency has violated any term of this provision, including, but not limited to, utilizing the Services for

anything other than the Permitted Purpose; or (e) any unauthorized access to Flock Services through Agency's account ("*Service Suspension*"). Agency shall not be entitled to any remedy for the Service Suspension period, including any reimbursement, tolling, or credit.

**2.7.2 Service Interruption.** Services may be interrupted in the event that: (a) Flock's provision of the Services to Agency or any Authorized End User is prohibited by applicable law; (b) any third-party services required for Services are interrupted; (c) if Flock reasonably believe Services are being used for malicious, unlawful, or otherwise unauthorized use; (d) there is a threat or attack on any of the Flock IP by a third party; or (e) scheduled or emergency maintenance ("*Service Interruption*"). Flock will make commercially reasonable efforts to provide written notice of any Service Interruption to Agency and to provide updates regarding resumption of access to Flock Services. Flock will use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Interruption is cured. Flock will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Agency or any Authorized End User may incur as a result of a Service Interruption. To the extent that the Service Interruption is not caused by Agency's direct actions or by the actions of parties associated with the Agency, the expiration of the Term will be tolled by the duration of the Service Interruption (for any continuous suspension lasting at least one full day) prorated for the proportion of cameras on the Agency's account that have been impacted. For example, in the event of a Service Interruption lasting five (5) continuous days, Agency will receive a credit for five (5) free days at the end of the Term.

## **2.8 Installation Services.**

**2.8.1 Designated Locations.** For installation of Flock Hardware, excluding Falcon Flex products, prior to performing the physical installation of the Flock Hardware, Flock shall advise Agency on the location and positioning of the Flock Hardware for optimal license plate image capture, as conditions and location allow. Flock may consider input from Agency regarding location, position and angle of the Flock Hardware ("*Designated Location*") and collaborate with Agency to design the Deployment Plan confirming the Designated Locations. Flock shall have final discretion on location of Flock Hardware. Flock shall have no liability to Agency resulting from any poor performance, functionality or Footage resulting from or otherwise relating to the Designated Locations or delay in installation due to Agency's delay in confirming Designated Locations, in ordering and/or having the Designated Location ready for installation including having all electrical work preinstalled and permits ready, if necessary. After installation, any subsequent changes to the Deployment Plan ("*Reinstalls*") will incur a charge for Flock's then-current list price for Reinstalls, as listed in the then-current Reinstall policy (available at <https://www.flocksafety.com/reinstall-fee-schedule>) and any equipment fees. For clarity, Agency will receive prior notice and provide approval for any such fees. These changes include but are not limited to re-positioning, adjusting of the mounting, re-angling, removing foliage, replacement, changes to heights of poles, regardless of whether the need for Reinstalls related to vandalism, weather, theft, lack of criminal activity in view, and the like. Flock shall have full discretion on decision to reinstall Flock Hardware.

**2.8.2 Agency Installation Obligations.** Agency agrees to allow Flock and its agents reasonable access in and near the Designated Locations at all reasonable times upon reasonable notice for the purpose of performing the installation work. Although Flock Hardware is designed to utilize solar power, certain Designated Locations may require a reliable source of 120V or 240V AC power. In the event adequate solar power is not available, Agency is solely responsible for costs associated with providing a reliable source of 120V or 240V AC power to Flock Hardware. Flock will provide solar options to supply power at each Designated Location. If Agency refuses recommended solar options, Agency waives any reimbursement, tolling, or credit for any suspension period of Flock Services due to low solar power. Additionally, Agency is solely responsible for (i) any permits or associated costs, and managing the permitting process of installation of cameras or AC power; (ii) any federal, state, or local taxes including property, license, privilege, sales, use, excise, gross receipts, or other similar taxes which may now or hereafter become applicable to, measured by or imposed upon or with respect to the installation of the Flock Hardware, its use (excluding tax exempt entities), or (iii) any other supplementary cost for services performed in connection with installation of the Flock Hardware, including but not limited to contractor licensing, engineered drawings, rental of specialized equipment, or vehicles, third-party personnel (i.e. Traffic Control Officers, Electricians, State DOT-approved poles, etc., if necessary), such costs to be approved by the Agency ("**Agency Installation Obligations**"). In the event that a Designated Location for Flock Hardware requires permits, Flock may provide the Agency with a temporary alternate location for installation pending the permitting process. Once the required permits are obtained, Flock will relocate the Flock Hardware from the temporary alternate location to the permitted location at no additional cost. Without being obligated or taking any responsibility for the foregoing, Flock may pay and invoice related costs to Agency if Agency did not address them prior to the execution of this Agreement or a third party requires Flock to pay. Agency represents and warrants that it has, or shall lawfully obtain, all necessary right title and authority and hereby authorizes Flock to install the Flock Hardware at the Designated Locations and to make any necessary inspections or tests in connection with such installation.

**2.8.3 Flock's Obligations.** Installation of Flock Hardware shall be installed in a workmanlike manner in accordance with Flock's standard installation procedures, and the installation will be completed within a reasonable time from the time that the Designated Locations are confirmed. Upon removal of Flock Hardware, Flock shall restore the location to its original condition, ordinary wear and tear excepted. Following the initial installation of the Flock Hardware and any subsequent Reinstalls or maintenance operations, Flock's obligation to perform installation work shall cease; however, for the sole purpose of validating installation, Flock will continue to monitor the performance of Flock Hardware for the length of the Term and will receive access to the Footage for a period of seven (7) business days after the initial installation for quality control and provide any necessary maintenance. Labor may be provided by Flock or a third-party. Flock is not obligated to install, reinstall, or provide physical maintenance to Agency Hardware. Notwithstanding anything to the contrary, Agency understands that Flock will not provide installation services for Falcon Flex products.

**2.8.4 Ownership of Hardware.** Flock Hardware shall remain the personal property of Flock and will be removed upon the natural expiration of this Agreement at no additional cost to Agency. Agency shall not perform any acts which would interfere with the retention of title of the Flock Hardware by Flock. Should Agency default on any

payment of the Flock Services, Flock may remove Flock Hardware at Flock's discretion. Such removal, if made by Flock, shall not be deemed a waiver of Flock's rights to any damages Flock may sustain as a result of Agency's default and Flock shall have the right to enforce any other legal remedy or right.

**2.9 Hazardous Conditions.** Unless otherwise stated in the Agreement, Flock's price for its services under this Agreement does not contemplate work in any areas that contain hazardous materials, or other hazardous conditions, including, without limit, asbestos, lead, toxic or flammable substances. In the event any such hazardous materials are discovered in the designated locations in which Flock is to perform services under this Agreement, Flock shall have the right to cease work immediately in the area affected until such materials are removed or rendered harmless.

**2.10 Support Services.** Subject to the payment of fees, Flock shall monitor the performance and functionality of Flock Services and may, from time to time, advise Agency on changes to the Flock Services, Installation Services, or the Designated Locations which may improve the performance or functionality of the Services or may improve the quality of the Footage. The work, its timing, and the fees payable relating to such work shall be agreed by the Parties prior to any alterations to or changes of the Services or the Designated Locations ("*Monitoring Services*"). Flock will use commercially reasonable efforts to respond to requests for support. Flock will provide Agency with reasonable technical and on-site support and maintenance services ("*On-Site Services*") in-person or by email at [support@flocksafety.com](mailto:support@flocksafety.com), at no additional cost. Notwithstanding anything to the contrary, Agency is solely responsible for installation of Falcon Flex products. Agency further understands and agrees that Flock will not provide monitoring services or on-site services for Falcon Flex.

**2.11 Special Terms.** From time to time, Flock may offer certain special terms related to guarantees, service and support which are indicated in the proposal and on the Order Form and will become part of this Agreement, upon Agency's prior written consent ("*Special Terms*"). To the extent that any terms of this Agreement are inconsistent or conflict with the Special Terms, the Special Terms shall control.

**2.12 Upgrades to Platform.** Flock may, in its sole discretion, make any upgrades to system or platform that it deems necessary or useful to (i) maintain or enhance (a) the quality or delivery of Flock's products or services to its agencies, (b) the competitive strength of, or market for, Flock's products or services, (c) such platform or system's cost efficiency or performance, or (ii) to comply with applicable law. Parties understand that such upgrades are necessary from time to time and will not materially change any terms or conditions within this Agreement.

### 3. RESTRICTIONS AND RESPONSIBILITIES

**3.1 Agency Obligations.** Flock will assist Agency Authorized End Users in the creation of a User ID. Agency agrees to provide Flock with accurate, complete, and updated registration information. Agency may not select as its User ID a name that Agency does not have the right to use, or another person's name with the intent to impersonate that person. Agency may not transfer its account to anyone else without prior written permission of Flock. Agency

will not share its account or password with anyone and must protect the security of its account and password. Unless otherwise stated and defined in this Agreement, Agency may not designate Authorized End Users for persons who are not officers, employees, or agents of Agency. Authorized End Users shall only use Agency-issued email addresses for the creation of their User ID. Agency is responsible for any activity associated with its account. Agency shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services. Agency will, at its own expense, provide assistance to Flock, including, but not limited to, by means of access to, and use of, Agency facilities, as well as by means of assistance from Agency personnel to the limited extent any of the foregoing may be reasonably necessary to enable Flock to perform its obligations hereunder, including, without limitation, any obligations with respect to Support Services or any Installation Services.

**3.2 Agency Representations and Warranties.** Agency represents, covenants, and warrants that Agency will use the Services only in compliance with this Agreement and all applicable laws and regulations, including but not limited to any laws relating to the recording or sharing of video, photo, or audio content. Although Flock has no obligation to monitor Agency 's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of the foregoing.

#### **4. CONFIDENTIALITY; AGENCY DATA**

**4.1 Confidentiality.** To the extent allowable by applicable FOIA and state-specific Public Records Acts, each Party (the "*Receiving Party*") understands that the other Party (the "*Disclosing Party*") has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business (hereinafter referred to as "*Proprietary Information*" of the Disclosing Party). Proprietary Information of Flock includes non-public information regarding features, functionality and performance of the Services. Proprietary Information of Agency includes non-public data provided by Agency to Flock or collected by Flock via the Flock Hardware or Agency Hardware, to enable the provision of the Services, which includes but is not limited to geolocation information and environmental data collected by sensors. The Receiving Party agrees: (i) to take the same security precautions to protect against disclosure or unauthorized use of such Proprietary Information that the Party takes with its own proprietary information, but in no event will a Party apply less than reasonable precautions to protect such Proprietary Information, and (ii) not to use (except in performance of the Services or as otherwise permitted herein) or divulge to any third person any such Proprietary Information. Flock's use of the Proprietary Information may include processing the Proprietary Information to send Agency alerts, or to analyze the data collected to identify motion or other events. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Proprietary Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Proprietary Information pursuant to any judicial or governmental order, provided that the Receiving Party gives the Disclosing

Party reasonable prior notice of such disclosure to contest such order. For clarity, Flock may access, use, preserve and/or disclose the Footage to law enforcement authorities, government officials, and/or third parties, if legally required to do so or if Flock has a good faith belief that such access, use, preservation or disclosure is reasonably necessary to: (a) comply with a legal process or request; (b) enforce this Agreement, including investigation of any potential violation thereof; (c) detect, prevent or otherwise address security, fraud or technical issues; or (d) protect the rights, property or safety of Flock, its users, a third party, or the public as required or permitted by law, including respond to an emergency situation. Flock may store deleted Footage in order to comply with certain legal obligations, but such retained Footage will not be retrievable without a valid court order.

**4.2 Agency Data.** As between Flock and Agency, all right, title and interest in the Agency Data, belong to and are retained solely by Agency. Agency hereby grants to Flock a limited, non-exclusive, royalty-free, worldwide license to (i) use the Agency Data and perform all acts with respect to the Agency Data as may be necessary for Flock to provide the Flock Services to Agency, including without limitation the Support Services set forth in Section 2.10 above, and a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Data as a part of the Aggregated Data, (ii) disclose the Agency Data (both inclusive of any Footage) to enable law enforcement monitoring for elected law enforcement Hotlists as well as provide Footage search access to law enforcement for investigative purposes only, and (iii) and obtain Aggregated Data as set forth below in Section 4.5. As between Agency and Non-Agency End Users that have prescribed access of Footage to Agency, each of Agency and Non-Agency End Users will share all right, title and interest in the Non-Agency End User Data. This Agreement does not by itself make any Non-Agency End User Data the sole property or the Proprietary Information of Agency. Flock will automatically delete Footage older than thirty (30) days. Agency has a thirty (30) day window to view, save and/or transmit Footage to the relevant government agency prior to its deletion. Notwithstanding the foregoing, Flock automatically deletes Wing Replay after seven (7) days, during which time Agency may view, save and/or transmit such data to the relevant government agency prior to deletion. Flock does not own and shall not sell Agency Data.

**4.3 Agency Generated Data in Wing Suite.** Parties understand that Flock does not own any right, title, or interest to third-party video integrated into the Wing Suite. Flock may provide Agency with the opportunity to post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Wing Suite, messages, text, illustrations, files, images, graphics, photos, comments, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, or other information or materials produced by Agency. Agency shall retain whatever legally cognizable right, title, and interest that Agency has in Agency Generated Data. Agency understands and acknowledges that Flock has no obligation to monitor or enforce Agency's intellectual property rights to Agency Generated Data. To the extent legally permissible, Agency grants Flock a non-exclusive, perpetual, irrevocable, worldwide, royalty-free, fully paid license to use, reproduce, modify, display, and distribute the Agency Generated Data for the sole purpose of providing Flock Services. Flock does not own and shall not sell Agency Generated Data.

**4.4 Feedback.** If Agency provides any suggestions, ideas, enhancement requests, feedback, recommendations or other information relating to the subject matter hereunder, Agency hereby assigns (and will cause its agents and representatives to assign) to Flock all right, title and interest (including intellectual property rights) with respect to or resulting from any of the foregoing.

**4.5 Aggregated Data.** Flock shall have the right to collect, analyze, and anonymize Agency Data and Agency Generated Data to create Aggregated Data to use and perform the Services and related systems and technologies, including the training of machine learning algorithms. Agency hereby grants Flock a non-exclusive, worldwide, perpetual, royalty-free right (during and after the Term hereof) to use and distribute such Aggregated Data to improve and enhance the Services and for other development, diagnostic and corrective purposes, other Flock offerings, and crime prevention efforts. Parties understand that the aforementioned license is required for continuity of Services. No rights or licenses are granted except as expressly set forth herein. Flock does not sell Aggregated Data.

## 5. PAYMENT OF FEES

**5.1.1 Software Product Fees.** For Order Forms listing Wing Suite, Advanced Search and other software-only products, Agency will pay Flock the fees for the Initial Term (as described on the Order Form attached hereto) on or before the 30<sup>th</sup> day from the date of invoice. For any Renewal Terms, Agency shall pay invoice on or before the 30<sup>th</sup> day from the date of renewal invoice.

**5.1.2 Hardware Product Fees.** For Order Forms listing Falcon, Sparrow, Raven and Falcon Flex products, Agency will pay Flock fifty percent (50%) of the fees for the Initial Term as set forth on the Order Form on or before the 30<sup>th</sup> day from date of invoice. Upon commencement of installation, Flock will issue an invoice for twenty-five percent (25%) of total fees, and Agency shall pay on or before 30<sup>th</sup> day following date of invoice. Upon completion of installation, Flock will issue an invoice for the remaining balance and Agency shall pay on or before 30<sup>th</sup> day following date of final invoice. Flock is not obligated to commence the Installation Services unless and until the first payment has been made and shall have no liability resulting from any delay related thereto. For any Renewal Terms, Agency shall pay the total invoice on or before the 30<sup>th</sup> day from the date of renewal invoice.

**5.2 Notice of Changes to Fees.** Flock reserves the right to change the fees or applicable charges and to institute new charges and fees on subsequent terms by providing sixty (60) days' notice prior to the end of such Initial Term or Renewal Term (as applicable) to Agency (which may be sent by email).

**5.3 Invoicing, Late Fees; Taxes.** Flock may choose to bill through an invoice, in which case, full payment for invoices must be received by Flock thirty (30) days after the receipt of invoice. If Agency is a non-tax-exempt entity, Agency shall be responsible for all taxes associated with Services other than U.S. taxes based on Flock's net income. If Agency believes that Flock has billed Agency incorrectly, Agency must contact Flock no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to



receive an adjustment or credit. Agency acknowledges and agrees that a failure to contact Flock within this sixty (60) day period will serve as a waiver of any claim Agency may have had as a result of such billing error.

## 6. TERM AND TERMINATION

**6.1 Term.** The initial term of this Agreement shall be for the period of time set forth on the Order Form and shall commence at the time outlined in this section below (the "*Term*"). Following the Term, unless otherwise indicated on the Order Form, this Agreement will automatically renew for successive renewal terms of the greater of one year or the length set forth on the Order Form (each, a "*Renewal Term*") unless either Party gives the other Party notice of non-renewal at least thirty (30) days prior to the end of the then-current term.

- a. For Wing Suite products: the Term shall commence upon execution of this Agreement and continue for one (1) year, after which, the Term may be extended by mutual consent of the Parties, unless terminated by either Party.
- b. For Falcon and Sparrow products: the Term shall commence upon first installation and validation of Flock Hardware.
- c. For Raven products: the Term shall commence upon first installation and validation of Flock Hardware.
- d. For Falcon Flex products: the Term shall commence upon execution of this Agreement.
- e. For Advanced Search products: the Term shall commence upon execution of this Agreement.

**6.2 Termination for Convenience.** At any time during the agreed upon Term, either Party may terminate this Agreement for convenience. Termination for convenience of the Agreement by the Agency will be effective immediately. Termination for convenience by Agency will result in a one-time removal fee of \$500 per Flock Hardware. Termination for convenience by Flock will not result in any removal fees. Upon termination for convenience, a refund will be provided for Flock Hardware, prorated for any fees for the remaining Term length set forth previously. Wing Suite products and Advanced Search are not subject to refund for early termination. Flock will provide advanced written notice and remove all Flock Hardware at Flock's own convenience, within a commercially reasonable period of time upon termination. Agency's termination of this Agreement for Flock's material breach of this Agreement shall not be considered a termination for convenience for the purposes of this Section 6.2.

**6.3 Termination.** Notwithstanding the termination provisions in Section 2.5.2, in the event of any material breach of this Agreement, the non-breaching Party may terminate this Agreement prior to the end of the Term by giving thirty (30) days prior written notice to the breaching Party; provided, however, that this Agreement will not terminate if the breaching Party has cured the breach prior to the expiration of such thirty (30) day period. Either Party may terminate this Agreement, without notice, (i) upon the institution by or against the other Party of insolvency, receivership or bankruptcy proceedings, (ii) upon the other Party's making an assignment for the benefit of creditors, or (iii) upon the other Party's dissolution or ceasing to do business. Upon termination for Flock's material breach, Flock will refund to Agency a pro-rata portion of the pre-paid fees for Services not received due to such termination.

**6.4 No-Fee Term.** Flock will provide Agency with complimentary access to Hotlist alerts, as further described in Section 4.2 ("*No-Fee Term*"). In the event a Non-Agency End User grants Agency access to Footage and/or notifications from a Non-Agency End User, Agency will have access to Non-Agency End User Footage and/or notifications until deletion, subject to a thirty (30) day retention policy for all products except Wing Replay, which is subject to a seven (7) day retention policy. Flock may, in their sole discretion, provide access or immediately terminate the No-Fee Term. The No-Fee Term will survive the Term of this Agreement. Flock, in its sole discretion, can determine to impose a price per No-Fee Term upon thirty (30) days' notice to Agency. Agency may terminate any No-Fee Term or access to future No-Fee Terms upon thirty (30) days' notice.

**6.5 Survival.** The following Sections will survive termination: 2.5, 2.6, 3, 4, 5, 6.4, 7.3, 7.4, 8.1, 8.2, 8.3, 10.1 and 10.6.

## **7. REMEDY; WARRANTY AND DISCLAIMER**

**7.1 Remedy.** Upon a malfunction or failure of Flock Hardware or Embedded Software (a "*Defect*"), Agency must notify Flock's technical support as described in Section 2.10 above. If Flock is unable to correct the Defect, Flock shall, or shall instruct one of its contractors to repair or replace the Flock Hardware or Embedded Software suffering from the Defect. Flock reserves the right in their sole discretion to refuse or delay replacement or its choice of remedy for a Defect until after it has inspected and tested the affected Flock Hardware provided that such inspection and test shall occur within a commercially reasonable time, but no longer than seven (7) business days after Agency notifies the Flock of a known Defect. In the event of a Defect, Flock will repair or replace the defective Flock Hardware at no additional cost to Agency. Absent a Defect, in the event that Flock Hardware is lost, stolen, or damaged, Agency may request that Flock replace the Flock Hardware at a fee according to the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>). Agency shall not be required to replace subsequently lost, damaged or stolen Flock Hardware, however, Agency understands and agrees that functionality, including Footage, will be materially affected due to such subsequently lost, damaged or stolen Flock Hardware and that Flock will have no liability to Agency regarding such affected functionality nor shall the Usage Fee or Implementation Fees owed be impacted. Flock is under no obligation to replace or repair Flock Hardware or Agency Hardware.

**7.2 Exclusions.** Flock will not provide the remedy described in Section 7.1 if Agency has misused the Flock Hardware, Agency Hardware, or Service in any manner.

**7.3 Warranty.** Flock shall use reasonable efforts consistent with prevailing industry standards to maintain the Services in a manner which minimizes errors and interruptions in the Services and shall perform the Installation Services in a professional and workmanlike manner. Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Flock or by third-party providers, or because of

other causes beyond Flock's reasonable control, but Flock shall use reasonable efforts to provide advance notice in writing or by e-mail of any scheduled service disruption.

**7.4 Disclaimer.** THE REMEDY DESCRIBED IN SECTION 7.1 ABOVE IS AGENCY'S SOLE REMEDY, AND FLOCK'S SOLE LIABILITY, WITH RESPECT TO DEFECTIVE EMBEDDED SOFTWARE. FLOCK DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SERVICES ARE PROVIDED "AS IS" AND FLOCK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. THIS DISCLAIMER OF SECTION 7.4 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6.

**7.5 Insurance.** Flock will maintain commercial general liability policies with policy limits reasonably commensurate with the magnitude of Flock's business risk. Certificates of Insurance can be provided upon request.

**7.6 Force Majeure.** Parties are not responsible or liable for any delays or failures in performance from any cause beyond their control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of third-party technology providers, riots, fires, earthquakes, floods, power blackouts, strikes, supply chain shortages of equipment or supplies, weather conditions or acts of hackers, internet service providers or any other third party acts or omissions. Force Majeure includes the novel coronavirus Covid-19 pandemic, and the potential spread of variants, which is ongoing as of the date of the execution of this Agreement.

## **8. LIMITATION OF LIABILITY; NO FEE TERM; INDEMNITY**

**8.1 Limitation of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, FLOCK AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL HARDWARE AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, PRODUCT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY, INCOMPLETENESS OR CORRUPTION OF DATA OR FOOTAGE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND FLOCK'S ACTUAL KNOWLEDGE OR REASONABLE CONTROL INCLUDING REPEAT CRIMINAL ACTIVITY OR INABILITY TO CAPTURE FOOTAGE OR IDENTIFY AND/OR CORRELATE A LICENSE PLATE WITH THE FBI DATABASE; (D) FOR ANY PUBLIC DISCLOSURE OF PROPRIETARY INFORMATION MADE IN GOOD FAITH; (E) FOR CRIME PREVENTION; OR (F) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH

ALL OTHER CLAIMS, EXCEED THE FEES PAID AND/OR PAYABLE BY AGENCY TO FLOCK FOR THE SERVICES UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRIOR TO THE ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT FLOCK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION OF LIABILITY OF SECTION 8 ONLY APPLIES TO THE EXTENT ALLOWED BY THE GOVERNING LAW OF THE STATE MENTIONED IN SECTION 10.6.

**8.2 Additional No-Fee Term Requirements.** IN NO EVENT SHALL FLOCK'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THE COMPLIMENTARY NO-FEE TERM AS DESCRIBED IN SECTION 6.4 EXCEED \$100, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE. Parties acknowledge and agree that the essential purpose of this Section 8.2 is to allocate the risks under the No-Fee Term described in Section 6.4 and limit potential liability given the aforementioned complimentary service, which would have been substantially higher if Flock were to assume any further liability other than as set forth herein. Flock has relied on these limitations in determining whether to provide the complementary No-Fee Term. The limitations set forth in this Section 8.2 shall not apply to claims or damages resulting from Flock's other obligations under this Agreement.

**8.3 Responsibility.** Each Party to this Agreement shall assume the responsibility and liability for the acts and omissions of its own employees, deputies, officers, or agents, in connection with the performance of their official duties under this Agreement. Each Party to this Agreement shall be liable (if at all) only for the torts of its own officers, agents, or employees.

## 9. INDEMNIFICATION

Agency hereby agrees to indemnify and hold harmless Flock against any damages, losses, liabilities, settlements and expenses in connection with any claim or action that arises from an alleged violation of Section 3.1, a breach of this Agreement, Agency's Installation Obligations, Agency's sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Agency's use of the Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third Party right. Although Flock has no obligation to monitor Agency's use of the Services, Flock may do so and may prohibit any use of the Services it believes may be (or alleged to be) in violation of Section 3.1 or this Agreement.

Flock agrees to indemnify and hold Agency harmless against any damages, losses, liabilities, settlements and expenses, including attorney's fees and costs arising out of third party claims for copyright and intellectual property infringement, public records act claims, an alleged violation of Flock's obligations under this agreement, Flock's

sharing of any data in connection with the Flock system, Flock employees or agent or Non-Agency End Users, or otherwise from Flock's provision of Services, Flock Hardware, Agency Hardware and any Embedded Software, including any claim that such actions violate any applicable law or third Party right.

## 10. MISCELLANEOUS

**10.1 Compliance With Laws.** The Agency and Flock and its agents agree to comply with all applicable local, state and federal laws, regulations, policies and ordinances and their associated record retention schedules, including responding to any subpoena request(s). In the event Flock is legally compelled to comply with a judicial order, subpoena, or government mandate, to disclose Agency Data or Agency Generated Data, Flock will provide Agency with notice.

**10.2 Severability.** If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect.

**10.3 Assignment.** This Agreement is not assignable, transferable or sublicensable by either Party, without prior consent. Notwithstanding the foregoing, either Party may assign this Agreement, without the other Party's consent, (i) to any parent, subsidiary, or affiliate entity, or (ii) to any purchaser of all or substantially all of such Party's assets or to any successor by way of merger, consolidation or similar transaction.

**10.4 Entire Agreement.** This Agreement, together with the Order Form(s), the then-current Reinstall policy (<https://www.flocksafety.com/reinstall-fee-schedule>), Deployment Plan(s), and any attached addenda are the complete and exclusive statement of the mutual understanding of the Parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both Parties, except as otherwise provided herein. None of Agency's purchase orders, authorizations or similar documents will alter the terms of this Agreement, and any such conflicting terms are expressly rejected. In the event of any conflict of terms found in this Agreement or any other terms and conditions, the terms of this Agreement shall prevail.

**10.5 Relationship.** No agency, partnership, joint venture, or employment is created as a result of this Agreement and Agency does not have any authority of any kind to bind Flock in any respect whatsoever. Flock shall at all times be and act as an independent contractor.

**10.6 Governing Law; Venue.** This Agreement shall be governed by the laws of the State in which the Agency is located. The Parties hereto agree that venue would be proper in the chosen courts of the State of which the Agency is located. The Parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**10.7 Publicity.** Upon prior consent from Agency, Flock has the right to reference and use Agency's name and trademarks and disclose the nature of the Services provided hereunder in each case in business and development and marketing efforts, including without limitation on Flock's website.

**10.8 Export.** Agency may not remove or export from the United States or allow the export or re-export of the Flock IP or anything related thereto, or any direct product thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in Federal Acquisition Regulation ("FAR"), section 2.101, the Services, the Flock Hardware and Documentation are "commercial items" and according to the Department of Defense Federal Acquisition Regulation ("DFAR") section 252.2277014(a)(1) and are deemed to be "commercial computer software" and "commercial computer software documentation." Flock is compliant with FAR Section 889 and does not contract or do business with, use any equipment, system, or service that uses the enumerated banned Chinese telecommunication companies, equipment or services as a substantial or essential component of any system, or as critical technology as part of any Flock system. Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**10.9 Headings.** The headings are merely for organization and should not be construed as adding meaning to the Agreement or interpreting the associated sections.

**10.10 Authority.** Each of the below signers of this Agreement represent that they understand this Agreement and have the authority to sign on behalf of and bind the Parties they are representing.

**10.11 Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

**FLOCK NOTICES ADDRESS:**

1170 HOWELL MILL ROAD, NW SUITE 210  
ATLANTA, GA 30318  
ATTN: LEGAL DEPARTMENT  
EMAIL: legal@flocksafety.com

**AGENCY NOTICES ADDRESS:**

ADDRESS:

City of Carmel City Hall  
4th Ave

DocuSign Envelope ID: 42741853-888F-4638-B507- F1B627A

Carmel, California 93921

ATTN:  
EMAIL:

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

**RESOLUTION NO. 2023-031**

**RESOLUTION 2023-031 AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE A 24-MONTH SERVICE AGREEMENT WITH FLOCK SAFETY GROUP INC. FOR THE LEASE OF TWENTY-FOUR (24) FALCON AUTOMATED LICENSE PLATE READER (ALPR) CAMERAS AND SIX (6) WING (ALPR) SOFTWARE OVERLAYS ONTO EXISTING CITY CAMERAS, FOR A YEAR 1 COST OF \$77,900 AND AUTHORIZE THE CITY MANAGER TO ENTER INTO A TWO-YEAR RENEWAL AGREEMENT TO MAINTAIN THE PROGRAM, NOT TO EXCEED \$69,000 ANNUALLY**

WHEREAS, Police agencies have used cameras and Automated License Plate Reader (ALPR) technology to help solve crimes, especially when an automobile has been used. ALPR technology has continued to evolve and has become less cost prohibitive; and

WHEREAS, the Carmel Police Department currently uses mobile ALPRs for parking management and is now looking to expand this beneficial tool to fixed locations throughout the ingress and egress locations of the city; and

WHEREAS, Flock Safety Group is the only ALPR system that partners with Evidence.com, which is the current evidence storage system the Carmel Police Department uses. Flock manufacturer is also the only service provider that leases ALPR services, which will prevent the city from being burdened with maintaining costly equipment that would need replacement; and

WHEREAS, it is believed that the entire peninsula is either exploring flock Safety or has signed contracts for flock Safety to be installed in their cities to assist with crime prevention. Due to multiple surrounding police agencies investing in flock safety, Carmel would benefit from sharing and accessing data from other cities should a crime take place; and

WHEREAS, to continue our efforts to enhance the safety of our community, we strongly believe this technology will deter crime and assist our officers in responding to and solving crime in a more expedient manner; and

WHEREAS, the Flock ALPR start-up cost with equipment and installation is \$77,900.00 (24 solar-powered ALPR cameras and 6 software camera overlays on existing cameras). Annual program costs: \$69,000 (after year 1), and the annual program costs \$69,000; and

WHEREAS, on February 21, 2023, Council adopted Resolution 2023-025, which approved a mid-year budget adjustment for FY 22/23 to cover the first year start up cost of \$77,900 in fund 101-116-00-42104 for Police Safety Equipment and Supplies, which sufficient to cover the first year of the contract; and

WHEREAS, the annual renewal costs for the Flock Safety System ALPR program for \$69,000 per year will be submitted in the budget for Council approval in FY 23-24 and subsequent years.



**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 Service Agreement with with Flock Safety Group Inc. for the lease of twenty-four (24) Falcon automated license plate reader (ALPR) cameras and six (6) Wing (ALPR) software overlays onto existing city cameras, for a year 1 cost of \$77,900 and authorize the city manager to enter into a two-year renewal agreement to maintain the program, not to exceed \$69,000 annually.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 14th day of March, 2023, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

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

\_\_\_\_\_  
Nova Romero, MMC  
City Clerk



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

February 4, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Javier Hernandez, Project Manager
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2025-016, authorizing the City Administrator to execute a Professional Services Agreement with Moffatt & Nichol, Inc. for coastal engineering and environmental services related to the Carmel Beach Coastal Protection and Access Improvement Projects, with a not-to-exceed budget of \$399,013 (Estimated time - 5 min)

## RECOMMENDATION:

Adopt Resolution 2025-016 (**Attachment 1**), authorizing the City Administrator to execute a Professional Services Agreement (**Attachment 2**) with Moffatt & Nichol, Inc. for coastal engineering and environmental services related to the Carmel Beach Coastal Protection and Access Improvement Projects, with a not-to-exceed budget of \$399,013.

## BACKGROUND/SUMMARY:

### Background

In June 2021, the City Council adopted Resolution 2021-033, approving the Capital Improvement Plan (CIP), which included the *Beach Sand and Wall Inspections* project, with an allocated budget of \$25,000. This project aimed to assess the rates of beach and sand loss along the coastline by reviewing existing data and aerial imagery. These inspections were essential for understanding coastal erosion trends and identifying areas that required further intervention or preservation efforts.

In June 2022, the City Council adopted Resolution 2022-048, approving 25 Capital Improvement Projects (CIPs) for Fiscal Year 2022/23, including the *Sea Level Rise/Coastal Engineering Report* project. This project was allocated a budget of \$150,000 and was structured to gather critical data and analysis to inform long-term decisions related to the durability and maintenance of the City's coastal resources and infrastructure. Recognizing potential overlaps in objectives, this project was efficiently combined with the *Beach Sand Survey and Wall Inspections* project, which had been carried over from the previous fiscal year.

In November 2022, the City Administrator executed a contract with EMC Planning Group, Inc. (EMC) to analyze four key coastal sections outlined in the Climate Committee Implementation Appendix. These

sections were as follows:

1. Armored private properties on the bluffs at the north end (Pescadero Canyon area).
2. Mostly natural, unarmored North Dunes area.
3. Unarmored dunes along private property between Eighth Ave. and Del Mar Parking Lot.
4. Mostly armored bluffs along Scenic Road south of Eighth Ave.

The goal of this project was to assess the current coastal conditions, identify vulnerabilities to sea level rise and erosion, and develop actionable recommendations for long-term coastal management. EMC's approach was structured around a series of tasks aimed at evaluating these conditions and preparing an action plan including the following scope:

- Coastal Engineering Condition Evaluation – Assessing the structural condition and resilience of coastal protection infrastructure
- Shoreline and Beach Change Analysis – Analyzing historical and current trends in beach and shoreline changes, including both seasonal fluctuations and long-term erosion patterns.
- Shoreline and Beach Erosion Exposure Modeling – Modeling future erosion risks under various scenarios, including sea level rise and storm surges.
- Coastal Hazard and Sea Level Rise Vulnerability, High Priority Adaptation Identification, and Action Plan – Identifying vulnerable areas and proposing high-priority adaptation strategies for each coastal section.

In July 2023, a "no cost" amendment (Amendment No. 1) was executed to the EMC agreement, adding an additional task to review the City's existing hazard policies, specifically the Local Coastal Program (LCP). This was to ensure alignment with the City's adaptation strategies and guide future updates to the LCP as necessary.

In April 2023, Haro, Kasunich, and Associates performed an assessment and evaluated the condition of key shoreline infrastructure (stairs, revetments, and sea walls) and identified critical repairs necessary to ensure long-term coastal resilience. These assessments were performed following extensive damage observe following winter storms in 2022/23. Their findings are contained within the *Carmel Beach Coastal Protection Assessment Report (Attachment 3)* and included the following recommendations:

- **Seawalls:** Of the 11 existing seawalls, 2-4 were identified as needing repairs, with the Fourth Avenue Outfall Wall marked as a high priority for immediate repair.
- **Beach Access Stairs:** Of 11 beach access stairs, 9 were found to be in need of repair, with three identified as high priority due to severe damage, two of which had been closed following winter storms.
- **Rock Revetments:** Of 6 existing rock revetments, 4 require repairs, with 3 of these being high priority due to their critical role in protecting coastal infrastructure.

In June 2023, Council adopted Resolution 2023-067, approving 16 new Capital Improvement Projects (CIPs) for FY 2023/24, including carry-over projects from FY 2021/22 and 2022/23. To address the most urgent repairs identified in the assessment by Haro Kasunich, the *Shoreline Infrastructure Repairs* project was allocated a budget of \$250,000. The total estimated cost for the engineering design, environmental permitting, and construction of all necessary repairs is expected to exceed \$2 million over the next few years. This initial \$250,000 allocated for FY 2023/24 was intended to begin the engineering and design work for these repairs, focusing on the highest-priority tasks, including repairing the Fourth Avenue Outfall Wall seawall and restoring the high-priority beach access stairs, particularly those that were closed due to

storm damage.

In March to May 2024, City Staff performed repairs to re-open select stairs that experienced additional damage from storms in winter 2023/2024. These repairs were able to be completed within 30 to 60 days to reopen access and were performed under an Emergency Coastal Development Permit (ECDP). Multiple stairs remain closed due to more extensive structural repairs required or lack of beach sand causing an unsafe transition at the bottom stair landing. At this time, it was determined a more robust plan be developed and an engineering firm consulted to design the repairs and evaluate more long term solutions to maintain select beach/stair access year round and increase the resiliency of existing infrastructure to resist future storm damage and sea level rise.

## Summary

In June 2024, the Council adopted Resolution 2024-047 for the FY 2024/25 CIP, which included the carry-over of previous fiscal year projects, including the *Shoreline Infrastructure Repair Project* (with an increased budget of \$400,000) and the *Shoreline Wall – Fourth Avenue Outfall Project* (with a budget of \$250,000) described in more detail below.

### Shoreline Infrastructure Repair Project (FY 2024/25):

This project will begin engineering and design for the highest-priority shoreline repairs and beach access stair restorations. It will use materials similar to those already in place, streamlining the regulatory approval process. The initial phase will help estimate future costs and develop a phased approach for the repairs. A Request for Proposal (RFP) has been prepared to hire a consultant with expertise in environmental permitting, coastal and structural engineering, and cost estimating. Funding for this project includes the \$250,000 allocated in FY 2023/24, plus an additional \$100,000 reallocated from the Coastal Engineering Study, Phase 2, and approximately \$50,000 from a FEMA grant for stair repairs.

### Fourth Avenue Outfall Seawall Repair (FY 2024/25):

The Fourth Avenue Outfall seawall was identified as the highest priority for repair in the 2023 Carmel Beach Coastal Infrastructure Condition Assessment. The seawall has significant structural issues, including an undermined foundation, cracks, and exposed corroded steel. The assessment recommended complete reconstruction, including the drainage box culvert outfall. This new project for FY 2024/25 has a budget of \$250,000 for engineering design and environmental permitting. Construction is estimated at \$900,000 and will be included in the 5-Year CIP for FY 2025/26.

## Consultant Selection Process (2024):

To proceed with planning, design, and construction of the two projects above, a professional engineering consultant is required. In May 2024, the City advertised Requests for Statements of Qualifications (SOQs) from consultants to develop a multi-phased plan for coastal protection and access improvements. The project aims to develop an improvement and repair capital improvement program to maintain safe coastal access via stairways and perform coastal protection improvements for existing seawalls and revetments.

In July 2024, the City received three submissions from EnGeo, MME, and Moffat & Nichol. After a comprehensive evaluation by a Selection Committee, Moffat & Nichol was determined to be the most qualified for the project.

## Scope of Services, Fee, and Schedule:

As outlined in the Professional Services Agreement, Moffat & Nichol will perform the following tasks:

<b>Task</b>	<b>Scope of Work</b>	<b>Budget</b>
<b>1</b>	Wood Stairs – Existing Condition Survey Report	\$90,160
<b>2</b>	Stairs Repair Project – 10th Ave North (ST7) and 12th Ave (ST4)	\$163,695
<b>4</b>	Fourth Ave Seawall Repair Project (S10)	\$87,146
<b>Total</b>		<b>\$341,001</b>

The base fee for these services was negotiated at \$341,001. The anticipated timeline includes completing Task 1 within 3 months, while Tasks 2 and 3 are expected to be ready for construction by Spring/Summer 2026, mainly due to environmental permitting requirements.

Additionally, a budget of \$58,012 is allocated for as-needed geotechnical support services throughout the agreement term, which expires on June 30, 2027. This work may be authorized pending the repair or replacement recommendations from Task 1 – Existing Condition Survey Report and is summarized below.

<b>Task</b>	<b>Scope of Work</b>	<b>Budget</b>
<b>1</b>	Wood Stairs – Existing Condition Survey Report	\$16,583
<b>2/4</b>	Geotechnical Drilling Investigation for Stairs Repair Project – 10th Ave North (ST7) and 12th Ave (ST4) and Fourth Ave Seawall Repair Project (S10)	\$41,429
<b>Total</b>		<b>\$58,012</b>

#### **FISCAL IMPACT:**

The following table recaps the current budget associated with the Carmel Beach Coastal Protection project with a total budget of \$650,000.

<b>No.</b>	<b>Project/Task</b>	<b>Firm</b>	<b>Budget</b>
<b>A</b>	Wallace Group Project Management	Wallace Group	\$63,594
<b>B</b>	Coastal Protection Stairs & Seawall Assessment + Design	Moffatt & Nichol	\$399,013
<b>C</b>	Budget Allowance for Construction Phase	TBD	\$187,393
<b>Total</b>			<b>\$650,000</b>

All expenditures for these projects are covered in the Capital Projects fund Account No. 301-311-00-43008

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

In June 2021, the City Council adopted the Capital Improvement Plan (CIP), which included the Beach Sand and Wall Inspections project, with an allocated budget of \$25,000. This project aimed to assess the rates of beach and sand loss along the coastline by reviewing existing data and aerial imagery. These inspections were essential for understanding coastal erosion trends and identifying areas that required further intervention or preservation efforts.

In June 2022, the City Council adopted Resolution 2022-048, approving 25 Capital Improvement Projects (CIPs) for Fiscal Year 2022/23, including the Sea Level Rise/Coastal Engineering Report project. This project was allocated a budget of \$150,000 and was designed to gather critical data and analysis to inform long-term decisions related to the durability and maintenance of the City's coastal resources and infrastructure. Recognizing potential overlaps in objectives, this project was efficiently combined with the Beach Sand Survey and Wall Inspections project, which had been carried over from the previous fiscal year.

In June 2023, Council adopted Resolution 2023-067, approving 16 new Capital Improvement Projects (CIPs) for FY 2023/24, including carry-over projects from FY 2021/22 and 2022/23. One of these projects was the Shoreline Infrastructure Repairs project, which was allocated a budget of \$250,000. This project arose from the recommendations in the Coastal Engineering Study, specifically its Shoreline Conditions Assessment. The assessment evaluated the condition of key shoreline infrastructure and identified critical repairs necessary to ensure long-term coastal resilience.

In June 2024, the Council adopted Resolution 2024-047 for the FY 2024/25 CIP, which included the carry-over of previous fiscal year projects, such as the Shoreline Infrastructure Repair Project (with an increased budget of \$400,000) and the Shoreline Wall – Fourth Avenue Outfall Project (with a budget of \$250,000).

## **ATTACHMENTS:**

Attachment 1) Resolution 2025-016

Attachment 2) Professional Services Agreement

Attachment 3) Carmel Beach Adaptation Coastal Protection Assessment

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

**RESOLUTION NO. 2025-016**

**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 MOFFATT & NICHOL, INC. FOR COASTAL ENGINEERING AND ENVIRONMENTAL SERVICES RELATED TO THE CARMEL BEACH COASTAL PROTECTION AND ACCESS IMPROVEMENT PROJECTS, WITH A NOT-TO-EXCEED BUDGET OF \$399,013**

WHEREAS, in June 2021, Council adopted Resolution 2021-033 approving capital improvement projects for Fiscal Year (FY) 2021/22, including Beach Sand and Wall Inspection Project, with a budget of \$25,000; and

WHEREAS, in June 2022, Council adopted Resolution 2022-048 approving capital improvement projects for Fiscal Year (FY) 2022/23, including the Sea Level Rise/Coastal Engineering Report Project, with a budget of \$150,000; and

WHEREAS, in November 2022, the City Administrator executed a Professional Services Agreement with EMC Planning Group, Inc., in an amount of \$175,000, to analyze four key coastal sections outlined in the Climate Committee Implementation Appendix; and

WHEREAS, in April 2023 Haro Kasunich performed an assessment and evaluated the conditions of key shoreline infrastructures and identified critical repairs necessary to ensure long-term coastal resilience. Their findings are contained within the Carmel Beach Coastal Projection Assessment Report; and

WHEREAS, in June 2023, Council adopted Resolution 2023-067 approving 16 new Capital Improvement Projects (CIPs) for FY 2023/24, including carry-over projects from FY 2021/22 and 2022/23. To address the most urgent repairs identified in the assessment by Haro Kasunich, the Shoreline Infrastructure Repairs project, with a budget of \$250,000; and

WHEREAS, in June 2024, Council adopted Resolution 2024-047 approving the capital improvement projects for Fiscal Year (FY) 2024/25, including the *Shoreline Infrastructure Repair Project* (with an increased budget of \$400,000) and the *Shoreline Wall – Fourth Avenue Outfall Project* (with a budget of \$250,000); and

WHEREAS, in May 2024, the City advertised Requests for Statements of Qualifications (SOQs) from consultants to develop a multi-phased plan for coastal protection and access improvements; and

WHEREAS, in July 2024, the City received three submissions from EnGeo, MME, and Moffat & Nichol. After a comprehensive evaluation by a Selection Committee, Moffat & Nichol was determined to be the most qualified for the project; and

WHEREAS, sufficient funding is available for these services in the Capital Projects fund account, leaving a balance of approximately \$187,393 for subsequent construction.

**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 the Professional Services Agreement with Moffatt & Nichol, Inc. for coastal engineering and environmental services associated with the Carmel Beach Coastal Protection and Access Improvement Projects, for a not-to-exceed fee of \$399,013.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of February 2025, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dale Byrne, Mayor

\_\_\_\_\_  
Nova Romero, MMC, City Clerk



**PROFESSIONAL SERVICES AGREEMENT**  
**for the**  
**Carmel Beach Coastal Protection and Access Improvement Projects**

**THIS AGREEMENT** is executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and Moffatt & Nichol, Inc. (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: Provide professional coastal engineering and environmental services for the Carmel Beach Coastal Protection and Access Improvement Projects. 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, Compensation, and Fee Schedule 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 City'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 Fifty-Nine Thousand Nine Hundred and Ninety-Nine Dollars (\$59,999.00) 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 City 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 Key Personnel, Compensation, and Fee Schedule (Exhibit "B"), in a base amount not-to-exceed Three Hundred Forty-One Thousand and One Dollars (\$341,001). A Supplemental Services budget of Fifty-Eight Thousand and Twelve Dollars (\$58,012) is available, but only upon prior written authorization by the City for as-needed geotechnical support services. The combined amount of Three Hundred and Ninety Nine Thousand and Twelve Dollars (\$399,013) is the "Maximum Authorized Expenditure" under 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 Consultant submits an invoice which is not 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 Key Personnel, Compensation & Fee Schedule (Exhibit “B”).
- 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 “B”). 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 by February 15, 2025 and must be completed by June 30th, 2027 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: Javier Hernandez  
 Title: Project Manager  
 Address: Junipero St, Carmel-By-The-Sea, CA 93921  
 Telephone: 831-427-7665  
 Email: jhernandez@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: Jaclyn Gnusti  
 Title: Senior Coastal Engineer  
 Company: Moffatt & Nichol  
 Address: 2185 N California Blvd, Suite 500, Walnut Creek, CA 934596  
 Telephone: 925-944-5411  
 Email: [jgnusti@moffattnichol.com](mailto:jgnusti@moffattnichol.com)

- 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 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. The general 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 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 represents 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 represents 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.
- E. **Additional Copies.** If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant must provide such additional copies, and the City will compensate Consultant for the actual costs related to the production of such copies by Consultant.

## 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.

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

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 applicable 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 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. **City Business License.** Prior to receiving a Notice to Proceed from the City, Consultant will obtain and maintain a valid City of Carmel-by-the-Sea Business License for the duration of the Agreement. Costs associated with the license are the responsibility of Consultant.
- N. **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

\_\_\_\_\_  
City Administrator

\_\_\_\_\_  
Consultant Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Consultant Legal Company Name

**APPROVED AS TO FORM:**

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

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

**ATTEST:**

By: \_\_\_\_\_  
Nova Romero, MMC, City Clerk

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

- Exhibit "A"      Scope of Services
- Exhibit "B"      Key Personnel, Compensation, and Fee Schedule
- Exhibit "C"      Project Schedule

Date: 27 April 2023  
Client: City of Carmel  
Subject: Carmel Beach Coastal Protection Assessment  
Reference: Carmel Beach Adaptation Plan  
Project No.: 12176

## **CARMEL BEACH COASTAL PROTECTION ASSESSMENT REPORT**

### **EXECUTIVE SUMMARY**

Previous evaluations of coastal protection structures have focused on maintenance and repair. For this evaluation HKA inventoried the length, footprint and other factors. Using engineering judgment HKA determined the effectiveness of restacking rip rap revetment structures and lateral/vertical extensions of both revetments and vertical seawalls. HKA estimated the existing life of structure until it ceases to adequately provide protection for the bluff and roadway. HKA provided this written condition and assessment report and tabular inventory.

In December 2022 through February 2023 Haro Kasunich and Associates Inc. evaluated the condition of the coastal protection structures and stairways that were visible at Carmel Beach. Fortunately, severe winter storms and ocean wave runup scoured portions of the beach in early 2023, temporarily removing beach sand that covered the lower portions of some coastal protection structures, allowing them to be inspected. These structures consisted of 8 publicly owned seawalls, 6 publicly owned revetments and 11 publicly owned stairways were inspected. Two privately owned seawalls (S1 and S11), one at each end of the beach were viewed from the beach but not inspected in detail. One coastal access path retaining wall that is not subject to wave runup or wave impact was viewed but not evaluated. In total we inspected 5537 lineal feet of coastline, which contained 4119 lineal feet of coastal armoring.

The Appendices in this report include a Coastal Protection Datasheet (in Appendix A) listing and detailing numerous characteristics of the coastal protection structures we evaluated; as well as a Coastal Protection Map (in Appendix B) locating and labeling the coastal protection structures we evaluated. Vertical seawalls are labeled with S, sloping revetments are labeled with R and stairways are labeled with ST. Our evaluation began at the Frank Lloyd Wright home at the south (downcoast) end of Carmel Beach and ended at Pescadero Creek at the north (upcoast) end of

Carmel beach.

All but one of the publicly owned seawalls are presently providing adequate protection. One seawall is in need of replacement (S10; at the Dunes Outfall); potential collapse of this structure poses a risk to beach users. We recommend this seawall have a high priority for replacement; a detailed set of plans and specifications will be required for that work. One spot on another seawall at a failed storm drain outlet needs repair ( S7; by 10th Avenue), which we rank as a medium priority. There was an area of exposed concrete grout on the beach seaward of S3; by 13<sup>th</sup> Avenue; this poses a hazard to barefoot beach users. In our opinion most of the seawalls have at least 30 years of remaining useful life, with the exception of seawall S10 at the Dunes Outfall, which could fail anytime in the next 10 years.

Of the 6 rip-rap revetments, only 4 could be assessed because the other two (R5 and R6) were buried by beach and dune sand. All four of those revetments need repair, with 3 of them found to be high priority and 1 to be medium priority. None of the 4 are providing adequate protection along their full lengths. The anticipated repairs at 3 of the revetments (The north 1/3 of R1, the south 1/4 of R3, and the north 1/3 of R4) consist of restacking the quarrystone rip-rap boulders; a detailed set of plans and specifications will be required for that work. The north 1/3 of one of the revetments (R1; by Santa Lucia Avenue) is oversteepened and potentially unstable, posing a safety risk to beach users. Revetment R2 (in Cooks Cove between 12th and 13th Avenue) is composed of undersized quarrystone and is failing. The south 1/4 of Revetment R3 (between 11th Avenue and 12th Avenue) is poorly stacked had has evidence of instability. The north 1/3 Of Revetment R4 consists of very undersized rock that provides little coastal protection. We recommend the two revetments that were buried by beach and dune sand be inspected and evaluated whenever they are next exposed.

Of the 11 stairways we inspected, we found that 9 are in need of repair. We found that 4 have high priority for repair; 4 have medium priority for repair; and 3 have low priority for repair. Three have bent or broken or missing guards and/or handrails. Two were undermined and had vertical drop-offs from the lowest stair tread to the beach as a result of natural beach scour. Three terminate at an elevation before they reach the beach, requiring beach users to traverse slippery irregular rip-rap or bedrock surfaces to traverse the remaining distance to the beach. Two have worn and irregular tread surfaces. Three appear to have substantial corrosion of hardware and reinforcing bar. Further evaluation of the structure by an independent licensed structural engineer

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(and if need be a licensed corrosion engineer) should be scheduled to verify the structure is safe for public use. Regular maintenance of all stairways is essential for pedestrian safety. Of the 11 stairways inspected, we found that 3 pose risks to stairway users during periods (seasons) of beach scour, 5 will pose risks to stairway users until they are repaired, and 1 is unknown until a structural and corrosion inspection is completed, which we recommend be a high priority.

Table 1 is a condensed version of Appendix A, containing selected data and findings concerning the coastal protection structures and stairways that Haro Kasunich and Associates Inc. evaluated.

**TABLE 1 City of Carmel Coastal Protection Data**

4/21/2023 Haro Kasunich and Associates, Inc.

Structure Identifier	Approximate Location	Adequate Protection?	Repair Needed?	Risk to Beach Users	Priority of Repair	Estimated Existing Life of Structure Until it Ceases to Protect Coastal Access Path, Stairs and Roadway (Yrs)	Notes
<b>Seawalls</b>							
<b>S1</b>	At FLW House	YES	UNKNOWN	NO	NA	30+?	Private Property, Upcoast Corner Will Need Maintenance at Some Future Point
<b>S2</b>	FLW Home to Santa Lucia Avenue	YES	NO	NO	VERY LOW	30+	Good Condition, Slight Undermining Noted in Two Spots
<b>S3</b>	13th Avenue	YES	NO	YES	VERY LOW (Upcoast) LOW (Downcoast)	Upcoast Part = 50 Downcoast Part = 20+	In Cove, Sloppy Pumped Concrete on Beach, Downcoast Part is Subject to Slow Undermining
<b>S4</b>	N of 13th Avenue	YES	NO	NO	VERY LOW	Most =30+	Mostly Good Condition; Founded on Bedrock Platform
<b>S5</b>	Outfall at 12th Avenue	YES	NO	NO	VERY LOW	30+	Good Condition, Monitor Annually
<b>S6</b>	Scenic Rd Retaining Wall	YES	NO	NO	NA	Not a Coastal Protection Structure	Short Coastal Path Wall Not Subject to Wave Impact
<b>S7</b>	Between Stairways 6 and 7	YES	YES	NO	MEDIUM	30	Wall Crack Below Failed Metal 16" Dia Storm Drain Pipe Thru Seawall; Pipe Replacement Needed
<b>S8</b>	Retaining Wall at 8th Ave	YES	NO	NO	VERY LOW	30+	Blufftop Retaining Wall Around Pump Station
<b>S9</b>	Outfall at 8th Ave	YES	NO	NO	VERY LOW	20	CMP Storm Drain Headwall ; 60 LF Scattered Rip-rap Below; Rip-rap Foundation Condition Uncertain
<b>S10</b>	Dunes Outfall	NO	YES	YES	HIGH	0 to 10 Until Collapse	Failing/Failed 3'x3' Box Culvert Storm Drain Outfall Wall; Needs Replacement
<b>S11</b>	At Pescadero Creek Home	YES	UNKNOWN	NO	NA	30?	Private Property; Not Evaluated, No Obvious Need for Repairs is Evident

**TABLE 1 City of Carmel Coastal Protection Data**

4/21/2023 Haro Kasunich and Associates, Inc.

Structure Identifier	Approximate Location	Adequate Protection?	Repair Needed?	Risk to Beach Users	Priority of Repair	Estimated Existing Life of Structure Until it Ceases to Protect Coastal Access Path, Stairs and Roadway (Yrs)	Notes
<b>Revetments</b>							
<b>R1</b>	Between S2 and S3	NO Upcoast 1/3	YES Upcoast 1/3	YES	HIGH	Upcoast 1/3 = 0	Upcoast 1/3 Oversteepened, No Filter Fabric Unstable, Potentially Unsafe
<b>R2</b>	Between S3 and S4	NO	YES	NO	HIGH	0 to 5	Failing Structure, Has Voids, Undersized Quarystone
<b>R3</b>	Between 11th and 12th Ave	YES Upcoast 3/4	YES Downcoast 1/4	NO	MEDIUM (Downcoast 1/4) VERY LOW (Upcoast 3/4)	Downcoast 1/4 = 10 Upcoast 3/4 = 30	Downcoast 1/4 Poorly Stacked, Has Had Instability; Upcoast 3/4 REJA 1983
<b>R4</b>	Between 10th and 11th Ave	NO Upcoast 1/3	YES Upcoast 1/3	NO	HIGH (Upcoast 1/3), UNKNOWN (Downcoast 2/3)	Upcoast 1/3 = 0 to 5 Downcoast 2/3 = Unknown	Undersized rock, Upcoast 1/3; Few Quarystones Visible; Back Beach Vegetated 12/2022; Monitor When Exposed
<b>R5</b>	Between 8th and 10th Ave	MAYBE	Unable to Assess	NO	Unable to Assess	Unknown	Few Quarystones Visible 1/2023; Monitor When Exposed; May Be Founded on Sand; Downcoast End Has Slumped;
<b>R6</b>	At Ocean Avenue	MAYBE	Unable to Assess	NO	Unable to Assess	10 to 30 years?	Few Quarystones Visible 1/2023; Monitor When Exposed; May Be Founded on Sand; Downcoast End Has Slumped;



**TABLE 1 City of Carmel Coastal Protection Data**

4/21/2023 Haro Kasunich and Associates, Inc.

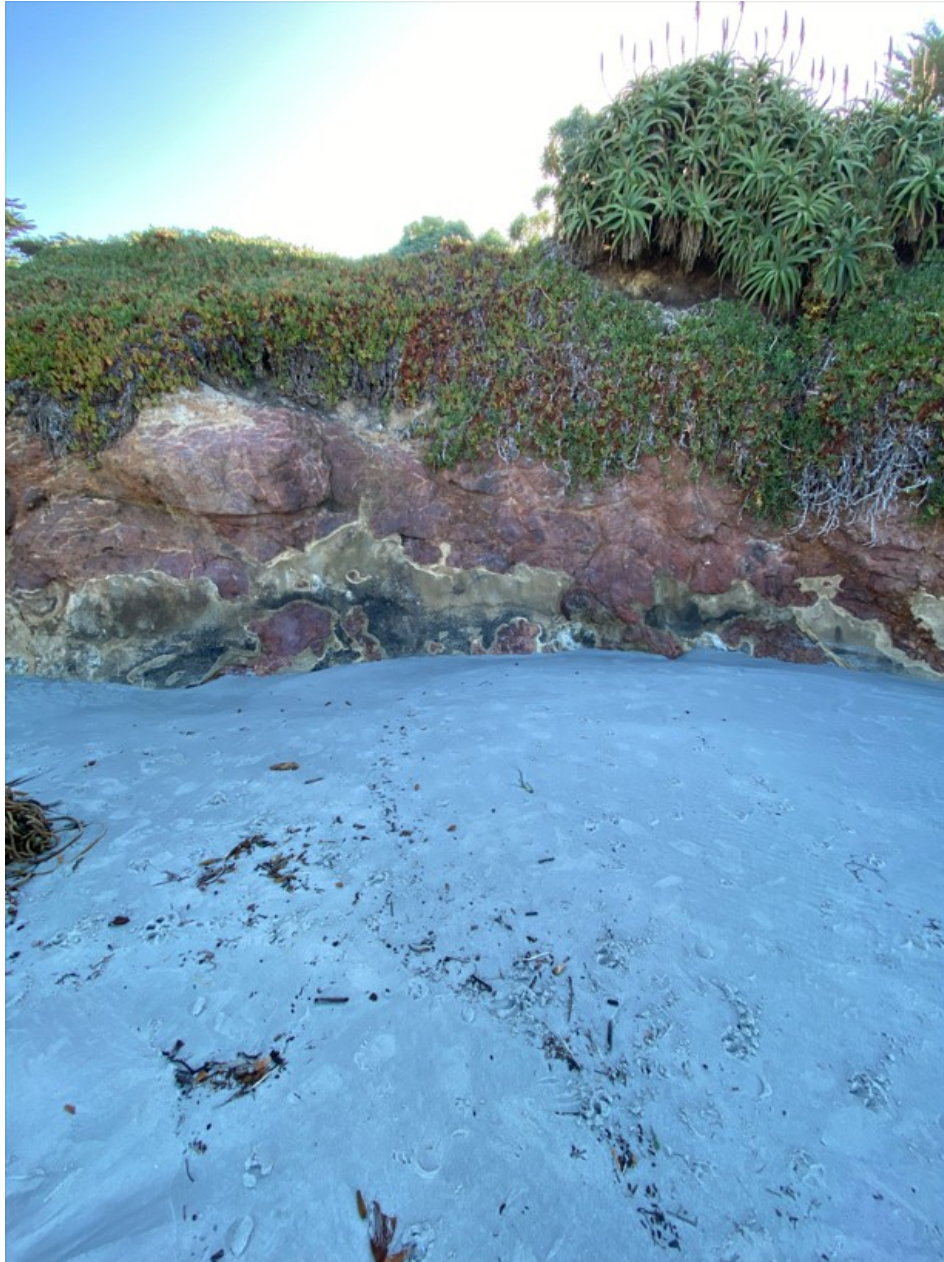
Structure Identifier	Approximate Location	Adequate Protection?	Repair Needed?	Risk to Beach Users	Priority of Repair	Estimated Existing Life of Structure Until it Ceases to Protect Coastal Access Path, Stairs and Roadway (Yrs)	Notes
<b>Stairways</b>							
ST1	Martin Way	NA	YES	UNKNOWN**	MEDIUM***	Regular Maintenance Essential	Corroded Structural Elements, Footing on Bedrock
ST2	Santa Lucia Avenue	NA	YES	NO	LOW	Regular Maintenance Essential	Downcoast Railing Bent from Log Impact
ST3	13th Avenue	NA	NO	YES During Scour Events	NONE NOW	Regular Maintenance Essential	Great Condition, Stairs End on Elevated Bedrock Platform; Consider Extending Stairs to Scoured Beach Level
ST4	12th Avenue	NA	YES	YES	HIGH	Regular Maintenance Essential	Hazardous; Undermined in EG Fig 1 (2016) Hardware Corroded
ST5	11th Avenue	NA	YES	YES During Scour Events	MEDIUM	Regular Maintenance Essential	Concrete Treads Worn; Stairs End on Elevated Bedrock Platform; Consider Extending Stairs to Scoured Beach Level
ST6	S of 10th Avenue	NA	YES	YES	MEDIUM	Regular Maintenance Essential	Needs Minor Tread Work; Corroded Rebar Exposed; Concrete Spalling
ST7	N of 10th Avenue	NA	YES	YES During Scour Events	HIGH***	Regular Maintenance Essential	Toe of Stairs Undermined by Scour 1/2023; Hazardous; Easton (2016) Said Look at 2008 CRP Photo
ST8	9th Avenue	NA	YES	YES During Scour Events	HIGH	Regular Maintenance Essential	Stairway Terminates Before Reaching Beach During Scour; Needs Seaward Extension Across Revetment
ST9	8th Avenue	NA	YES	YES	MEDIUM	Regular Maintenance Essential	Rock and Mortar Steps; Worn Natural Rock Surfaced Treads Create Slippery Condition
ST10	Ocean Avenue	NA	NO	NO	NONE NOW	Regular Maintenance Essential	Coastal Overlook and Boardwalk Subject to Wave Impact
ST11	Dunes	NA	YES	YES	HIGH	Regular Maintenance Essential	Hazardous; Broken Guard and Handrail Upcoast Side of lowest Run

## REPORT AND PHOTOGRAPHS



**Photograph 1: Privately Owned Seawall S1 on December 22, 2022**

Photograph 1 shows a seawall located on private property at the well-known Frank Lloyd Wright designed oceanfront home at the southern end of Carmel Beach on December 22, 2022. It appears to be in good condition. At some point it will need maintenance and/or repair. Close inspection was not possible without entering onto the private property.



**Photograph 2: Unnamed shotcrete between S1 and S2 on December 22, 2022**

Photograph 2 shows some shotcrete or gunite fascia exists on the bedrock portion of the coastal bluff face between S1 and S2 (where located on the map contained in Appendix B) north from the Frank Lloyd Wright home on December 22, 2022. Its age, origin, and position relative to the boundary between the privately owned and publically owned upland parcel's common boundary line is unknown. It looks to be in good condition.



**Photograph 3: Seawall S2 on December 22, 2022**

Photograph 3 shows a view looking north at Seawall S2, which extends from the Frank Lloyd Wright home to Santa Lucia Avenue, on December 22, 2022. This seawall is in good condition.



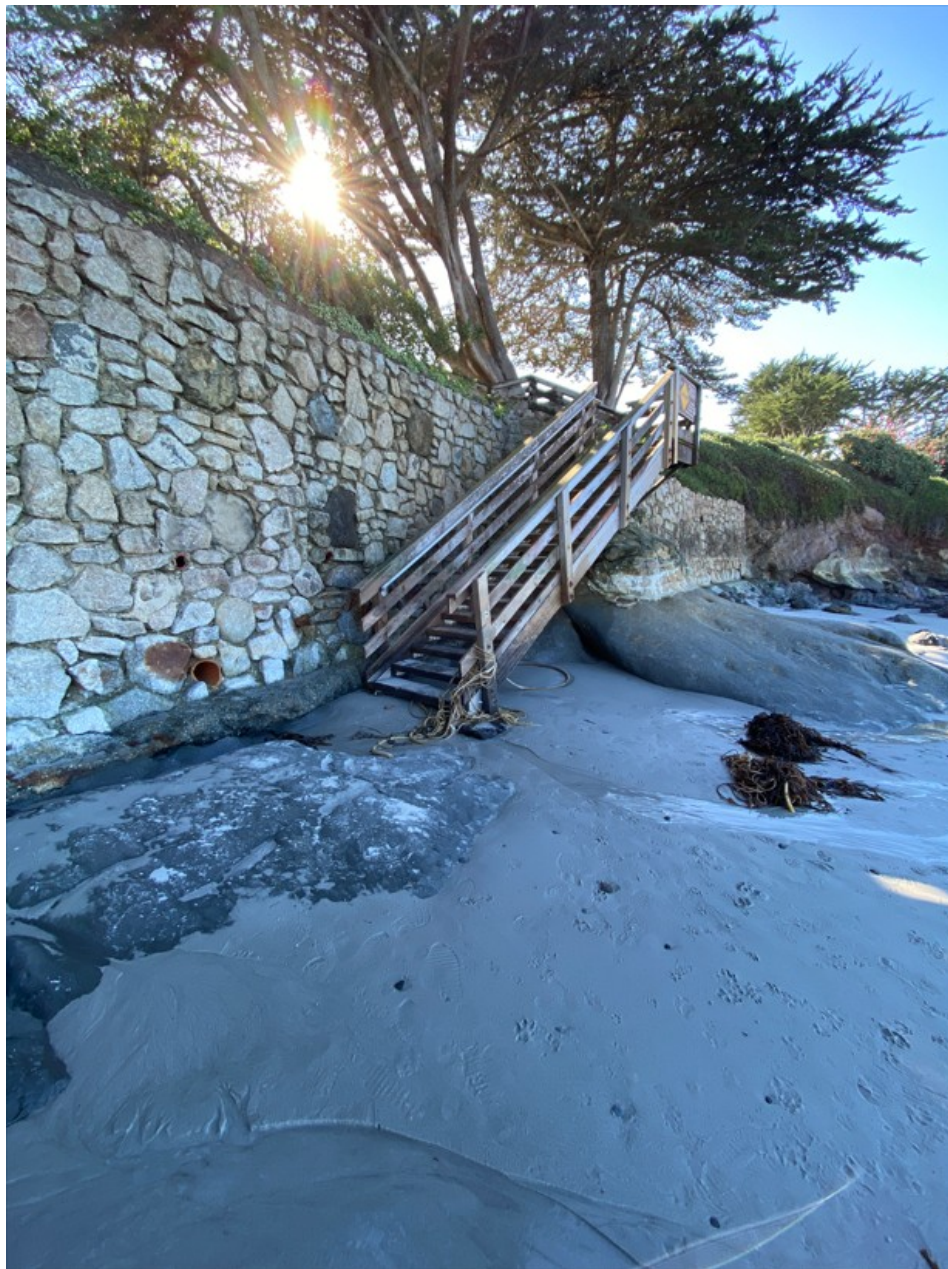
**Photograph 4: Stairway ST1 on December 22, 2022**

Photograph 4 shows Public Access Stairway ST1 located at Martin Way on December 22, 2022 which is in average condition.



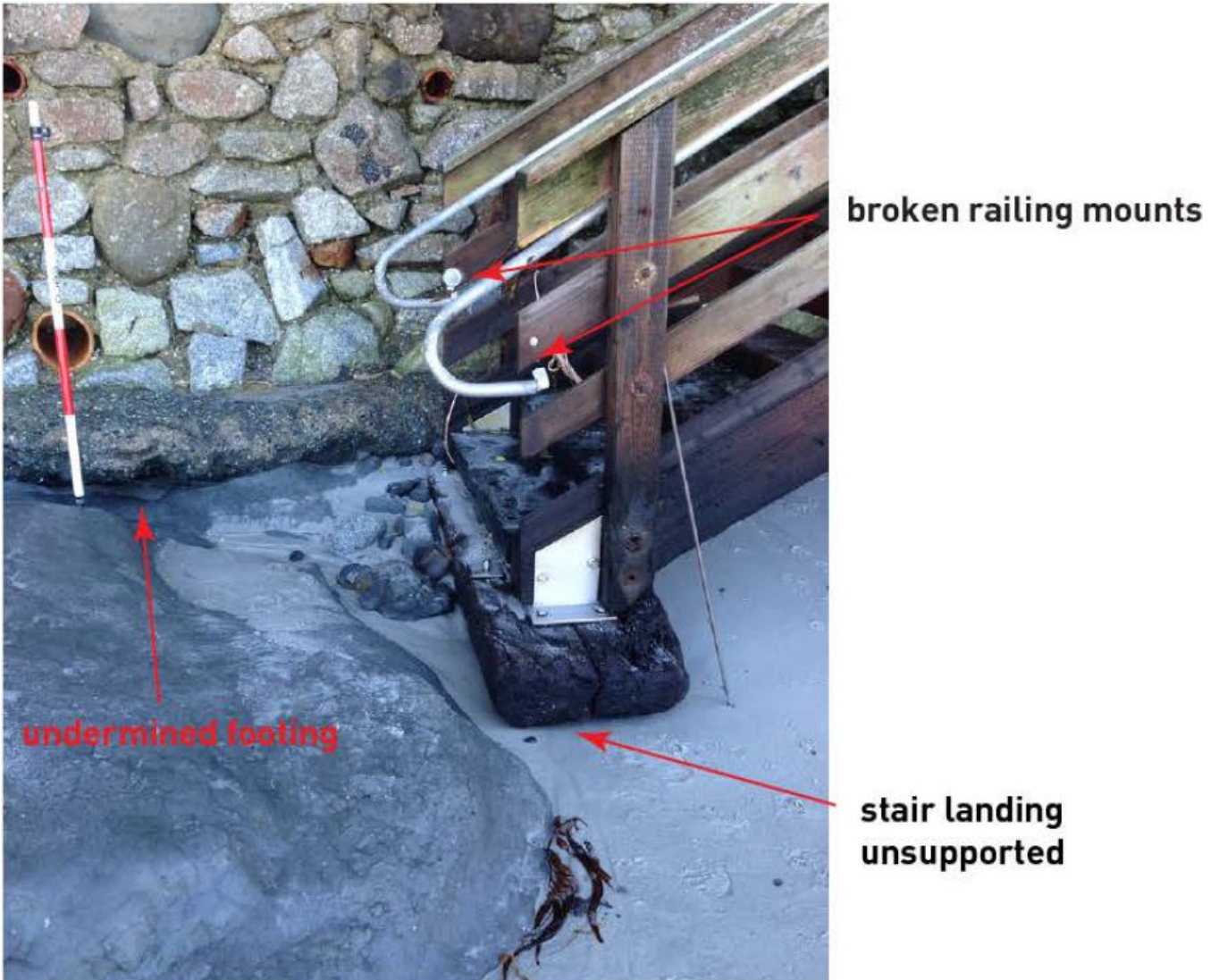
**Photograph 5: Public Access Stairway ST1 on December 22, 2022**

Photograph 5 shows Public Access Stairway ST1 on December 22, 2022. Corrodible fasteners and brackets were used on this stairway and those are deteriorating. At some point it will need maintenance and/or repair. Visually it appears satisfactory to us at this time. Further evaluation of the structure by an independent licensed structural engineer (and if need be a licensed corrosion engineer) should be scheduled to verify the structure is safe for public use, and recommend any needed repairs.



**Photograph 6: Showing Stairway ST1 on January 30, 2023**

Photograph 6: shows Stairway ST1 along Seawall S2 on January 30, 2023. The beach sand level was scoured lower compared to December 2022. The Seawall S2 foundation is exposed and is bearing upon sandstone bedrock; no maintenance is presently recommended.



**Photograph 7: Showing Stairway ST1 in February 2016 (Photo from Easton Geology)**

Stairway ST1 was unsupported in 2016 as shown in Photograph 7 by Easton Geology. The landing area is an irregular surface and the seawall footing is slightly undermined. We recommend it be verified that the stairway structure is presently founded upon bedrock. Repairs appear to be needed due to corrosion of fasteners and hardware. We rank the repair as a medium priority, pending structural and corrosion inspection, which we rank as a high priority. There is an unknown risk to users of the stairs.





**Photograph 8: Showing Seawall S2 on January 30, 2023**

Photograph 8 shows Seawall S2 on January 30, 2023 inspection. No rip riprap revetments seaward of the seawall were evident during our inspection. Some bedrock platform exposures are observed seaward of seawall, indicating scour levels were near the bottom of the sand deposit.



**Photograph 9: Seawall S2 on December 22, 2022**

Photograph 9 shows Public Access Seawall S2 on December 22, 2022. The exposed portion is in excellent condition. The seawall foundation is buried by beach sand, which is normal. After severe ocean storms in January 2023 we revisited this location and almost all of this seawall's foundation was still buried by beach sand. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade, but could be possible this winter. No repairs appear needed at this time and the seawall does not pose any extraordinary risks to beach users. This seawall appears to have more than 30 years of remaining life.



**Photograph 10: Storm Drain near NorthNorthern End of Seawall S2 on December 22, 2022**

Photograph 10 shows a Storm Drain Outfall near the north end of Seawall S2 on December 22, 2022. Storm runoff had gullied the beach sand at that location. Minor erosion had occurred adjacent to the seawall foundation footing. This location should be periodically monitored as time passes, so that if repairs are needed (such as plugging cavity under the footing) they can be done in a timely manner. No repair work is presently needed.



**Photograph 11: North End of Seawall S2 on December 22, 2022**

Photograph 11 shows an area at the northern end of Seawall S2 on December 22, 2022, where the edge of the seawall footing is exposed and it has been slightly undermined. Easton Geology inspected this location as well. Photograph 12 (below) is an Easton Geology photograph of the north end of Seawall S2 showing it was undermined in 2016. Comparison of that photo with the 2022 photo (above) shows there has been very little change in the conditions; there has been no continued undermining during that 7 year period. It is likely that this area was buried in beach sand during most of those 7 years; when the bedrock supporting the footing is buried, wave action does not contact the bedrock and no erosion or bedrock retreat occurs under the footing.

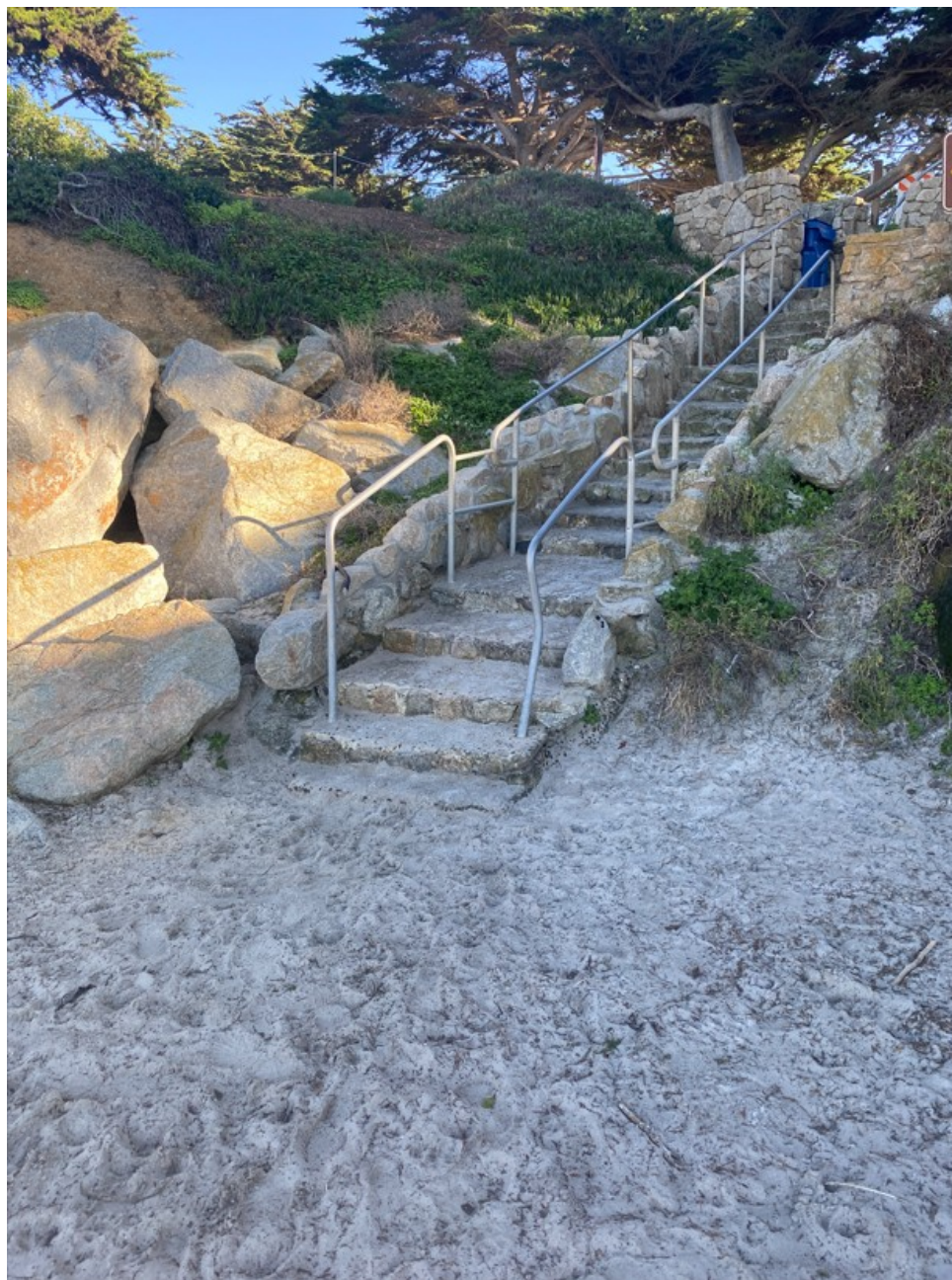


**Photograph 12: Easton Geology Photograph of the North End of Seawall S2 in June 2016**



**Photograph 13: North End of Seawall S2 on December 22, 2022**

Photograph 13 shows the very northern tip of Seawall S2 on December 22, 2022, where noticeable groundwater seepage is present. The end of the seawall was historically undermined and a repair consisting of a small concrete patch was done in the past. This area appears to be in reasonable condition, and the seawall appears to be stable.



**Photograph 14: Public Access Stairway ST2 on December 22, 2022**

Photograph 14 shows the seaward portion of Public Access Stairway ST2, located at Santa Lucia Avenue, on December 22, 2022, which is in good condition. The south handrail of ST2 is bent; likely from a wave carried log impacting it. The stairway seems functional despite this minor damage. The bottom of the stairway foundation is buried by beach sand, which is the normal condition.



**Photograph 15: Showing Revetment R1 and Stairway ST2 on January 30, 2023**

Photograph 15 shows Revetment R1, which is located between Seawalls S2 and S3, and shows Stairway ST2 during our January 30, 2023 inspection after severe ocean storms occurred in January 2023 and it was still buried by beach sand. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade but could be possible this winter. The estimated life of Stairway ST1 is 30 years or more. The south railing is bent from floating log impact. This does not pose a substantial risk to users of the stairs. We rank the repair as a low priority.





**Photograph 16: Showing Revetment R1 on January 30, 2023**

Photograph 16: shows Revetment R1 on January 30, 2023.

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**Photograph 17: Revetment R1 on December 22, 2022**

Photograph 17 shows the southern end of Revetment R1 on December 22, 2022, which consists of oversteep riprap, making it relatively unstable. One displaced boulder (a "fugitive" rock) can be seen poking out of the beach sand seaward of the revetment. Historic instability and the use of undersized boulders to construct this revetment have caused cavities to develop in the revetment and have diminished the erosion protection it provides. We recommend the holes in the revetment structure be filled and the 1 to 4 ton rocks be restacked. It is presently unsafe.



**Photograph 18: Revetment R1 Showing Undersized Overly Steep Riprap on December 22, 2022**



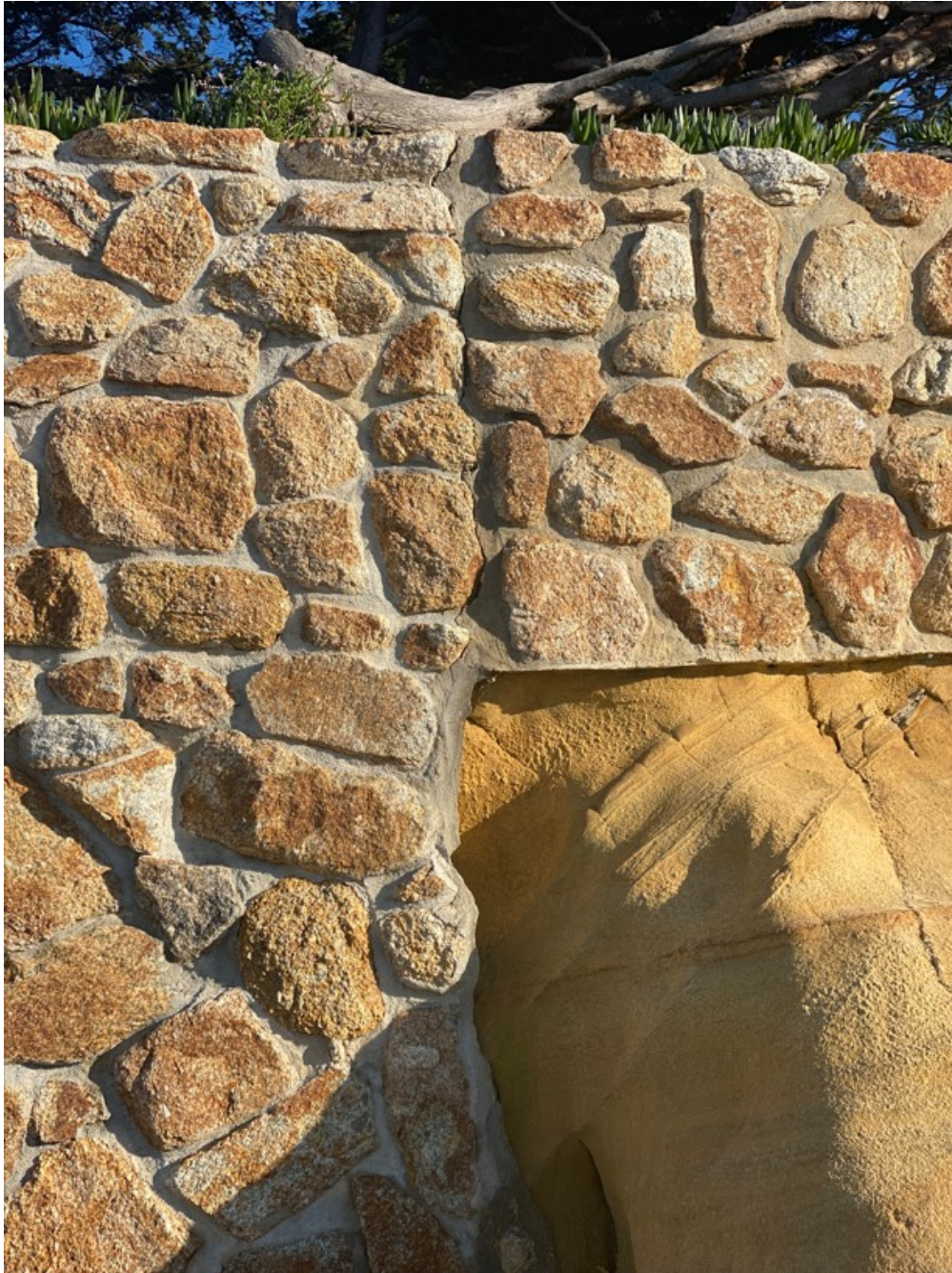
**Photograph 19: Revetment R1 on December 22, 2022**

Photograph 19 shows the northern end of Revetment R1 on December 22, 2022, which consists of overly steep riprap at a 0.5:1 (H:V) gradient. The northern 1/3 of the Revetment R1 riprap is unstable, poses risks to beach users, and we recommend it has a high priority for repair. We recommend bringing in additional larger riprap quarrystone boulders to lower the revetment gradient. Alternately the revetment could be removed and replaced with a vertical seawall to match the appearance of the other nearby seawalls along Carmel Beach.



**Photograph 20: Showing Revetment R1 and the Southern End of Seawall S3 on January 30, 2023**

Photograph 20 shows Revetment R1 and the South End of Seawall S3 on January 30, 2023.



**Photograph 21: Very Southern End of Seawall S3 on December 22, 2022**

Photograph 21 shows Seawall S3 where its foundation is founded on bedrock and steps upward at the very southern end of Seawall S3, which is located near 13th Avenue, on December 22, 2022. A vertical crack, which appears to be a shrinkage crack or expansion crack, is visible, but is not of concern.



**Photograph 22: Southern End of Seawall S3 on December 22, 2022**

Photograph 22 shows a view looking to the south along Seawall S3 on December 22, 2022.



**Photograph 23: Concrete Debris on Beach at Base of Seawall S3 on December 22, 2022**

Photograph 23 shows Seawall S3 on December 22, 2022 which has pumped concrete debris located on the beach at base of the seawall. Easton Geology inspected Seawall S3 in February 2016 and again in June 2016 for the City. Photograph 24 from Easton Geology shows that the beach was more scoured then than during our 2022 and 2023 inspections.





**Photograph 24: Southern End of Seawall S3 in February 2016 Photographed by Easton Geology Showing Pumped Concrete Repair of Undermining of Seawall S3**



**Photograph 25: Looking North at Seawall S3 on December 22, 2022**

Photograph 25 is looking north along Seawall S3 on December 22, 2022. At that time the seawall foundation was buried by beach sand, which is normal. After severe ocean storms in January 2023, we revisited this location and it was still partially buried by beach sand. This seawall, including the portion of the foundation we were able to inspect, appears to be in satisfactory condition. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade but could be possible during any winter. Except for the possible removal of some of the pumped concrete on the beach at the southern end, no repairs appear needed at this time, and the seawall does not pose any significant risks to beach users. This seawall appears to have more than 30 years of remaining life.

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**Photograph 26: Seawall S3 Showing Missing Rock on December 22, 2022**



**Photograph 27: Public Access Stairway ST3 on December 22, 2022**

Photograph 27 shows the seaward portion of Public Access Stairway ST3 located at 13th Avenue, on December 22, 2022, which is in good condition. Seawall S3 is on both sides of ST3.



**Photograph 28: Showing Public Access Stairway ST3 with Seawall S3 on Both Sides  
On January 30, 2023**

Photograph 28 shows the seaward portion of Public Access Stairway ST3 on January 30, 2023, when beach sand levels were scoured much lower in elevation than in December 2022. Stairway ST3 is primarily a rock and mortar set of steps that appear to be performing well. This staircase terminates onto a bedrock platform that was an approximately 5 feet vertical height drop from the platform down to beach level at the time of the photograph. This is not a safe transition for public use and it should be investigated for a safer alternative stair termination that accounts for scoured beach conditions. Stairway ST3 repairs do not appear to be needed, but extension of the stairs does appear to be prudent. There is risk to users of the stairs because they do not extend to beach level during periods of low sand levels from scouring. We rank extension of the stairs to beach level as a low priority if they are securely closed off at both the top and bottom during times of low beach levels.

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North of Public Beach Access Stairway ST3, Seawall S3 had an exposed foundation in February 2016. Easton's June 2016 letter states "exposed undercuts (*identified and documented in February 2016*) between the wall footing and the underlying bedrock within the 13th Avenue Cove (*referred to as S3 in this document*) were filled with concrete" (*between February and June 2016*) (*italicized portions added by HKA for clarity*). Photographs 29 and 30 from Easton Geology illustrate the condition of S3 in 2016.



**Photograph 29: Seawall S3 Just North of ST4 in February 2016 (Easton Geology)**



**Photograph 30: Seawall S3 Just North from ST4 in February 2016 (Easton Geology)**

Photograph 30 shows that the footing of Seawall was bearing on bedrock and slightly undermined in 2016.



**Photograph 31: Looking South at Seawall S3 Adjacent to ST3 on January 30, 2023**

Photograph 31 shows Seawall S3 at the south end of Cooks Cove, adjacent to ST3, showing its foundation is still bearing on a sandstone bedrock platform, and the footing remains slightly undermined. It is still performing well, and we have no recommended maintenance at this time. We note that when beach sand levels are naturally higher, the footing is buried and naturally protected from wave impact, resulting in no undermining occurring during those time periods, which are typically present in most years all year long. We recommend the undermining shown in Photographs 30 and 31 be photographically monitored whenever it is exposed, to verify the that undermining is occurring atover time.





**Photograph 32: North End of Seawall S3 on December 22, 2022**

Photograph 32 shows the north end of Seawall S3 where it adjoins Revetment R2 on December 22, 2022. The north end of Seawall S3 was historically slightly undermined, and the resultant cavities have been repaired with concrete patchwork, and or grouted riprap. The north end of Seawall S3 appears to be stable.



**Photograph 32: Showing Revetment R2 between Seawalls S3 and S4 on January 30, 2023**

As shown in Photograph 32, the beach at Revetment R2, which is located between Seawalls S3 and S4, had similar sand levels on January 30, 2023 as it did during our December 2022 inspection.



**Photograph 33: Showing South End of Revetment R2 on December 22, 2022**

Photograph 33 shows the south end of Revetment R2 on December 22, 2022, which has some displaced fugitive riprap. The revetment surface gradient is not uniform and the coastal erosion protection this revetment provides could be improved from restacking the riprap boulders. Revetment R2 includes a large volume of undersized riprap, which is vulnerable to plucking from wave attack. Revetment R2 poses risks to beach users, and we recommend it as a high priority for repair. The base of the revetment was buried by beach sand during our inspections and so its condition is unknown. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade but could be possible any winter.



**Photograph 34: Showing North End of Revetment R2 on December 22, 2022**

Photograph 34 shows the north end of Revetment R2 on December 22, 2022,



**Photograph 35: Showing Seawall S4 on January 30, 2023**

Photograph 35 shows the southern portion of Seawall S4 on January 30, 2023 which is in similar conditions to when our December inspection was done. This seawall is in good to excellent condition and is founded on the bedrock platform. No repairs appear to be needed.



**Photograph 36: Showing North Portion of Seawall S4 on December 22, 2022**

Photograph 36 shows the north portion of Seawall S4 on December 22, 2022, which is founded on a natural bedrock platform that is elevated above the beach level. This wall was designed by Neill Engineers and constructed in 2001.



**Photograph 37: Showing Unnamed Rip-rap Boulders North of Seawall S4 on December 22, 2022**

Photograph 37 shows a few rip-rap boulders located north of Seawall S4 and south of Public Access Stairway ST4 on December 22, 2022. These boulders are founded on a natural bedrock platform that is elevated above the beach level. They presently appear stable.



**Photograph 38: Showing Public Access Stairway ST4 on December 22, 2022**

Photograph 38 Shows Public Access Stairway ST4, located at 12th Avenue, on December 22, 2022. This stairway was undermined as shown in Photograph 39 (below) contained in a letter from Easton Geology dated February 8, 2016





**Photograph 39: Undermined Stairway ST4 in February 2016 (Easton Geology)**

The undermined portion of Stairway ST4 that was visible in 2016 was not visible during our December 2022 inspection but was subsequently exposed by beach scour and visible in our January 2023 inspection. The metallic hardware for the railing is severely corroded and is expanding and splitting the timber framework of these stairs, which are located at 12th Avenue.

As shown in Photograph 40 (below) the foundation of Public Access Stairway ST4 was not exposed during either our December 2022 inspection or our January 2023 inspection. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade but could be possible during any winter.

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**Photograph 40: Showing Base of Stairway ST4 naturally buried in beach sand on December 22, 2022**

Stairway ST4 has severely corroded hardware and fasteners as well as some split timber elements, as shown in Photographs 41 and 42 below. Further evaluation of the structure by an independent licensed structural engineer (and if need be a licensed corrosion engineer) should be scheduled to verify the structure is safe for public use, and recommend any needed repairs.

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**Photograph 41: Showing Corroded Hardware and Split Timbers on Stairway ST4 on December 22, 2022**



**Photograph 42: Showing Corroded Hardware and Split Timbers on Stairway ST4 on December 22, 2022**

Stairway ST4 repairs appear to be needed due to corrosion of fasteners and hardware, split timbers, and the vertical drop off and lack of foundation support at the base of the stairs during times of beach scour. Extension of the stairs does appear to be prudent. There is risk to users of the stairs because they do not extend to beach level during periods of low elevation sand levels. Due to the vertical drop off we rank extension of the stairs to beach level as a high priority and recommend prompt structural and corrosion inspection. There is a high risk to users of the stairs.

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Photograph 43 (below) shows a storm drain outfall just northeast of Stairway ST4 with a rock and mortar seawall that armors the bluff face below the outfall that is Seawall S5. A small amount of riprap below the outfall and Seawall S5 was barely visible during our December 2022 inspection.



**Photograph 43: Storm Drain Outfall and Seawall S5 Northeast from Stairway ST4 on December 22, 2022**

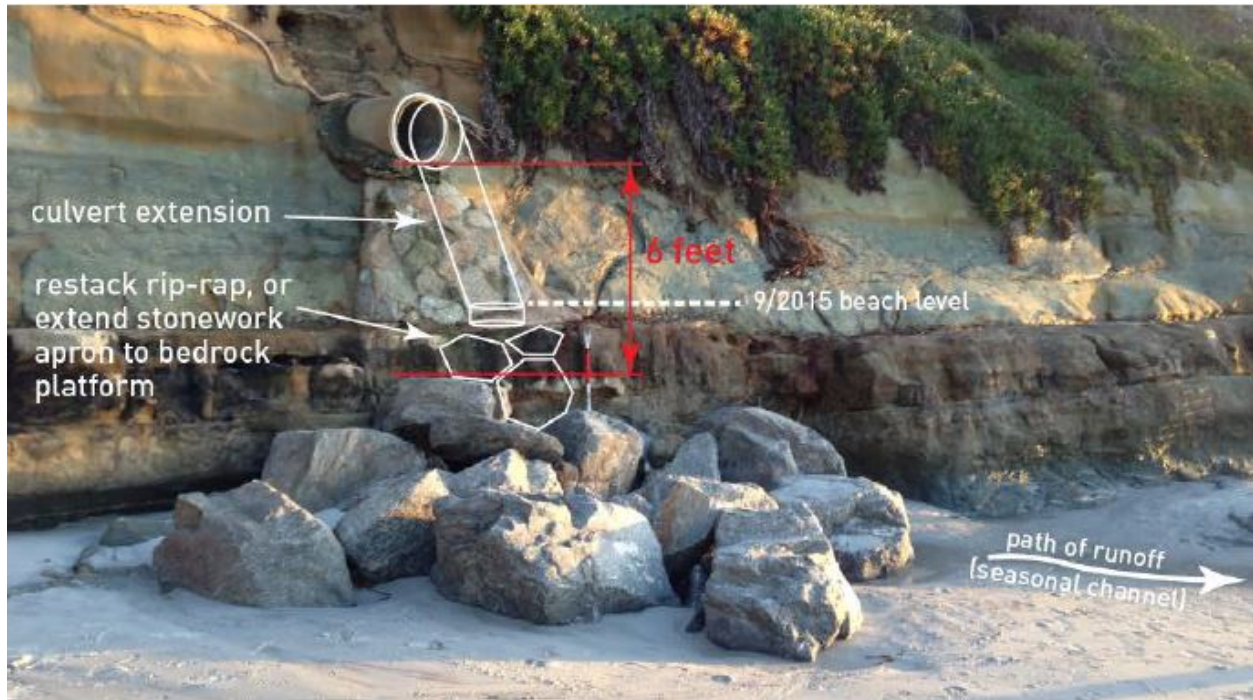
Seawall S5 is immediately below the storm drain outfall near 12th Avenue.



**Photograph 44: Storm Drain Outfall with Minor Armoring Between ST4 and R3 on January 30, 2023**

As Photograph 44 shows, a greater amount of riprap below the outfall and Seawall S5 was visible during our January 2022 inspection. The rip-rap dissipates the energy from the runoff flowing onto the beach and serves to reduce bedrock erosion during times of low beach elevation.

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**Photograph 45: Seawall S5 Just North from ST4 in February 2016 (Easton Geology)  
 Easton Geology's Recommendations Are Shown on the Photo**

Photograph 43 shows a storm drain outfall with minor armoring (Seawall S5) south of Revetment R5 and Stairway ST4 on December 22, 2022. Photograph 44 shows the same outfall and Seawall S5 after during January 2023 when considerable additional sand scour had occurred, exposing the grouted riprap energy dissipater placed on the bedrock platform below the outfall. About 75% of the coastal bluff height consists of erosion resistant bedrock, and appears to be in good shape. A seawall may be needed to slow bluff retreat in the future. Photograph 45 by Easton Geology (above) shows the conditions in February 2016, and includes their recommendations regarding extending the culvert and restacking the rip-rap they made at that time. Seawall S5 has no maintenance recommended by HKA at this time. It appears to have at least 30 years remaining life.

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Revetment R5, which is between 8th and 10th Avenue, starts northnorth from Seawall S5.



**Photograph 46: Looking South along Revetment R3 towards ST4 on December 22, 2022**





**Photograph 47: Revetment R3 Showing Scattered Rip-rap Boulders on December 22, 2022**

Photograph 47 shows Revetment R3 with scattered rip-rap boulders on December 22, 2022. We recommend that Revetment R3 be restacked to increase coastal protection and reduce the revetment footprint.



**Photograph 48: Revetment R3 Showing Area of Rip-rap on December 22, 2022  
Where the Public Could Benefit from Quarystone Re-stacking**

The southern 1/4 of the Revetment R3 riprap unstable, poses risks to beach users, and we recommend it as a high priority for repair. The over-steepened portion of R3 should be re-stacked to alower gradient to increase its stability and provide better coastal protection.



**Photograph 49: Showing Revetment R3 Looking South on January 30, 2023**

Most of the portion of R3 shown in Photograph 49 has begun to slump and requires routine maintenance. needs to be re-stacked. The portion of R3 shown in Photograph 48 appears to have been constructed at a different time using smaller rock that may have been dumped into place rather than placed boulder by boulder, perhaps due to emergency conditions during construction. There is displaced undersized rock at the toe of the revetment at a lower gradient, and the revetment appears to be founded on the sandstone bedrock platform and we expect it will continue to provide service for 10 to 20 years. However, the rip-rap boulders are subject to displacement from wave impact. We recommend a vertical reinforced concrete seawall with rock fascia be designed and planned for and considered as a replacement for this portion of the R3 Revetment. The public coastal access at the top of the bluff is reliant upon bluff toe stability, which is currently provided by the R3 rip-rap armoring.



**Photograph 50: Most of Revetment R3 is in Good Condition on December 22, 2022**

The northern three-quarters of Revetment R3 is composed of 2-to-4-ton riprap stacked at approximately a 1.5 to 1.7 to 1 (H:V) gradient and looks to be performing well. No maintenance is recommended here.



**Photograph 51: Showing the Middle Portion of Revetment R3 on January 30, 2023**

Photograph 51 shows the middle portion of Revetment R3 with bearing support on the bedrock platform and on the outboard side of keyway, with the bedrock still providing lateral support of the toe of the structure, except in a couple locations. Two over-steepened sections could benefit from re-stacking, however, this riprap revetment is in good condition and performing well.



**Photograph 52: Showing Revetment R3 Looking North on January 30, 2023**

Photographs 51 and 52 show Revetment R3 looking north and south. The portion of R3 shown in Photograph 52 is in great condition.



**Photograph 53: Profile View of Revetment R3 on January 30, 2023**

Photograph 53 is a profile view of Revetment R3. It was constructed following the severe 1983 storms with the toe of riprap revetment structure properly keyed into the bedrock platform, and still is performing well.



**Photograph 54: Over-steepened portion of Revetment R3 on December 22, 2022**

Photograph 55 shows that small portions near the north end of Revetment R3 are overly steep and could be re-stacked to be more stable and resistant to wave impact energy. During repair of the south 1/4 of R3, this area should be checked and the positions of a few boulders should be adjusted to improve boulder stability.





**Photograph 55: Another Profile View of Revetment R3 on January 30, 2023**



**Photograph 56: Showing Stairway ST5 on January 30, 2023**

Stairway ST5 is located at 11th Avenue and terminates on a bedrock platform, which is exposed when natural beach scour has lowered the beach elevation.



**Photograph 57: Showing Stairway ST5 on January 30, 2023**

Stairway ST5 repairs are needed due to corrosion of the concrete reinforcing, concrete spalling, and worn irregular concrete tread surfaces. We rank the concrete repair as a medium priority to abate slip and fall hazards. There is risk to users of the stairs because they do not extend to beach level during sand scour events. Extension of the stairs appears to be prudent. We rank extension of the stairs to beach level as a low priority if they are securely closed off at both the top and bottom during times when beach sand

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elevations are low as a result of periodic natural beach scour.



**Photograph 58: Showing Stairway ST5 and North End of Revetment R6 on December 22, 2023**

Photographs 57 and 58 show Stairway ST5 before and after the severe January 2023 coastal storms and ocean wave events that resulted in beach scouring. Photograph 58 is a December 2022 photo of ST5 to show the influence of the scour event on beach conditions. This staircase is bearing upon sandstone bedrock platform and appears to be stable. The handrails are in decent shape. The ST5 stair treads are

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worn and cracked and should be resurfaced.

We note that Seawall S6, which was initially mapped by Integral Consulting as a seawall, is not actually a seawall, but rather is a blufftop retaining wall located at the top of the bluff along Scenic Road. It is not influenced by the ocean. It appears to be in good condition; no repairs appear needed.



**Photograph 59: Showing Bluff South of Revetment R4 on January 30, 2023**

At the time of our inspection along the bluff face between Stairway ST5 and Revetment R4, a sandstone bedrock platform was discontinuously exposed, with very few fugitive riprap boulders exposed along the toe of the bluff at beach level. The bedrock exposed in the vertical lower bluff face appears to be erosion resistant and in good shape. No maintenance or armoring is necessary now. However, a future bluff face seawall with artificial rock fascia may be needed in the future to retard long-term erosion.



**Photograph 60: Showing Very Few Boulders Exposed in Revetment R4 Area on December 22, 2022**

Revetment R4 is located between 9th Avenue and 10th Avenue and was mapped by Integral Consulting extending from Stairway 5 and Stairway 6.



**Photograph 61: Northern 1/3 of Revetment R4 Showing Scattered Undersize Riprap Boulders  
on January 30, 2023**

Photograph 61 shows Revetment R4 in profile view showing over 50% of the visible structure is composed of very undersized scattered rock, that is subject to displacement and scattering onto the beach from wave action. The northern 1/3 of the Revetment R4 riprap is unstable, poses risks to beach users and we recommend it as a high priority for repair. Because this structure is composed of undersized, unstable rock, it increases the rate of bedrock erosion when the boulders are tumbled by wave action and abrade the bluff and bedrock platform. We recommend bringing in additional larger riprap quarystone boulders to lower the revetment gradient. Alternately the revetment could be removed and replaced with a vertical seawall to match the appearance of the other nearby seawalls along Carmel Beach.



**Photograph 62: Northern 1/3 of Revetment R4 Showing Very Undersized Scattered Rock  
on January 30, 2023**

We recommend that Revetment R4, which is composed of very undersized scattered rock be completely reconstructed or replaced with a vertical concrete seawall faced with rock fascia.





**Photograph 63: Showing Few Boulders Exposed at the North End of Revetment R4  
On December 22, 2022**

Photographs 61, 62 and 63 show Revetment R4, which is comprised of mostly undersized rock and broken concrete debris. The exposed portion of R4 where we observed substantially undersized scattered rock is approximately 225 feet in length and 8 to 10 feet tall. This structure has been undermined and has collapsed. Undersized riprap has been tumbling around in the wave action and is abrading the bedrock platform seaward of the riprap revetment structure toe. Future wave action could cause the steep slope below the path to slump, undermining the large cypress trees and public pathway along Scenic Road. A vertical concrete seawall at the toe of the bluff would be a preferred alternative here, as opposed to the riprap revetment structure, which requires more maintenance, and takes up a larger footprint.

Recommended maintenance and repair is to clean up the undersized riprap and replace it with a properly engineered, riprap revetment structure, founded into the bedrock platform. Alternately, this revetment could be removed, uncovering beach area, and a vertical seawall could be constructed at the toe of the bluff to prevent Scenic Road from being undermined.



**Photograph 64: Showing Stairway ST6 on December 22, 2022**

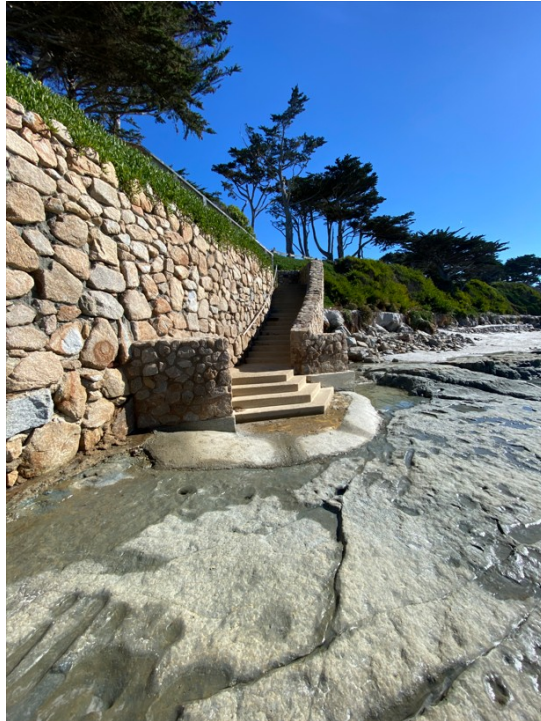
Photograph 64 shows Stairway ST6 is located south of 10th Avenue. The base of the stairs was buried in beach sand.

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**Photograph 65: Showing Recent Maintenance on Stairway ST6 on December 22, 2022**

Photographs 65, 66 and 67 show Stairway ST6, which is a combination reinforced concrete (lower portion) to wooden (upper portion) public beach access staircase. The base of the staircase is founded on the sandstone bedrock platform below the beach sand. Several stair treads have spalled concrete areas, exposing highly corroded rebar, which is expanding, resulting in internal pressures within the concrete, which causes the stair treads to spall. This spalling creates a hazardous condition, and we recommend it be repaired and maintained to a safe standard for public use, using corrosion resistant reinforcing bar such as ChromX 4100 or 9100. Stairway ST5 repairs are needed due to corrosion of the concrete reinforcing, concrete spalling, and worn irregular concrete tread surfaces. We rank the concrete repair as a medium priority to abate slip and fall hazards.



**Photograph 66: Stairway ST6 Well Founded in Bedrock on January 30, 2023**



**Photograph 67: Stairway ST6 with Tread Deterioration on January 30, 2023**

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**Photograph 68: South Foundation of Seawall S7 on January 30, 2023**

Photograph 68 shows the south foundation of Seawall S7, located between Stairways ST6 and ST7, is bearing on the sandstone bedrock platform. The foundation is in good condition. Seawall S7 is flanked by the north end of R6.



**Photograph 69: Storm Drain Outfall near South End of Seawall S7 on January 30, 2023**

Photograph 69 shows the south end of Seawall S7 where a 24-inch diameter concrete storm drain culvert outfall is in good condition. No maintenance is recommended here.



**Photograph 70: Seawall S7 Foundation on January 30, 2023**

Photograph 70 shows the Seawall S7 foundation, which was partially exposed during our inspection. This foundation appears to be a conventional spread footing foundation, approximately 20 inches wide at its toe and embedded in bearing upon the sandstone bedrock platform. The seawall above grade has slowly deteriorating mortar between individual rocks that form the wall face. The seawall foundation appears to be in good condition, and no maintenance is recommended at this time.



**Photograph 71: Seawall S7 Foundation on January 30, 2023**

Photograph 71 shows a view looking down coast at Seawall S7, showing additional exposed foundation area that is bearing on the sandstone bedrock platform.





**Photograph 72: Storm Drain in Seawall S7 on January 30, 2023**

Photograph 72 shows a storm drain culvert projecting out of the top portion of S7. This culvert is composed of highly corroded corrugated metal pipe that is 16 inches in diameter and appears to be collapsed about 3 feet landward of the wall. We observed large cracks in the seawall just below the culvert outfall. We recommend replacing this corrugated metal culvert with watertight HDPE N-12 storm drainpipe. We classified this as a medium priority. Except for this area of recommended repair, Seawall S7 has 30 years of remaining life.



**Photograph 72: Stairway ST7 on December 22,2022**

Photograph 72 shows Stairway ST7, which is located north of 10th Avenue.



**Photograph 73: Stairway ST7 on January 30, 2023**

Photographs 72 and 73 show Stairway ST7 at different beach scour conditions. Photo 73 shows the lower end of the stairs ending in mid-air at the time of our January inspection. Stairway ST7 repairs are needed due to corrosion of fasteners and hardware, and the vertical drop off and lack of foundation support at the base of the stairs during times of low beach surface elevations from scour. We rank the repair as a high priority and recommend prompt structural and corrosion inspection. There is a high risk to users of the stairs.



**Photograph 74: Stairway ST7 on January 30, 2023 Showing Undermining**

Photograph 74 illustrates the 2 1/2-foot vertical drop down to current beach sand elevation after the considerable winter scour event. At the time of our inspection the stairs were unsafe for public use in this condition. Extension of the stairs does appear to be prudent. We recommend that the stairs should be structurally evaluated and extended down to a landing constructed on the bedrock platform that they are secured to at their base. There is risk to users of the stairs because they do not extend to beach level during times of low beach sand surface elevations. Due to the vertical drop off we rank extension of the stairs to beach level as a high priority and recommend prompt structural and corrosion inspection. There is a high risk to users of the stairs.



**Photograph 75: South Portion of Revetment R5 on January 30, 2023 Showing Bedrock Platform Below Beach Sand and Old Erosional Scarp in Ice Plant Above Revetment**

Photograph 75 shows the southern end of Revetment R5, which is located between 8th Avenue and 10th Avenue, and was possibly initially founded on beach sand in an emergency effort to buttress the bluff failure above it. The wave action then likely scoured away the beach sand, and undermined the emergency revetment, causing it to collapse, and spread boulders out onto the beach.



**Photograph 76: Showing Collapsed Southern End of Revetment R5 on January 30, 2023**

Photograph 76 shows the southern end of Revetment R5, which has partially collapsed, and a majority of the riprap is now fugitive. We recommend re-stacking the fugitive riprap boulders on and at the toe of the existing revetment at a 1.5 to 1 slope gradient with the total base of the revetment structure founded below the beach sand on the bedrock platform.



**Photograph 77: Southern Portion of Revetment R5 on January 30, 2023 Showing Steep Slope**

Photograph 77 shows the southern portion of Revetment R5 and large cypress trees on the bluff face where driftwood has washed up onto the bluff face by waverunup. The upper portion of the riprap revetment looks steep. The top of the riprap revetment elevation is unknown. The estimated total height of the riprap revetment is 12 to 15 feet high and is likely sloped at a 1.5:1 or 2:1 (H to V) slope gradient.

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**Photograph 78: Central Portion of Revetment R5 on January 30, 2023**

Photograph 78 shows the central portion of Revetment R5, where the coastal access path at the top of the bluff is dependent on bluff toe armoring and stability. A riprap revetment structure which is armoring the toe of the bluff is barely visible. About 3 to 5 feet of the revetment height is visible. The total height of a revetment is unknown, but estimated at 12 to 15 feet. Future wave action could cause the steep slope below the path to slump, undermining the large cypress trees, and public pathway along Scenic Road. A vertical concrete seawall at the toe of the bluff would be a preferred alternative here, as opposed to the riprap revetment structure, which requires more maintenance, and takes up a larger footprint.





**Photograph 79: Showing Beach Access Stairway ST8 on January 30, 2023**

Photograph 79 shows Beach Access Stairway ST8, which is near 9th Avenue just south of the central part of Revetment R5. It is a wooden stairway that is in good condition; however, it terminates before reaching the beach when the beach sand levels are seasonally low. We recommend that that the stairway be extended approximately 12 vertical feet down to the bedrock platform (which is presently buried by beach sand) at beach level. The existing beach access path across the R5 rip-rap below these stairs is hazardous and poses risk to stair users attempting to cross the revetment. Extension of the stairs is a high priority. This stairway does not have any other maintenance recommended at this time. Extending the stairway across the rip-rap revetment should be done carefully. A detailed design study will be necessary to properly found the stairway in and seaward of Revetment R5.



**Photograph 80: Showing South End of Central Portion of Revetment R5 on January 30, 2023**

Photograph 80 shows the south end of the central portion of Revetment R5 adjacent to Stairway ST8.



**Photograph 81: Small Amount of Revetment R5 Riprap on January 30, 2023**

As shown in Photograph 81, in the center portion of Revetment R5 we observed a small amount of visible riprap which was approximately 12 feet long and 6 feet tall. It was not possible to see enough riprap to draw meaningful conclusions regarding the extent, dimensions, condition and need for repair (if any) of this reported structure.



**Photograph 82: Showing A Small Amount of Additional Revetment R5 Riprap on January 30, 2023**



**Photograph 83: Showing Additional Revetment R5 Rip-rap on January 30, 2023**



**Photograph 84: Showing a Small Amount of Revetment R5 Riprap on January 30, 2023**

Photographs 82, 83 and 84 show the location of the center portion of Revetment R5 where we observed approximately 100 linear feet of 3- to 5-foot-high rip-rap that was exposed. It was not possible to see enough riprap to draw meaningful conclusions regarding the extent, dimensions and condition of this reported structure. We suspect most of this revetment structure is below sand level, not visible during our inspection.



**Photograph 85: Location of North Area of Revetment R5 on January 30, 2023**

We observed the area where the north portion of Revetment R5 was mapped by Integral Consulting. No riprap was visible.



**Photograph 86: Stairway ST9 on January 30, 2023**

Photographs 86 and 87 show Stairway ST9, which is near 8th Avenue, is a set of rock and mortar landscape or decorative steps. No recommended maintenance at this time is needed. The natural rock (Carmel Stone) treads are becoming worn, and their irregular surface should be evaluated for safety and code compliance by a qualified professional. A detailed study would be required to assess how to protect the stairs from being undermined.





**Photograph 87: Toe Conditions at Seaward End of Stairway ST9 on January 30, 2023**

Because the treads of Stairway ST9 are worn and have an irregular (bumpy) surface that poses some slip and fall risks to stair users, we recommend they be repaired and classify that as a medium priority.



**Photograph 88: Seawall S8 on January 30, 2023**

Photograph 88 shows Seawall S8 on January 3, 2023. It is a retaining wall (not a seawall) near 8th Avenue and Stairway ST9 and appears to be supporting a cut slope created to construct a municipal infrastructure system. It is not influenced by ocean wave impact. Seawall S8 appears to have at least 30 years of remaining life and no repairs are needed now.



**Photograph 89: Revetment R5 and Seawall S9, Showing Small Amount of Riprap Boulders on January 30, 2023**

Photograph 89 shows that Seawall S9 is a storm drainpipe headwall just north of 8th Avenue. No noticeable maintenance is recommended at this time. As exposed during our inspection, the north end of Revetment R5 has scattered riprap in this location and it does not seem laterally continuous. During our inspection, only the crest of the revetment structure was visible during inspection. Seawall S9 appears to have 20 years of remaining life and no repairs are needed now.



**Photograph 90: Stairway ST10 Overlook Platform on January 30, 2023**

Photograph 90 shows a Public Overlook Platform at the end of a boardwalk at the end of Ocean Avenue, we have named ST10, as seen on January 30, 2023. Our firm (Haro Kasunich and Associates Inc.) assisted in the design of this overlook in 2012. The ST10 wooden platform has reinforced concrete piers supporting it that appear to be performing reasonably well and we do not note the need for any maintenance at this time. We estimate the anticipated life of the structure is approximately 20 years. We recommend that the platform structure be monitored for deterioration of the wood and corrosion of the metallic hardware and reinforcing. If any problems are noted in the future, appropriate maintenance and repair should be done.



**Photograph 91: Revetment R6 Showing Small Amount of Rip-rap Boulders on January 30, 2023**

Photograph 91 shows riprap that forms part of the R6 Revetment structure seaward of the end of Ocean Avenue which incorporates a storm drain outfall, as seen on January 30, 2023. The rip rap has an approximately 2:1 (H to V) surface slope gradient and the exposed portion is 6 to 7 feet tall. The remainder of the revetment, including its foundation condition, is buried in sand and is unlikely to be visible until the next extreme scour event. Whenever it is next exposed by natural beach sand scour processes, it should be inspected. That may not be for a decade but could be possible during any winter. Based on what we observed, no maintenance is presently recommended. We estimate the lifespan of this structure is 10 to 30 years, depending upon its foundation condition.

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**Photograph 92: Seawall S10 on January 30, 2023**

Photographs 92, 93, 94 and 95 show Seawall S10 on January 30, 2022. This seawall is a storm drain headwall for a 3 by 3-foot reinforced concrete box culvert located in the dunes area north of Ocean Avenue. It is in poor condition. Photograph 92 shows that the central part of the Seawall S12 foundation is bearing upon sandstone bedrock. In adjacent areas the foundation is partially undermined horizontally up to 16 inches at the toe.



**Photograph 93: Central Part of Foundation of Seawall S10 on January 30, 2023**

Photograph 93 is a photograph that shows concrete spalling, exposing steel reinforcement.



**Photograph 94: Seawall S10 on January 30, 2023**

Photograph 94 is a photograph that shows Seawall S12 being undermined where it steps up the coastal bluff on the north side. Also visible is that the guard at the top of the wall is broken creating an unsafe condition there that needs to be remedied.





**Photograph 95: Seawall S10 on January 30, 2023**

Photograph 95 is a photograph that shows a large structural crack in Seawall S12 above the box. The crack is wider at the top than the bottom and the wall has been displaced. Reinforcing bars have been exposed by spalling concrete. It appears the south side of the seawall has rotated out in the seaward direction. The north side of the seawall appears to be vertical (plumb) and straight. Most of the rebar of the structure is corroded and not salvageable. We recommend reconstruction of the box culvert and seawall in its entirety. The down coast end of the seawall is outflanked and has been partially undermined, contributing to instability on that side of the structure. This structure has 0 to 10 years of remaining service life before it may collapse. It could collapse catastrophically this year. We do not expect it to survive 10 years. We recommend the City budget for and construct a new structure as soon as possible. This structure poses risks to beach users, and we recommend it have a high priority for replacement



**Photograph 96: Stairway ST11 on January 30, 2023**

Photograph 96 shows Public Beach Access Stairway ST11, located in the dunes area north of Ocean Avenue, on January 30, 2022. Our firm (Haro Kasunich and Associates Inc.) designed this stairway. The lowest elevation run of the stairway has a damaged handrail, minor corrosion in a few spots along the handrail, a broken wooden guard and handrail on the north side of the lowest flight of stairs. The bottom 3 or so feet of the stairs were buried in beach sand at the time of our inspection. We recommend re-inspection during the next natural beach scour event that exposes the lowest portion of the stairs which were founded on bedrock at the time of initial construction. Further evaluation of the structure by an independent licensed structural engineer (and if need be, a licensed corrosion engineer) should be scheduled to verify the structure condition is safe for public use. We recommend the broken guard and handrail be repaired or replaced for the sake of pedestrian safety, and rank that as a high priority, since the current conditions pose slip and fall risks to stair users.

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Photographs 97, 98 and 99 show Seawall S11 on January 30, 2022. This is a privately owned seawall and is the furthest north coastal protection structure protecting the furthest north home in the City of Carmel. The total height of the seawall is unknown. Photograph 71 shows the north portion. At the time of our inspection 6 to 10 feet of retaining wall was exposed above the beach sand level. The seawall appeared to be in good condition, and we did not observe any maintenance or repair that was needed.



**Photograph 97: South Portion of Privately Owned Seawall S11 on January 30, 2023**

Photograph 97 shows the south part of Seawall S11 on January 30, 2022. The south portion is approximately 6 feet high. This portion includes a private access stairway at the south end. The seawall appeared to be in good condition, and we did not observe any maintenance or repair that was needed.



**Photograph 98: Central Portion of Privately Owned Seawall S13 Center on January 30, 2023**

Photograph 98 shows the central part of Seawall S11 on January 30, 2022. The center portion is approximately 6 feet high. The seawall appeared to be in good condition, and we did not observe any maintenance or repair that was needed.



**Photograph 73: North Portion of Privately Owned Seawall S11 on January 30, 2023**

Seawall S11 connects to a retaining wall along the margin of Pescadero Creek that has steel H-beam soldier piles and wood lagging. Evaluation of it is outside of our scope of services.

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## **References**

Easton Geology, 8 February 2016, Mid-winter Assessment of Shoreline Improvements at Carmel Beach, Carmel-by-the-Sea, California.  
Easton Geology, 13 June 2016, Second Winter Inspection of Shoreline Improvements at Carmel Beach, Carmel-by-the-Sea, California

## **APPENDIX A**

### **Carmel Adaptation Coastal Protection Datasheet Dated 4-27-2023**

APPENDIX A Haro Kasunich and Associates, Inc.

City of Carmel Coastal Protection Datasheet

4/27/2023

Structure Identifier	Approximate Location	Date of Inspection	Length (Ft)*	Visible Height (Ft)	Total Height (Ft)	Guesstimated Footprint Area (Ft <sup>2</sup> )	Estimated Surface Slope Gradient (H:V)	Estimated Quarrystone Size Range (Tons)	Estimated Rip Rap Volume (CY)	Adequate Protection?	Repair Needed?	Risk to Beach Users	Priority of Repair	Estimated Existing Life of Structure Until it Ceases to Protect Coastal Access Path, Stairs and Roadway (Yrs)	Note 1	Note 2
<b>Seawalls</b>																
S1	At FLW House	12/22/2022 & 1/30/2023	27	5	5	162	0:1 (Vertical)	NA	0	YES	UNKNOWN	NO	NA	30+?	Private Property, Not evaluated; Upcoast Corner Will Need Maintenance at Some Future Point	Private Property
S2	FLW Home to Santa Lucia	12/22/2022 & 1/30/2023	565	8 to 13	8 to 13	1695	0:1 (Vertical)	NA	0	YES	NO	NO	VERY LOW	30+	Good Condition, Slight Undermining Noted in Two Spots	Upcoast End (Last 5 Ft) Has been Undermined and Patched, Some Seepage Below Wall
S3	13th Avenue	12/22/2022 & 1/30/2023	556	6 to 14	11 to 14?	1668	0:1 (Vertical)	NA	0	YES	NO	YES	VERY LOW (Upcoast) LOW (Downcoast)	Upcoast Part = 50, Downcoast = 20+	In Cove, Sloppy Pumped Concrete on Beach; Downcoast Part is Subject to Slow Undermining	Upcoast Part is Newer Neill Engineers Wall (2010?)
S4	N of 13th Avenue	12/22/2022 & 1/30/2023	168	6 to 8	6 to 8	504	0:1 (Vertical)	NA	0	YES	NO	NO	VERY LOW	Most = 30+	Mostly Good Condition; Founded on Bedrock Platform	
S5	Outfall at 12th Avenue	12/22/2022 & 1/30/2023	13	8	8	39	0:1 (Vertical)	NA	0	YES	NO	NO	VERY LOW	30+	Good Condition, Monitor Annually	Small Storm Drain Splash Block Armor
S6	Scenic Rd Retaining Wall	12/22/2022 & 1/30/2023	317	3	3	951	0:1 (Vertical)	NA	0	YES	NO	NO	NA	Not a Coastal Protection Structure	Short Coastal Path Wall Not Subject to Wave Impact	
S7	Between Stairways 6 and 7	12/22/2022 & 1/30/2023	241	8 to 13	8 to 13	723	0:1 (Vertical)	NA	0	YES	YES	NO	MEDIUM	30	Wall Crack Below Failed Metal 16" Dia Storm Drain Pipe Thru Seawall; Pipe Replacement Needed	Mortar is starting to deteriorate; maintenance consisting of mortar tuck pointing by a stone mason is needed
S8	Retaining Wall at 8th Ave	1/30/2023	37	2 to 4	2 to 4	111	0:1 (Vertical)	NA	0	YES	NO	NO	VERY LOW	30+	Blufftop Retaining Wall Around Pump Station	Good Condition
S9	Outfall at 8th Ave	1/30/2023	13	8 to 10	8 to 10	39	0:1 (Vertical)	NA	0	YES	NO	NO	VERY LOW	20	CMP Storm Drain Headwall; 60 LF Scattered Rip-rap Below; Rip-rap Foundation Condition Uncertain	Monitor during Scour
S10	Dunes Outfall	1/30/2023	31	15	15	93	0:1 (Vertical)	NA	0	NO	YES	YES	HIGH	0 to 10 Until Collapse	Falling/Failed 3'x3' Box Culvert Storm Drain Outfall Wall, Needs Replacement	Concrete Cracked, Undermined, Outflanked, Corroded Rebar, Visually Undesirable; Replacement Recommended
S11	At Pescadero Creek Home	1/30/2023	290	6 to 10	Unknown	2900	0:1 (Vertical)	NA	0	YES	UNKNOWN	NO	NA	30?	Private Property; Not Evaluated, No Obvious Need for Repairs is Evident	Private Property
<b>Revetments</b>																
R1	Between S2 and S3	12/22/2022 & 1/30/2023	118			2360	Upcoast 1/3 is 1:1	Upcoast 1/3 is 1 Ton		NO; Upcoast 1/3	YES; Upcoast 1/3	YES	HIGH	Upcoast 1/3 = 0	Upcoast 1/3 Oversteepened, No Filter Fabric, Unstable, Potentially Unsafe	Public Will Benefit from Replacement
R2	Between S3 and S4	12/22/2022 & 1/30/2023	50			1000	3:1?	< 1 Ton		NO	YES	NO	HIGH	0 to 5	Falling Structure, Has Voids, Undersized Quarrystone	Public Will Benefit from Restacking or Replacement; Consider Vertical Wall Here
R3	Between 11th and 12th Ave	12/22/2022 & 1/30/2023	406	Unknown	Unknown	8120	1.5 to 2:0:1	Upcoast 3/4; 2 to 4 Ton		YES; Upcoast 3/4	YES; Downcoast 1/4	NO	MEDIUM (Downcoast 1/4); VERY LOW (Upcoast 3/4)	Downcoast 1/4 = 10; Upcoast 3/4 = 30	Downcoast 1/4 Poorly Stacked, Has Had Instability; Upcoast 3/4 REIA 1983	Upper 1/2? Covered by iceplants; Could Not Inspect It
R4	Between 10th and 11th Ave	12/22/2022 & 1/30/2023	336	Unknown	Unknown	6720	Unknown	Unknown	Unknown	NO; Upcoast 1/3	YES; Upcoast 1/3	NO	HIGH (Upcoast 1/3); UNKNOWN (Downcoast 2/3)	Upcoast 1/3 = 0 to 5; Downcoast 2/3 = Unknown	Undersized rock Upcoast 1/3; Few Quarrystones Visible; Back Beach Vegetated 12/2022; Monitor When Exposed	Downcoast 2/3 Not Exposed Enough to Inspect Now; Recommend Re-Inspection When Exposed
R5	Between 8th and 10th Ave	1/30/2023	815	6**	Unknown	16300	Unknown	Unknown	Unknown	MAYBE	Unable to Assess	NO	Unable to Assess	Unknown	Few Quarrystones Visible 1/2023; Monitor When Exposed; May Be Founded on Sand; Downcoast End Has Slumped;	Not Exposed Enough to Inspect Now; Recommend Re-Inspection When Exposed
R6	At Ocean Avenue	1/30/2023	136	6 to 7			2:1			MAYBE	Unable to Assess	NO	Unable to Assess	10 to 30 years?	Few Quarrystones Visible 1/2023; Monitor When Exposed; May Be Founded on Sand; Downcoast End Has Slumped;	Not Exposed Enough to Inspect Now; Recommend Re-Inspection When Exposed
<b>Stairways</b>																
ST1	Martin Way	12/22/2022 & 1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	UNKNOWN***	MEDIUM***	Regular Maintenance is Essential	Corroded Structural Elements, Footing on Bedrock	Maintenance is Essential for Pedestrian Safety
ST2	Santa Lucia Avenue	12/22/2022 & 1/30/2023	NA	NA	Attachment 3	NA	NA	NA	NA	NA	YES	NO	NONE NOW	Regular Maintenance is Essential	Downcoast Railing Bent from Log Impact	Maintenance is Essential for Pedestrian Safety
ST3	13th Avenue	12/22/2022 & 1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES During Scour Events	LOW	Regular Maintenance is Essential	Great Condition, Stairs End on Elevated Bedrock Platform; Consider Extending Stairs to Scoured Beach Level	Maintenance is Essential for Pedestrian Safety
ST4	12th Avenue	12/22/2022 & 1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES	HIGH	Regular Maintenance is Essential	Hazardous; Undermined in EG Fig 1 (D0167); Corroded Hardware	Maintenance is Essential for Pedestrian Safety
ST5	11th Avenue	12/22/2022 & 1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES During Scour Events	MEDIUM	Regular Maintenance is Essential	Concrete Treads Worn; Stairs End on Elevated Bedrock Platform; Consider Extending Stairs to Scoured Beach Level	Maintenance is Essential for Pedestrian Safety
ST6	5 of 10th Avenue	12/22/2022 & 1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES	MEDIUM	Regular Maintenance is Essential	Needs Minor Tread Work; Corroded Rebar Exposed; Concrete Spalling	Maintenance is Essential for Pedestrian Safety
ST7	N of 10th Avenue	1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES During Scour Events	HIGH***	Regular Maintenance is Essential	Toe of Stairs Undermined by Scour 1/2023; Hazardous; Easton (2016) Said Look at 2008 CRP Photo	Maintenance is Essential for Pedestrian Safety
ST8	9th Avenue	1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES During Scour Events	HIGH	Regular Maintenance is Essential	Stairway Terminates Before Reaching Beach During Scour; Needs Seaward Extension Across Revetment	Maintenance is Essential for Pedestrian Safety
ST9	8th Avenue	1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES	MEDIUM	Regular Maintenance is Essential	Rock and Mortar Steps; Worn Natural Rock Surfaced Treads Create Slippery Condition	Maintenance is Essential for Pedestrian Safety
ST10	Ocean Avenue	1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	NO	NO	NONE NOW	Regular Maintenance is Essential	Coastal Overlook and Boardwalk; Not Subject to Wave Impact	Maintenance is Essential for Pedestrian Safety
ST11	Dunes	1/30/2023	NA	NA	NA	NA	NA	NA	NA	NA	YES	YES	HIGH	Regular Maintenance is Essential	Hazardous; Broken Guard and Handrail on Upcoast Side of lowest Run	Maintenance is Essential for Pedestrian Safety

Total Armor Length (feet) 4119  
 Total Coastline Length (feet) 5537

\* = As mapped by Integral consulting; Some structures may not exist or be of different as-built length  
 \*\* = Scattered Spots Along < 10% of Length Observed  
 \*\*\* = Structural and Corrosion Inspection is High Priority

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## **APPENDIX B**

### **Carmel Coastal Protection Map With Structure Identifiers and Structure Lengths Dated 4-27-2023**





S# = SEAWALL NUMBER WITH APPROXIMATE LENGTH IN FEET NOTED

R# = REVETMENT NUMBER WITH APPROXIMATE LENGTH IN FEET NOTED

ST# = STAIRWAY NUMBER

## 2023-4-27 Carmel Coastal Protection Structures & Stairways



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

February 4, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Javier Hernandez, Project Manager
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2025-017, authorizing the City Administrator to execute Amendment No. 1 to the Professional Services Agreement with Advance Design Consultants, Inc. for Electric Panel Upgrades and Electric Vehicle Charging related projects, for a not-to-exceed fee of \$58,020 (Estimated time - 5 min)

## RECOMMENDATION:

Adopt Resolution 2025-017 (**Attachment 1**), authorizing the City Administrator to execute Amendment No. 1 (**Attachment 2**) to the Professional Services Agreement with Advance Design Consultants, Inc. for Electric Panel Upgrades and Electric Vehicle Charging related projects, for a not-to-exceed fee of \$58,020.

## BACKGROUND/SUMMARY:

In June 2022, the City Council approved Resolution 2022-048, which allocated funding for 25 Capital Improvement Projects for Fiscal Year (FY) 2022/23. Among these projects, the Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and Vista Lobos Facilities were included, with a total budget of \$75,000.

In December 2022, the City Administrator entered into a contract with PG&E to install a new meter and related equipment, valued at \$200,000, at no cost to the City. This installation will provide discounted power to new EV charging stations along the southern row of the Vista Lobos parking lot, including a high-capacity station for the electric street sweeper. The plan also includes rerouting the existing dual-capacity EV charger, which is currently powered by the near-capacity electrical panel at the Vista Lobos building, to take advantage of the discounted power rates.

In June 2023, the Council adopted Resolution 2023-067, approving 16 new FY 2023/24 Capital Improvement Projects, including the Sunset Center North Lot Electrical Panel Replacement Project with a budget of \$100,000. Located along Eighth Avenue, the existing panel is overburdened, frequently causing breakers to trip and resulting in EV charging stations being taken out of service. The panel has also been flagged by the Building Official. It currently powers the parking lot lights, the CERT Connex box, and five EV charging stations. The replacement panel will be properly sized to support current loads and accommodate additional EV charging stations, subject to PG&E service charges.

In July 2023, the Council adopted Resolution 2023-071, authorizing the City Administrator to execute a Professional Services Agreement with Advance Design Consultants, Inc. for electrical engineering services related to the electric panel upgrades and other associated projects, for a not-to-exceed fee of \$79,560.

In June 2024, the Council adopted Resolution 2024-047 for the FY 2024/25 Capital Improvement Plan, approving the carryover of prior fiscal year projects. This included the Sunset Center North Lot Electrical Panel Replacement Project, with a budget of \$100,000, and the Vista Lobos: 3 EV Charging Stations and Building Electrical Panel project, with a budget of \$460,000, for a combined total of \$560,000.

To proceed with the design and construction phases for both projects, an amendment to the existing agreement with Advance Design Consultants is required. Amendment No. 1 includes additional electrical engineering design services for the Sunset Center North Lot and construction support for both the Sunset Center and Vista Lobos projects. The amendment has been negotiated for a not-to-exceed fee of \$58,020 and includes a provision for \$15,000 in on-call electrical and mechanical engineering services to address urgent facility maintenance needs through June 30, 2026. This ensures timely expert support for ongoing maintenance and repairs at these facilities.

**FISCAL IMPACT:**

Engineering design and construction support services by Advance Design Consultants for Amendment No. 1 are outlined in the table below:

No.	Scope of Work	Fee
1	Sunset Center – Parking Commercial Service Relocation	\$19,760
2	Vista Lobos – Construction Support Services (Fleet and Commercial)	\$11,630
3	Sunset Center – Construction Support Services (Rule 29 and Commercial)	\$11,630
4	On-Call Architecture-Engineering Services	\$15,000
<b>Total</b>		<b>\$58,020</b>

The total fee for Advance Design Consultants, including the original Agreement authorization of \$79,560, plus this Amendment No. 1 for a not-to-exceed fee of \$58,020, is \$137,580.

The two electrical projects have been bundled for efficiency in design, bidding, and construction, resulting in cost savings through economies of scale. However, due to ongoing inflation, rising construction labor costs, and supply chain challenges, additional funds may be required once the construction contract is awarded. The FY 2024/25 Capital Improvement Program includes a Contingency Fund to address these potential needs.

The following table provides a recap of the current budget allocations for the Sunset Center North Lot Electrical Panel Replacement Project (\$100,000) and the Vista Lobos: 3 EV Charging Stations and Building Electrical Panel (\$460,000).

No.	Project/Task	Firm	Fee
1	Sunset Center – North Parking Lot Electric Panel Upgrade	Advance Design Consultants, Inc.	\$1,824
2	Design and Construction Support Services for Electric Panel Upgrades and Electric Vehicle Charging Related Projects	Advance Design Consultants, Inc.	\$58,020
3	Budget Available for Electrical Improvements	TBD	\$500,156
<b>Total</b>			<b>\$560,000</b>

All expenditures for these projects are covered in the Capital Projects Fund, Account No. 301-311-00-43008.

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

In June 2022, the City Council approved Resolution 2022-048, which included 25 Capital Improvement Projects for Fiscal Year (FY) 2022/23. Among these projects was the Electrical Panel Upgrades for City Hall, Public Works, Sunset Center, and Vista Lobos Facilities, with an allocated budget of \$75,000.

In June 2023, Council adopted Resolution 2023-067, approving 16 new Capital Improvement Projects for FY 2023/24, including the Sunset Center North Lot Electrical Panel Replacement Project with a budget of \$100,000.

In July 2023, Council adopted Resolution 2023-071, authorizing the City Administrator to execute a Professional Services Agreement with Advance Design Consultants, Inc. for electrical engineering services related to electric panel upgrades and related projects, for a not-to-exceed fee of \$79,560.

In June 2024, the Council adopted Resolution 2024-047 for the FY 2024/25 Capital Improvement Plan (CIP), approving the carryover of prior fiscal year projects. This included the Sunset Center North Lot Electrical Panel Replacement Project, with a budget of \$100,000, and the Vista Lobos: 3 EV Charging Stations and Building Electrical Panel project, with a budget of \$460,000, for a total combined budget of \$560,000.

#### **ATTACHMENTS:**

- Attachment 1) Resolution 2025-017
- Attachment 2) Amendment No. 1

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

**RESOLUTION NO. 2025-017**

**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 ADVANCE DESIGN CONSULTANTS, INC.  
FOR PROFESSIONAL ELECTRICAL ENGINEERING AND CONSTRUCTION SUPPORT  
SERVICES FOR A NOT-TO-EXCEED FEE OF \$58,020 FOR FISCAL YEAR 2024/25**

WHEREAS, in June 2022, Council adopted Resolution 2022-048 approving capital improvement projects for Fiscal Year 2022/23, including the Electric Panel Upgrades Project for four City buildings; and

WHEREAS, in December 2022, the City Administrator executed a contract with PG&E to install electrical equipment in the Vista Lobos parking lot, at no cost to the City, to allow for new electric vehicle charging stations and reduce power loads for the Vista Lobos building; and

WHEREAS, in June 2023, Council adopted Resolution 2023-067 approving capital improvement projects for Fiscal Year 2023/24, including the Sunset Center North Lot Electrical Panel Replacement Project; and

WHEREAS, based on Statements of Qualifications received from four firms, an evaluation committee selected Advance Design Consultants (ADC) as best qualified to provide electrical and mechanical engineering services for these types of projects; and

WHEREAS, a Professional Services Agreement was prepared with ADC for electrical panel evaluations, designs, and construction support services for the Vista Lobos and Sunset Center projects for a base fee of \$64,560; and

WHEREAS, a budget of \$15,000 is included to provide on-call, as-needed electrical or mechanical services for urgent safety repairs, for a combined not-to-exceed fee of \$79,560 and a term expiring on June 30, 2025; and

WHEREAS, Amendment No. 1 to the Professional Services Agreement was negotiated with Advance Design Consultants, Inc. to provide electrical service relocation design and EV charging station construction support at Vista Lobos and Sunset Center; and

WHEREAS, per Amendment No. 1, a budget of \$15,000 is included to provide on-call, as-needed electrical or mechanical services for urgent safety repairs and PG&E construction coordination, for a combined not-to-exceed fee of \$58,020 and a term expiring on June 30, 2026; and

WHEREAS, the original Professional Services Agreement in the amount of \$79,560, together with Amendment No. 1 in the amount of \$58,020, results in a total contract value of \$137,580; and

WHEREAS, there is sufficient budget available in the Capital Fund Account to cover fees for the Capital Improvement Projects.

**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 Advance Design Consultants, Inc. for Engineering and Construction support services for a not-to-exceed fee of \$58,020 for Fiscal Year 2024/25.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of February, 2025, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dale Byrne, Mayor

\_\_\_\_\_  
Nova Romero, MMC, City Clerk

**AMENDMENT NO. 1 TO  
AGREEMENT # PWD-AVDSN-198-23-24**

**PROFESSIONAL ELECTRICAL ENGINEERING SERVICES  
FOR FISCAL YEAR 2023/24**

1. This amendment (the "Amendment") is made by **City of Carmel-by-the-Sea** and **Advance Design Consultants, Inc.**, parties to Agreement #PWD-AVDSN-198-23-24 (the "Agreement") executed on July 20, 2023.

2. The Agreement is amended as follows:

a. Section 1, Services, is amended to include the following engineering and constructions support services and related services during Fiscal Year 2024/25, as described in the Scope of Services in Exhibit A.1:

- Sunset Center Parking – Commercial Electric Service Relocation Design
- Vista Lobos – Construction Support Services
  - Commercial Service Relocation and Electric Vehicle Charging Station Construction.
  - Fleet Electric Vehicle Charging Station Construction.
- Sunset Center – Construction Support Services
  - Commercial Service Relocation
  - Rule 29 Electric Vehicle Charging Station Construction
- On-Call, As-Needed Services,

b. Section 2, Compensation, of the Agreement is amended and restated as follows:

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 Fee Schedule (Exhibit "B.1"), in a total amount not-to-exceed Fifty-Eight Thousand Twenty Dollars (\$58,020.00) for services performed in Fiscal Year 2024/25. Therefore, the "Maximum Authorized Expenditure" under this Agreement, including Amendment No. 1, is One Hundred Thirty-Seven Thousand Five Hundred Eighty Dollars (\$137,580).

c. Section 3, Agreement Term, of the Agreement is amended and restated as follows:

The work under this Agreement will commence by July 20, 2023 and must be completed by June 30, 2026 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 Amendment No. 1 services in a timely manner and in accordance with the Project Schedule for Fiscal Year 2024/25 in Exhibit C.1.

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.

4. Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Amendment and to bind the parties to the performance of its obligations.

5. This Amendment may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, constitute one and the same instrument. The Amendment will be considered executed when the signature of a party is delivered by facsimile or other electronic transmission. Such facsimile or other electronic signature will have the same effect as an original signature.

6. If any term, condition, or covenant of this Amendment is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Amendment will not be affected and the Amendment will be read and construed without the invalid, void or unenforceable provision.

**CONSULTANT:**

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

**CITY:**

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

**ATTEST:**

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Nova Romero, MMC, City Clerk



## Exhibit A.1 - Scope of Services for Amendment No. 1

The scope of work shall include the following;

**1. Sunset Center Parking Commercial Service Relocation**

- a. Provide electrical engineering for construction documents to relocate the existing commercial service relocation at Sunset Center Parking Lot. This will include a new concrete housekeeping pad and equipment seismic anchorage for relocated equipment.

**2. Vista Lobos - Construction Support Services**

- a. Provide response to RFI's, equipment submittal review and provide 3 construction site visits.
- b. (Fleet and Commercial) construction expected to begin March 2025

**3. Sunset Center - Construction Support Services**

- a. Provide response to RFI's, equipment submittal review and provide 3 construction site visits.
- b. (Both Rule 29 and Commercial) construction expected to begin July 2025.

**4. On-Call Architecture-Engineering Services**

- a. Provide engineering services on an on-call basis, scope, and fees to be negotiated.
- b. Refer to the 2025 hourly rate sheet attached.

**5. Extend PSA contract to "June 30th 2026"**

Total cost time and material cost to provide value engineering services fee is:

**\$ 58,020** (Fifty-Eight thousand, Twenty dollars)

ENGINEERING SERVICES										
Fee Proposal to the CITY OF CARMEL										
Attachment 2										
TASK DESCRIPTION	PERSONNEL								TOTAL HOURS	TASK TOTAL VALUE
	PRINCIPAL	PROJECT MANAGER	ARCHITECT/ STRUCTURAL	SENIOR ENGINEER	DESIGN ENGINEER	REVIT/CADD DESIGNER	CADD DRAFTER	CLERICAL		
<b>Task 1: Sunset Center Parking Commercial Service Relocation</b>										<b>\$19,760</b>
Kick-Off Meeting	2	2	2	2	0	0	2	1	11	\$2,200
Mobilization / Programming / Scheduling	0	2	0	0	0	0	0	0	2	\$430
Field Work / As-Built (ASMEP)	0	0	0	0	0	0	0	0	0	\$0
General Schematic Design	0	0	0	2	4	0	2	0	8	\$1,330
Structural Schematic Design	0	1	2	0	0	0	4	0	7	\$1,205
Electrical Schematic Design	0	0	0	2	4	0	4	0	10	\$1,590
Quality Assurance/Control	1	1	1	2	4	0	4	0	13	\$2,315
30% SD Review Meeting	1	1	0	2	4	0	0	2	10	\$1,720
General Construction Design	0	0	0	2	4	0	1	0	7	\$1,200
Structural Construction Design	0	1	2	0	0	0	4	0	7	\$1,205
Electrical Construction Design	0	0	0	2	4	0	4	0	10	\$1,590
Quality Assurance/Control	1	2	1	2	4	0	4	0	14	\$2,530
90% CD Review Meeting	1	2	0	2	4	0	0	3	12	\$2,015
100% CD Review Meeting	0	2	0	0	0	0	0	0	2	\$430
<b>Task 2: Vista Lobos Construction Support</b>										<b>\$11,630</b>
Bid-Walk Meeting Support	0	4	0	0	0	0	0	4	8	\$1,180
Submittal Review	0	2	0	8	0	0	0	8	18	\$2,710
RFI Review	0	2	0	8	0	0	0	8	18	\$2,710
Site Inspections (qty. 3)	0	12	0	0	0	0	0	0	12	\$2,580
"As-Builts" and Close-Out	0	2	0	4	0	0	8	2	16	\$2,450
<b>Task 3: Sunset Center Construction Support</b>										<b>\$11,630</b>
Bid-Walk Meeting Support	0	4	0	0	0	0	0	4	8	\$1,180
Submittal Review	0	2	0	8	0	0	0	8	18	\$2,710
RFI Review	0	2	0	8	0	0	0	8	18	\$2,710
Site Inspections (qty. 3)	0	12	0	0	0	0	0	0	12	\$2,580
"As-Builts" and Close-Out	0	2	0	4	0	0	8	2	16	\$2,450
<b>Task 4: On-Call Services</b>										<b>\$15,000</b>
Subtotal Hours	6	58	8	58	32	0	45	50		
RATE	\$275	\$215	\$235	\$205	\$165	\$190	\$130	\$80		
<b>PERSONNEL COST</b>	<b>\$1,650</b>	<b>\$12,470</b>	<b>\$1,880</b>	<b>\$11,890</b>	<b>\$5,280</b>	<b>\$0</b>	<b>\$5,850</b>	<b>\$4,000</b>		
									<b>TOTAL</b>	<b>\$58,020</b>

## FORM G - HOURLY RATE SHEET

No.	Key Personnel from FORM C	Role	Fully Burdened Hourly Rates		
			7/1/2022 to 6/30/2023	7/1/2023 to 6/30/2024	7/1/2024 to 6/30/2025
1.	Lorenzo Rios, P.E.	Principal-in-Charge	\$260	\$260	\$275
2.	Lorenzo Rios Jr., P.E.	Project Manager	\$200	\$200	\$215
3.	Craig Olivier, P.E.	Project Manager/Sr. Cost Estimator	\$200	\$200	\$215
4.	Gewargis Youssefi, P.E. LEED AP	Sr. Mechanical Engineer	\$190	\$190	\$205
5.	David Hammond, P.E.	Sr. Plumbing Engineer	\$190	\$190	\$205
6.	Alex Hernandez, P.E.	Sr. Electrical Engineer	\$190	\$190	\$205
No.	Other Staff (or Classifications)	Role	Fully Burdened Hourly Rates		
			7/1/2022 to 6/30/2023	7/1/2023 to 6/30/2024	7/1/2024 to 6/30/2025
7.	Mechanical Designer		\$155	\$155	\$165
8.	Electrical Designer		\$155	\$155	\$165
9.	Drafter		\$120	\$120	\$130
10.	Spec Writer		\$120	\$120	\$125
11.	Clerical		\$80	\$80	\$85
12.	Architect		\$220	\$220	\$235
13.	Architect – Designer		\$180	\$180	\$190
14.	Cost Estimator		\$175	\$175	\$185

Does your firm's fully burdened hourly rates include the following?

Software      Yes  No   
 Phone/Cell    Yes  No   
 Mileage        Yes  No

Vehicles        Yes  No   
 Printing        Yes  No   
 Postage/Courier    Yes  No

Please initial here to acknowledge that markups for subconsultants and other direct costs shall not exceed 10.0%.   LRR



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

February 4, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Javier Hernandez, Project Manager
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2025-018, authorizing the City Administrator to execute Amendment No. 3 to the Professional Services Agreement (PSA) with AUSONIO, INC. for Project Management Services for a fee increase of \$50,000 and a not-to-exceed fee of \$175,000 for Fiscal Year 2024/25 (Estimated time - 10 min)

## RECOMMENDATION:

Adopt Resolution 2025-018 (**Attachment 1**), authorizing the City Administrator to execute Amendment No. 3 to the Professional Services Agreement (PSA) with AUSONIO, INC. for Project Management Services (**Attachment 2**) for a fee increase of \$50,000 and a not-to-exceed fee of \$175,000 for Fiscal Year 2024/25.

## BACKGROUND/SUMMARY:

In April 2022, the City issued requests for Statements of Qualifications (SOQs) for consultants in 14 professional service areas, including Project Management services, covering a wide geographic range from San Jose to Sacramento to San Luis Obispo.

In May 2022, based on the SOQs submitted, an evaluation committee selected 4Leaf, Inc. and Ausonio, Inc. as best-qualified consultants to manage certain Capital Improvement Projects (CIP) and facility renovation-oriented projects.

In August 2022, the City Council adopted Resolution 2022-065, awarding a three-year Professional Services Agreement (PSA) to Ausonio, Inc. to manage nine facility renovation projects, with a fee of \$125,000 for FY 2022/23.

In July 2023, the City Council adopted Resolution 2023-073, approving an additional \$125,000 fee for Ausonio to manage seven ongoing and additional facility renovation projects in FY 2023/24.

In July 2024, the City Council adopted Resolution 2024-052, approving a \$125,000 fee to Ausonio to manage five ongoing and additional facility renovation projects in FY 2024/25.

## Project Assignments - Ausonio

As of FY 2024/25, the five facility renovation projects assigned to Ausonio are progressing as follows:

1. Sunset Center Cottage Window Repairs - Substantially complete, in final closeout phase.
2. City Hall Roof Replacement - Substantially complete, in final closeout phase.
3. Lincoln & 4th Street Footbridge Assessment - Substantially complete, in final closeout phase.
4. San Antonio Ave. Pedestrian Trail Repairs - In construction.
5. Sunset Center Retaining Wall Repairs - 90% design complete; in the Building Permit readiness and contract document phase.

Upon approval of the Resolution (**Attachment 1**), Amendment No. 3 will provide retroactive compensation to Ausonio for additional work performed on the San Antonio Avenue Pedestrian Trail Repairs and City Hall Roof Replacement projects. Additionally, Ausonio will oversee a condition assessment for the Sunset Center Elevators, a new CIP project for FY 2024/25. Amendment No. 3 is included as **Attachment 2**.

### City's Second Full-Time Project Manager

The City's FY 2024/25 Operating Budget includes hiring a second full-time Project Manager as a cost-saving measure. This should not be seen as a reduction in the level of service provided by Ausonio.

Once the new City Project Manager is hired, the City may take on responsibility for certain projects. However, it is recommended that Ausonio continue to oversee ongoing projects (e.g. Sunset Center Retaining Walls Repair and Sunset Center Elevator Assessment) until their completion. Projects that are in the earlier stages of construction, or not yet started, would be more appropriate for transfer to the City Project Manager. This approach will ensure a smooth transition and minimize disruption during project implementation.

### FISCAL IMPACT:

In June 2024, Council adopted Resolution 2024-047, approving the CIP Budget for FY 2024/25 and setting project budgets for Items No. 1-5 listed below. All CIP projects and PM services are charged to CIP Account #301-311-00-43008. PM services for on-call, as-needed projects not associated with specific CIP projects will be charged to the Public Works/Facility Maintenance Services Division Account #101-119-42-42001.

No.	CIP Project	2024/25 Budgets	PM Fees	Add Services Fees	New Fee Total
1	City Hall Roof Replacement	\$350,000	\$20,000	\$15,000	
2	Sunset Center Cottage Windows Repairs	\$200,000	\$20,000		
3	San Antonio Pathway Reconstruction	\$550,000	\$45,000	\$15,000	
4	Sunset Center Retaining Wall Repairs	\$550,000	\$20,000		
5	Lincoln/Fourth Trestle Bridge Assessment	\$40,000	\$10,000		
6	Sunset Center Elevator Assessment (New Project)	N/A		\$20,000	
7	On-Call PM Services		\$10,000		
	<b>Ausonio Projects Total</b>	<b>\$1,690,000</b>	<b>\$125,000</b>	<b>\$50,000</b>	<b>\$175,000</b>

The \$15,000 required for the San Antonio Pathway Reconstruction add services is available from the \$400,000 CIP Contingency Fund, which currently has a balance of \$292,335. This reallocation would reduce the Contingency Fund to \$277,335. Both the City Hall Roof Replacement and Sunset Center Elevator Assessment have available budget under their current project allocations.

### City Hall and Sunset Center Cottages Cost Savings

The final costs for the City Hall Roof Replacement and Sunset Center Cottage Window Repairs projects came in significantly under budget. Hazardous materials abatement was not required at City Hall, as the hazmat survey revealed no hazardous materials in the roof. Additionally, construction bids for both projects came in lower than anticipated. As a result, the combined final cost for both projects in FY 2024-25 was over \$200,000 under budget:

Project	FY 2024/25 Budgeted Amount	Actual Cost	Savings
City Hall Roofing Replacement	\$350,000	\$159,860	
Sunset Center Cottage Window Repairs	\$200,000	\$185,918	
Total	\$550,000	\$345,778	\$204,222

### Ausonio Fees

Over the past two fiscal years, Ausonio was authorized not-to-exceed fees of \$125,000 per fiscal year, and the fees remained under budget. The proposed fee for Amendment No. 3, totaling \$50,000, will continue to be billed on an actual time and materials basis.

### PRIOR CITY COUNCIL ACTION:

August 2022, Council adopted Resolution 2022-065 awarding a three-year PSA to Ausonio, Inc., for management of nine facility renovation projects, for a fee of \$125,000 for FY 2022/23.

July 2023, Council adopted Resolution 2023-073 approving a fee of \$125,000 to Ausonio for seven ongoing and additional facility renovation projects assigned for FY 2023/24.

July 2024, Council adopted Resolution 2024-052 approving a fee of \$125,000 to Ausonio for five ongoing and additional facility renovation projects assigned for 2024/25.

### ATTACHMENTS:

Attachment 1) Resolution 2025-018

Attachment 2) Amendment No. 3

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

**RESOLUTION NO. 2025-018**

**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 ADVANCE DESIGN CONSULTANTS, INC.  
FOR PROFESSIONAL ELECTRICAL ENGINEERING AND CONSTRUCTION SUPPORT  
SERVICES FOR A NOT-TO-EXCEED FEE OF \$58,020 FOR FISCAL YEAR 2024/25**

WHEREAS, in June 2022, Council adopted Resolution 2022-048 approving capital improvement projects for Fiscal Year 2022/23, including the Electric Panel Upgrades Project for four City buildings; and

WHEREAS, in December 2022, the City Administrator executed a contract with PG&E to install electrical equipment in the Vista Lobos parking lot, at no cost to the City, to allow for new electric vehicle charging stations and reduce power loads for the Vista Lobos building; and

WHEREAS, in June 2023, Council adopted Resolution 2023-067 approving capital improvement projects for Fiscal Year 2023/24, including the Sunset Center North Lot Electrical Panel Replacement Project; and

WHEREAS, based on Statements of Qualifications received from four firms, an evaluation committee selected Advance Design Consultants (ADC) as best qualified to provide electrical and mechanical engineering services for these types of projects; and

WHEREAS, a Professional Services Agreement was prepared with ADC for electrical panel evaluations, designs, and construction support services for the Vista Lobos and Sunset Center projects for a base fee of \$64,560; and

WHEREAS, a budget of \$15,000 is included to provide on-call, as-needed electrical or mechanical services for urgent safety repairs, for a combined not-to-exceed fee of \$79,560 and a term expiring on June 30, 2025; and

WHEREAS, Amendment No. 1 to the Professional Services Agreement was negotiated with Advance Design Consultants, Inc. to provide electrical service relocation design and EV charging station construction support at Vista Lobos and Sunset Center; and

WHEREAS, per Amendment No. 1, a budget of \$15,000 is included to provide on-call, as-needed electrical or mechanical services for urgent safety repairs and PG&E construction coordination, for a combined not-to-exceed fee of \$58,020 and a term expiring on June 30, 2026; and

WHEREAS, the original Professional Services Agreement in the amount of \$79,560, together with Amendment No. 1 in the amount of \$58,020, results in a total contract value of \$137,580; and

WHEREAS, there is sufficient budget available in the Capital Fund Account to cover fees for the Capital Improvement Projects.

**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 Advance Design Consultants, Inc. for Engineering and Construction support services for a not-to-exceed fee of \$58,020 for Fiscal Year 2024/25.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of February, 2025, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dale Byrne, Mayor

\_\_\_\_\_  
Nova Romero, MMC, City Clerk



**AMENDMENT NO. 3 TO  
AGREEMENT #PWD-AUSON-180-22-23**

**ADDITIONAL PROJECT MANAGEMENT/CONSTRUCTION MANAGEMENT  
SERVICES  
FOR FISCAL YEAR 2024/25**

1. This amendment (the "Amendment") is made by **City of Carmel-by-the-Sea** and **Ausonio, Incorporated**, parties to Agreement #PWD-AUSON-180-22-23 (the "Agreement") executed on August 2, 2022.

2. The Agreement is amended as follows:

a. Section 1, Services, is amended to include the following facility renovation-oriented capital improvement projects and related services during Fiscal Year 2024/25, as described in the Scope of Services in Exhibit A.3:

- Sunset Center Elevator Assessment – New project: procurement and evaluation of third-party condition assessments
- San Antonio Pedestrian Walkway Reconstruction – Procuring special inspections, phased construction, ongoing traffic controls, unforeseen conditions (added columns, larger footings)
- City Hall Roof Replacement – Additional work due to rain intrusion, stop notice for subcontractor, front entrance fascia revision

b. Section 2, Compensation, is amended and restated as follows:

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 Fee Schedule (Exhibit B.3), in a total amount not-to-exceed Fifty Thousand Dollars (\$50,000.00) for services performed under Amendment 3. Therefore, the "Maximum Authorized Expenditure" under this Agreement, including Amendment No. 1, No. 2, and No. 3 is Four Hundred Twenty-Five Thousand Dollars (\$425,000.00).

c. Section 3, Agreement Term, is amended and restated as follows:

The work under this Agreement will commence by August 2, 2022 and must be completed by June 30, 2025 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 Amendment No. 3 services in a timely manner and in accordance with the Project Schedule in Exhibit C.3.

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.

4. Each party represents and warrants that all necessary action has been taken by such party to authorize the undersigned to execute this Amendment and to bind the parties to the performance of its obligations.

5. This Amendment may be executed in counterparts, each of which will be deemed an original, and all of which, when taken together, constitute one and the same instrument. The Amendment will be considered executed when the signature of a party is delivered by facsimile or other electronic transmission. Such facsimile or other electronic signature will have the same effect as an original signature.

6. If any term, condition, or covenant of this Amendment is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Amendment will not be affected and the Amendment will be read and construed without the invalid, void or unenforceable provision.

**CONSULTANT:**

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

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

**CITY:**

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

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

**ATTEST:**

By: \_\_\_\_\_  
Nova Romero, MMC, City Clerk

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

## **EXHIBIT A.3 – Additional Services for Fiscal Year 2024/25**

### **Section 1 – Additional Services:**

This Additional Services document outlines the responsibilities, duties, and deliverables for the Project Management (PM) and Construction Management (CM) services to be provided by Ausonio under the Professional Services Agreement between the City of Carmel and Ausonio, Inc. The below scope is intended as a general outline and may need to be customized to apply to the specific projects identified in Section 2 of this document, as well as for additional projects that may be assigned under the on-call, as-needed component of Amendment No. 3.

#### **1. Project Management**

- a) Establish project objectives and quality standards.
- b) Develop and implement project controls, including progress tracking, cost control, and risk management.
- c) Coordinate with all project stakeholders, including architects, engineers, contractors, suppliers, applicable City departments, and building occupants.
- d) Facilitate regular meetings with the City to review project progress and provide summary minutes with action items.
- e) Ensure compliance with all applicable laws, regulations, codes, and permits.

#### **2. Design and Bidding Phase**

- a) Assist with the selection and negotiation of professional services agreements and amendments with design professionals. Support contract execution and draft Notice to Proceed and similar letters.
- b) Conduct progress meetings with design consultants, and prepare summary minutes with action items.
- c) Review design documents, including technical reports, plans, specifications, and cost estimates, for biddability/constructability, value engineering, and adherence to project goals.
- d) Develop and maintain project schedules, including critical path analysis and milestones.
- e) Prepare and manage project budgets, including cost estimates, bid analysis, and change orders.
- f) For designated projects, prepare basic site plans, details, photographs, specifications, bid item descriptions, and compile bidding documents.
- g) Assist in obtaining permits, approvals, and other necessary regulatory requirements.
- h) Provide bid phase services, coordinating advertising with the City, conducting pre-bid meetings, answering bidder questions, issuing addenda, attending the bid opening, compiling bid results, and supporting

contract awards and contract document execution. Draft Notice of Award and Notice to Proceed letters for awarded contractors.

### **3. Construction Phase**

- a) Provide construction management and daily inspection services as needed.
- b) Oversee all construction activities, including scheduling, quality control, and inspections. Coordinate with applicable City departments.
- c) Ensure contractor compliance with contract documents, project specifications, quality standards, industry best practices, and permit conditions.
- d) Conduct regular progress meetings with contractors, resolving any issues or disputes, and prepare summary minutes with action items.
- e) Review and approve contractor payment applications and change orders.

### **4. Post-construction Phase**

- a) Prepare the project punch list, and manage the resolution of outstanding issues, defects, or punch list items.
- b) Coordinate project closeout activities, including final inspections, testing, and commissioning.
- c) Facilitate the turnover of the project to the City, including spare parts, training, and transition support.
- d) Review project record documents, warranties, and as-built drawings.
- e) Provide post-construction support and warranty management.

### **5. On-Call, As-Needed Services**

- a) Additional services requested by the City or required by project-specific needs are anticipated during the term of the Agreement. These may include closing out prior year projects, managing other new projects, or providing other services including value engineering, sustainability consulting, LEED certification, cost estimating, etc.

## **Section 2 – Assigned Projects**

### **Project #1, Sunset Center Elevator Assessment:**

Sunset Center has two elevators; one in the Lobby and a second one backstage. In late 2024, the Lobby elevator got stuck twice with passengers inside. This prompted City personnel to seek repair proposals from multiple service providers. The resulting proposals ran the gamut from recommendations for increased lubrication to complete modernization. Public Works has asked Ausonio to solicit and evaluate proposals from neutral third-party firms (not local service providers) to perform a facility assessment to

determine scope of work and lifespan of existing equipment, and schedule an assessment.

*Ausonio to provide Project Management and preliminary Design phase services.*

### **Project #2, San Antonio Pedestrian Walkway Reconstruction (Ongoing Project):**

The San Antonio Avenue Pathway, located on the west side between Second and Fourth Avenues, was damaged by winter storms in early 2023. FEMA funding was promptly applied for reconstruction costs, but this effort was not successful. Funded out of the Public Works/Streets and Forestry operating budgets for Fiscal Year (FY) 23-24, ZFA Engineering, a structural engineering firm, designed the repairs to restore the pathway. The design process revealed that the original construction was deficient in that while the original buried concrete piers were fine, the wooden lagging supporting the pathway did not accommodate proper drainage, and the connection of the wooden posts supporting the grape stake fencing were not properly connected to the piers. Consequently, stormwater traveled along the west edge of the fencing, rotting the lagging and the bottom of the posts, and resulted in the fence falling down.

The original scope of work involved excavating 44 concrete piers, constructing concrete pier caps to support new column posts, replacing the wood lagging, restoring the pathway, and installing grape stake fence to match the appearance of the original fence. Construction began in November, 2024, and is on track to be completed by the end of January 2025. Additional construction management work has been needed due to reasons beyond Ausonio's control, including procurement of special inspections, adding a phased construction plan, ongoing traffic controls, and unforeseen conditions including five added concrete piers, longer spans between some existing piers, and larger existing footings. Ausonio's original fee was \$45,000 and is being increased to \$60,000.

*Ausonio to continue to provide Project Management, Design, Bidding, Construction Management, and Post-Construction Phase Services.*

### **Project #3, City Hall Roof Replacement (Ongoing Project):**

The City Hall roof was last replaced in 1984 and was 16-years past its warranty when re-roofing began in September, 2024. This project is currently in the end stages of the construction phase and is anticipated to be completed by late January 2025. Additional construction management work has been needed due to reasons beyond Ausonio's control, including a September rain event, a stop notice from the roofing subcontractor, and revisions to the front entrance fascia. Ausonio's original fee was \$20,000 and is being increased to \$35,000.

*Ausonio to continue to provide Project Management, Bidding, Construction Management, and Post-Construction Phase Services.*

### EXHIBIT B.3 - Compensation and Fee Schedule for Fiscal Year 2024/25

Costs for Project Management Services will be hourly per the rate chart below, and billed out monthly. Hourly rates are fully burdened rates and include labor, benefits, overhead, and profit. An annual rate increase of 5% will be accessed every January 1st during the project. The anticipated manpower will be a part-time Project Manager and a part-time Project Engineer with minor support staff.

#### Key Staff:

- Dustin Conner, Senior Project Manager/Construction Manager
- Diane Miller, Project Manager
- Geraldo "Jerry" Ramirez, Assistant Project Manager
- Jill Kronick, Project Engineer

#### Subconsultants:

- Martin D. Frankis, Cost estimator/Scheduler

Ausonio will provide its staff with a computer and phone. All other expenses, if needed, to be paid by City such as, but not limited to: office space, printing, travel, etc. All reimbursable expenses are in addition to the above and will include a 10% mark-up.

#### Fully Burdened Hourly Rates

No.	Key Personnel	Role	7/1/24 to 6/30/2025
1	Samuel J. Phillips	Principal-in-Charge	\$275.63
2	Brian Tracy	Construction Manager	\$203.96
3	Dustin Conner	Construction Manager	\$203.96
4	Diane Miller	Project Manager	\$154.35
5	Steve Pichler	Project Manager	\$154.35
6	Jill Kronick	Project Engineer	\$104.74
7.	Jerry Ramirez	Assistant Project Manager	\$137.81
8.	Martin D. Frankis	Estimator	\$172

No.	Project Name	Original Fee	Add Services Fee
1	Sunset Center Elevators	N/A	\$20,000
2	San Antonio Pathway Reconstruction	\$45,000	\$15,000
3	City Hall Roof Replacement	\$20,000	\$15,000
	<b>Totals</b>	<b>\$65,000</b>	<b>\$50,000</b>

**EXHIBIT C.3 – Project Schedule for Additional Services Work**

1. Sunset Center Elevators: Solicitation of third-party assessment consultants began in December, 2024. A consultant will be selected by the end of January, 2025 and the assessment will be completed by the end of March, 2025. The City will then determine the schedule of work for the design and construction phases, if applicable, based on the assessment report findings.
2. San Antonio Walkway: Construction began November 13, 2024 and is contractually required to be substantially complete by March 7, 2025.
3. City Hall Roofing Replacement: Construction began September 2, 2024 and is substantially complete at this time. Punch list items are in progress and are scheduled to be completed by the end of January, 2025.



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

February 4, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Nova Romero, City Clerk
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2025-019 ratifying appointments to the Planning Commission, and Forest and Beach Commission (Estimated time - 10 min)

## RECOMMENDATION:

Adopt Resolution 2025-019 ratifying appointments to the Planning Commission, and Forest and Beach Commission.

## BACKGROUND/SUMMARY:

### Background

Following the November 5, 2024, election, Hans Buder and Bob Delves were sworn in as City Councilmembers on December 9, 2024. This created vacancies on the Forest and Beach Commission and Planning Commission, respectively, as their prior service on those bodies ended upon assuming their Council seats. To ensure the continued function of these commissions, the City promptly initiated an appointment process to fill the vacancies.

### Application and Interview Process

In December, 2024, the City Clerk's office published the notice of vacancies in accordance with the City's policies and Government Code Section 54974(a) through the *Pine Cone*, City notice boards, website, and public newsletters, which invited qualified residents to apply. Twelve (12) applications were received by the January 10, 2025 deadline (**Attachment 1**).

An Ad Hoc Committee, comprised of Mayor Byrne and Mayor Pro Tem Delves, interviewed all applicants. The Committee was impressed by the applicants' commitment to community service and their strong desire to contribute meaningfully to the Carmel-by-the-Sea community. The Committee extends its sincere appreciation to all applicants for their time, dedication, and the valuable insights they shared during the interview process.

### Recommendation

Based on the interview process and careful consideration, the Ad Hoc Committee recommends the following appointments:



- **Forest and Beach Commission:** Appointment of Neal Rutta - Term expiring May 30, 2028.
- **Planning Commission:** Appointment of Mel Ahlborn - Term expiring May 30, 2029.

For the Planning Commission, the Committee recommends a full four-year term to ensure continuity and maintain a staggered term structure.

Staff recommends that the City Council adopt the attached Resolution (**Attachment 2**) to formally ratify the above appointments and term lengths.

#### **FISCAL IMPACT:**

None for this action

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

None for this action

#### **ATTACHMENTS:**

Attachment 1) Applications received (redacted)

Attachment 2) Resolution 2025-019

Planning +  
Forest & Beach  
resident

Attachment 1



City of Carmel-By-The-Sea

DEC 16 2024

Office of the City Clerk

## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME David O'Neil DATE December 14,, 2024

RESIDENCE ADDRESS [REDACTED] CITY Carmel-by-the-Sea ZIP 93921

MAILING ADDRESS PO [REDACTED] CITY Carmel-by-the-Sea ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE [REDACTED]

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 4 Years

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	X
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	X
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? Yes

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

**Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code?** YES  NO

**Reason for Interest in the Position:**

Carmel-by-the-Sea's captivating landscape and architecture have fueled my passion and career in construction, land planning, and real estate, shaped by my mother's role as a Monterey Real Estate Broker and my father's work as a General Contractor. Working with them since childhood made me value the impact of thoughtful community development. While auditing the Planning Commission, I noticed the need for decisions that align with our governing documents to enhance fairness and efficiency. Encouraged by citizens I've assisted, I am committed to contributing meaningfully to Carmel's future. I am dedicated to nurturing our community so it can be enjoyed for generations.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

I have decades of experience in Commercial & Residential Construction, Land Planning, Development, Real Estate, and Historic Restoration. My work includes commercial projects, luxury homes, and significant historic restorations. Active in community affairs, I've attended numerous city council and commission meetings, offering me insight into local governance and processes. Running for City Council further broadened my understanding of community needs. As a volunteer, I serve with organizations such as the CRA, Chamber of Commerce, and Carmel Cares, representing diverse community interests. My skills in balancing various stakeholders' needs are well-developed, emphasizing patience and fact-based solutions. I possess strong communication skills, grounded in attentive listening. I also engaged with French governmental layers to resolve development issues, inspired by Carmel-by-the-Sea's preservation model. I've contributed to committee work and city discussions while diligently studying local planning documents.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

Carmel Cares, Board of Directors  
VELO, LLC, Marketing & Sales Director and Project Manager  
David Lyng Real Estate, REALTOR

**Education:**


Institution	Course of Study	Degree Year (s)
Leland High School College Prep.	College Prep.	Diploma
National Association of Realtors	California Real Estate	REALTOR®
	Senior Real Estate Service Designation	

**Employment Experience (Start with Most Recent):**

Organization:	VELO, LLC	
Position:	Marketing & Sales Director / Project Manager	Year: 2016-Present
Organization:	Chateau de Falloux SARL	
Position:	General Manager	Year: 2016-2020
Organization:	Energy Talk Radio	
Position:	Owner/Founder/Radio Host	Year: 2012-2016

**Prior public service, civic or volunteer activities:**

Organization:	Carmel Residents Association, Board of Directors	
Position:	Director	Year: 2023-2024
Organization:	VIPS - Volunteer in Police Service	
Position:	Volunteer Patrol Assisting for Carmel Police Department	Year: 2023-Present
Organization:	Meals on Wheels of the Monterey Peninsula	
Position:	Dispatch, Safety & Fundraiser	Year: 2022-Present
	SPCA of Monterey County	2021-Present
	Volunteer Cashier Shop & Telethon Fundraiser Operator	
	Carmel Cares	
	Board of Directors	2024-Present


 \_\_\_\_\_  
 December 14, 2024

Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

# DAVID O'NEIL

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Carmel-by-the-Sea is the epitome of proper preservation and advancement through charming architecture, natural landscape and commercial development.

While in France remodeling a chateau, opening it to the public and helping with local development, I used Carmel-by-the-Sea as the prime example of the perfect balance of architecture, nature, real estate, local enjoyment, tourism, and commerce.

I have profound respect for Carmel-by-the-Sea and would be honored to be of service in its continued protection and development.

## **OBJECTIVE:**

Planning Commission or Forest and Beach Commission

## **TECHNICAL SKILLS:**

Extensive participation in various Carmel City meetings, plan design and review, land planning and development, property management, submittals/budgets/RFIs for commercial and residential, historic research, coordinating contractors, pre-planning in 3D Software/Sketch-up, PowerPoint, and Photoshop for architects/designers/clients, web design, commercial and high-end residential real estate sales and marketing, and 1031 tax deferred exchanges.

## **PERSONAL SKILLS:**

Love of architecture and history, excellent listener, patient, reasonable, optimistic, objective, forthright, understanding, sympathetic, collaborative, perceptive, and a diplomatic communicator, facilitator and negotiator.

## **RELEVANT EXPERIENCE:**

### **2021 - Present - Full time resident and volunteer in Carmel-by-the-Sea:**

Excellent understanding of the designs, landscape, architecture and commerce of the town demonstrated at many city meetings in Carmel, and other municipalities both state, national and international. Have a vested interest in the long term development of the community. Volunteer for Meals on Wheels, SPCA, Carmel Preservation Association, Carmel Cares, Carmel Woman's Club, Carmel Rotary, and PacRep.

### **2007 - Present - Commercial and Residential Real Estate Agent:**

Excellent understanding of values, pricing and marketing.  
Negotiations and contracts.  
Discerning architecture and design observations.  
1031 exchanges education and processing.

### **1998 - Present - Commercial & Residential Construction**

Commercial and historic remodels and tenant improvements.  
Property management for both residential, commercial and HOAs.3D

visual plans for architects and clients. Management of plans, submittals, RFIs and correspondence. Liaison with contractors, owners, HOAs, architects, design boards and municipalities.

**2005 - Present - Land Planning/Development & Landscape Architecture**

Work with clients, planning departments and communities to approve concepts, mixed use development and international large scale development.

Negotiate needs between parties to find alternatives and solutions.

Listen and communicate clearly to determine needs, benefits and costs.

**VOLUNTEER EXPERIENCE:**

**Carmel Cares**

Board of Directors, Co-Chair

**Carmel Residents Association**

Event Planning, Management & Civic Leadership

**Carmel Police Department**

Volunteer in Police Service - PR & Security

**Pacific Repertory Theatre**

Event Planning & Fundraising

**Carmel Rotary**

Event Planning

**Carmel Chamber of Commerce**

Public Relations & Event Management

**Meals on Wheels**

Fund Raising, Dispatch, Database & Event Management

**SPCA of Monterey County**

Cashier Salesperson & Fund Raising

**Stop AIDS Project**

Operations Manager, Fund Raising & Human Resources

**L'association 3P : Passé Présent Patrimoine**

**French Historic Association**

Philanthropist, Event Manager, Donor, Community Development, and PR

**MORE INFORMATION:**

PROTECTCARMEL.NET

CARMELCOASTAL.COM

**LANGUAGES:**

English and French

Forest & Beach  
Attachment 1  
Resident  
City of Carmel-By-The-Sea

JAN 6 '25 PM 3:03

JAN 06 2025

Office of the City Clerk



### APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

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NAME David Refuerzo DATE 1/4/2025

RESIDENCE ADDRESS [REDACTED] CITY Carmel ZIP 93921

MAILING ADDRESS P. [REDACTED] CITY Carmel ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE [REDACTED]

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 15 years

#### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	<input checked="" type="checkbox"/>
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? yes

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

See attached

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Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

See attached

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Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

None

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**Education:**

Institution	Course of Study	Degree Year (s)
Stanford University	Chemical Engineering	1982

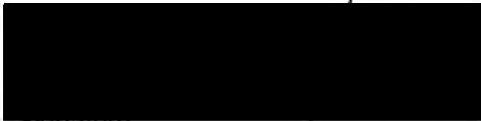


**Employment Experience (Start with Most Recent):**

Organization: Bank of America/Merrill Lynch	
Position: Vice President/Senior Financial Advisor	Year: 2009-present
Organization: Advanced Micro Devices / Spansion	
Position: Etch Module Manager	Year: 1987-2009
Organization: National Semiconductor	
Position: Process Engineer	Year: 1984-1987

**Prior public service, civic or volunteer activities:**

Organization: Carmel by the Sea Forest and Beach	
Position: Commissioner	Year: 2011-2019
Organization: Concours d'Elegance	
Position: Exit and Iron Gate Team leader	Year: 2014-present
Organization: Tour d'Elegance	
Position: Block Captain	Year: 2011-2019



Signature

1/4/2025  
Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

## **Carmel by the Sea Application to Serve on the Forest and Beach Commission**

### **Reason for Interest in the Position:**

**I walk the white sand beach every weekend with my wife and our two dogs which allows me to keep in tune with the main issues that are facing our top tourist attraction. With the past two years of major storms, access to the beach from the 8<sup>th</sup> Ave dune is no longer possible and 2 stairwells from Scenic Ave need repair which further limits public access. In addition, those 2 years of storms have potentially undermined the walls and supporting rock features that protect Scenic Drive from being compromised. As I see it, these are some of the Beach issues that must be addressed if the City is to maintain the crown jewel of the local economy.**

**I walk my dogs 3-4 miles per day throughout the urban forest that surrounds Carmel and I'm aware of the number of trees that we've lost during the past two seasons of winter storms due to the epic wind events and many other trees that were removed in-between storms because of concerns that they might fall. There is a Forest management plan in place and it's the Forest and Beach Commissions responsibility to make sure that it is followed and updated so that the forest is maintained for future generations.**

**Because we live in a Village in the forest by the sea, I feel that it is important to ensure that both the beach and urban forest are fully maintained in the short term and that proper measures are put in place for their long-term preservation. One way to accomplish this is to be a responsible/involved resident and volunteer to serve on the Forest and Beach Commission as I have done previously.**

**Please List any relevant qualifications or experience that you possess that would enhance the missions and goals of the board(s) commission(s) for which you are applying:**

I previously served on the Carmel by the Sea Forest and Beach Commission for 8 years from 2011 -2019 and during the two terms, I was the Chair for 3 ½ of those 8 years. For the two terms, I was appointed by 2 different mayors, Sue McCloud and Jason Burnett, respectively. During my tenure as the Chair, the original Beach Fire Management Program was thoroughly vetted in many meetings and was approved by the Coastal Commission. We also updated the Forest Management Plan and put into place more strict guidelines for Tree replanting and subsequent monitoring by the city during my tenure. The North Dunes habitat restoration project was also started during my 2<sup>nd</sup> term. Beach and Shoreline assessments from a local Coastal Biologist were completed 1-2 times during my two terms and I hope that something as complete as those surveys is still being done today. From those assessments, public works projects were completed on the 13<sup>th</sup> Ave cove to shore up the infrastructure supporting the wall.

**RECEIVED**  
JAN 03 2025  
BY: *[Signature]*



## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME Donna Jett DATE 1/3/2025  
RESIDENCE ADDRESS [Redacted] Carmel ZIP 93921  
MAILING ADDRESS [Redacted] CITY Carmel ZIP 93921  
RESIDENCE PHONE [Redacted] BUSINESS PHONE \_\_\_\_\_  
EMAIL [Redacted]  
HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 28 years

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	<input checked="" type="checkbox"/>
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	<input checked="" type="checkbox"/>

Will you be available to attend board/commission meetings regularly? Yes

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position: Served on F & B ad Hoc - believe I can assist.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

Organizational Skills, Ability to understand complex issues.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

None

**Education:**

Institution	Course of Study	Degree Year (s)
<u>El Camino Jr.</u>	<u>Business &amp; Speech</u>	<u>1993</u>
<u>MPC - History Art &amp; Architect,</u>	<u>1996 - 2005</u>	<u>Computer</u>

**Employment Experience (Start with Most Recent):**

Organization:	Church of the Wayfarer	
Position:	Wedding Coordinator	Year: 2008-2011
Organization:	Carterwell School	
Position:	Administration	Year: 1997-2002
Organization:		
Position:	Year:	

**Prior public service, civic or volunteer activities:**

Organization:	Carmel Activities Commission	
Position:		Year: 2016 - Present
Organization:	Carmel Woman's Club	
Position:	Past President	Year: 2021-2023
Organization:	Joining Hands Benefit	
Position:	Pacific Rep Theater - Volunteer	Year: 2021-Present
		1997-Present



Signature

1/3/2025  
Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.



City of Carmel-by-the-Sea

JAN 08 2025

Office of the City Clerk

## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

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NAME GAIL LEHMAN DATE 01.07.2025

RESIDENCE ADDRESS [REDACTED] CITY CARMEL ZIP 93921

MAILING ADDRESS [REDACTED] CITY CARMEL ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE SAME

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 50 YEARS

### Board or Commission Selection:

**You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.**

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	✓
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? YES

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In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

I MAJORED IN GOVERNMENT AT CORNELL AND SUBSEQUENTLY STUDIED SPACE PLANNING AND DESIGN AT THE NEW YORK SCHOOL OF DESIGN BOTH CONTINUE TO ENGAGE ME. I WAS FORTUNATE TO COMBINE BOTH WORKING FOR LOS ANGELES COUNTY, THE PLANNING COMMISSION PRESENTS AN IDEAL WAY TO AGAIN SERVE MY COMMUNITY

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

PRIOR SERVICE ON THE PLANNING COMMISSION IS MY MOST PERTINENT QUALIFICATION. I HAVE A VETERAN'S KNOWLEDGE OF THE PLANNING COMMISSION'S MISSION, METHODS AND GUIDELINES. MY C.V. IS ATTACHED AND PROVIDES MY OCCUPATIONAL EXPERIENCE WITHIN CARMEL AND IN CALIFORNIA'S MAJOR METRO POLITAN AREAS.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

GAW LEHMAN & ASSOCIATES, OWNER-DESIGNER-ARTIST  
 THE GOLDEN HAN LLC - MANAGING MEMBER  
 O.S.I.T. INVESTMENTS - PARTNER

**Education:**

Institution	Course of Study	Degree Year (s)
PLEASE SEE ATTACHED C.V.	PAGE. # 1	



**Employment Experience (Start with Most Recent):**

Organization: PLEASE SEE ATTACHED C.V. PAGES #1-4	
Position:	Year:
Organization:	
Position:	Year:
Organization:	
Position:	Year:

**Prior public service, civic or volunteer activities:**

Organization: PLEASE SEE ATTACHED C.V. PAGE #1	
Position:	Year:
Organization:	
Position:	Year:
Organization:	
Position:	Year:



Signature

01-08-2025  
Date

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Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

**GAIL LEHMAN**



**PROFILE**

**EDUCATION:**

Cornell University 1957-1960  
Harvard College 1959  
New School for Social Research 1960-1961  
New York School of Interior Design 1963-65

**PROFESSIONAL AFFILIATIONS:**

American Institute of Architects, (affiliate member)  
Institute of Business Designers  
Design International  
Central Coast Art Association  
National Society of Acrylic Painters  
Women Artists of the West

**SERVICE:**

Interior Design Guild of Monterey Bay, 1980-84, President, 1983-84  
Soroptimist International  
Chamber of Commerce, Santa Cruz, San Francisco, Monterey  
City of Monterey, Design Review Board 1977-78  
City of Carmel by the Sea,  
Planning Commissioner, Vice-Chair 2016-2022  
Arts Council of Monterey County, Grants evaluator

**HONORS AND AWARDS:**

- Design International award winner 1983, 1984, for
- "Excellence in the field of Interior Design and Space Planning."  
Design projects included in the :  
"Compendium of Women in Design International"  
"Prix des Femmes International" award for:  
Excellence in commercial office design.

Certificate of special Congressional Recognition for selection as:  
The Judge in " An Artistic Discovery" 2017  
"The Congressional Art Competition for High School Students"

**EMPLOYMENT HISTORY:**

1/2000-Present

**GAIL LEHMAN FINE ART**

Carmel by The Sea, California

See : Artist Bio at: [www.gaillehmanfineart.com](http://www.gaillehmanfineart.com)

1/1988-Present

**THE GOLDEN MEAN, LLC**

Carmel by the Sea, California

Position: Owner, Designer, Project Manager  
Supervised the design and construction of thirty-six homes in Washington, New Jersey  
The majority in Carmel by the Sea, California

2/1977 to 2005

**GAIL LEHMAN AND ASSOCIATES**

Carmel By The Sea, California

Position: Owner. Project Director/Designer  
Responsibilities: Principal Designer, Long range feasibility planning, space evaluations for lease negotiations, project coordination, project design, marketing, coordination and direction of office personnel.

Major Clients:

American Tin Cannery  
Bayou Cafe  
Crocker National Bank Building  
Dalgety Foods  
Dominican Santa Cruz Hospital  
Fort Ord dining room, disco, modular units, barracks)  
Fortuna Communications  
Hartnell College, Child Development  
Hudson, Martin, Ferrante & Street  
IBM Corporation, on call field consultant  
Lakin-Spears, law office  
Lavorato & House, Law building  
Robert Louis Stevenson School  
Salinas Public Library  
University of California, San Francisco  
UCSF/ Stanford Health Care  
UCSF Long Hospital/Pediatric  
(Floors six and seven)

5/76 to 2/77

**MILTON SWIMMER PLANNING AND DESIGN**

Beverly Hills, California

Position: Project Director, Senior Designer  
Responsibilities: Coordinate and direct projects for major corporations. Supervise initial space planning, working drawings and construction in progress.

Major Clients:

Buckeye Realty & Construction  
Columbia Savings & Loan  
Freedman & Low  
Korean Exchange Bank  
National Distillers & Chemical Corporation

3/77-9/ **ENVIRONMENTAL RESEARCH AND DEVELOPMENT**  
Beverly Hills, California

Position: Project Director/Designer  
Responsibilities: Identical to previous position

Major Clients:

Ayre Jorgensen MacDonald  
Billy Jack Productions  
The Colwell Company  
Ernst & Ernst (Salt Lake City)  
Kellog & Andelson  
National Medical Enterprises  
Peat, Marwick, Mitchell (New Orleans)  
Prudential Insurance Company  
Rosenfeld, Horn, Denton & Harrell  
Shapiro, Robin, Cohen & Powell

9/73. **SAPHIER LERNER SCHINDLER ENVIRONETICS**  
West Los Angeles, California

Position: Project Director  
Responsibilities: The same as above.

Major Clients:

Gate Realty, Inc.  
Harbor Insurance Building  
Johnson & Higgins  
Monogram Industries  
Tishman Reality & Construction  
Unionamerica Insurance  
(Los Angeles, San Francisco, Dallas, Houston and

New York)  
Urban Projects, Inc.

Position: Director of Technical Services  
Responsibilities: Supervised production control operation. Duties included direct supervision of Draftsmen, Detailers and Tenant Development Project Directors. Responsible for job scheduling, determining building standards for construction, final approval of working drawings, building permits and computer operation. Acted as major contact between company, tenant and construction coordinators.

Major clients:

Avco Center  
Charles Dunn Company  
Dillingham Development Company  
S. Jon Kreedman Company  
Matlow-Kennedy Corporation  
The Realty Group  
The State of California  
Shell Oil  
Tishman Realty & Construction

9/70 to 9/73

**COUNTY OF LOS ANGELES**

Department of Health Services  
LAC-USC Planning Division  
Los Angeles, California

Position: Senior Project Planner  
Responsibilities: Design, plan and execute schematics and working drawings for major county hospitals. Write service and facility programs for capital projects. Conduct feasibility studies to determine optimum utilization of facilities.

Planning Commission  
Attachment 1  
resident JAN 7 '25 PM 4:15



City of Carmel-By-The-Sea

JAN 07 2025

Office of the City Clerk

## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME JOSEPH DiNUCCI DATE 01/06/2025  
RESIDENCE ADDRESS [REDACTED] CITY CARMEL ZIP 93921  
MAILING ADDRESS [REDACTED] CITY CARMEL ZIP 93921  
RESIDENCE PHON [REDACTED] BUSINESS PHONE SAME  
EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 4 YEARS / 5 MONTHS RESIDENT  
40 YEARS / 8 MONTHS OWNED

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	X
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? \_\_\_\_\_

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

I WANT TO SERVE THIS TIME I LOVE. HOW CARMEL CAN MAINTAIN OUR HERITAGE AND EVOLVE IN OUR 2ND CENTURY CHALLENGES ME. THE BALANCE BETWEEN PRESERVATION AND PROPERTY RISKS WILL REQUIRE CRITICAL THOUGHT, AS WELL AS KNOWING THE GUIDELINES. I AM EXCITED ABOUT OUR NEW MAYOR AND COUNCIL MEN. I SEE BETTER GOVERNANCE AHEAD FOR CARMEL.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

MY EDUCATION + 50+ YEARS OF LIVING AND WORKING HAVE TAUGHT ME HOW TO THINK, AND HOW TO LISTEN. I'VE TAUGHT GRADUATE CLASSES ON LEADERSHIP AND TEAMWORK @ STANFORD, OXFORD AND MIT. I HELPED CREATE THE REACH PROGRAM FOR STROKE SURVIVORS IN PALO ALTO AND 1989, AND SERVED AS A BOARD MEMBER AND CHAIR FROM 2012 TO 2022. I CO-CREATED "SILICON VALLEY PRESS.NET, AND HAVE RUN IT SINCE 2010. I ASPIRE TO THE "SERVANT LEADER" MODEL. BTW, I HAVE NO ASPIRATIONS TO ELECTED OFFICE.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

NONE

**Education:**

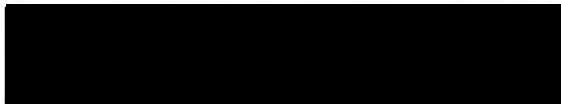
Institution	Course of Study	Degree Year (s)
CARNEGIE MELLON UNIV	BS MECHANICAL ENGINEERING	1964
Duquesne Univ.	MBA MARKETING	1971

**Employment Experience (Start with Most Recent):**

Organization: SILICON VALLEY PRESS, NET	
Position: PARTNER	Year: 2010 - NOW
Organization: SURVIVING SUCCESS (PROFESSIONAL COACHING)	
Position: COACH	Year: 2007 - NOW
Organization: SILICON GRAPHICS	
Position: SVP MARKETING - AUTOMOTIVE & AEROSPACE	Year: 1992 - 1999

**Prior public service, civic or volunteer activities:**

Organization: REACH PROGRAM FOR STROKE SURVIVORS	
Position: BOARD MEMBER, CHAIRMAN	Year: 2012 - 2022
Organization: SILICON VALLEY COMES TO OXFORD MBA SCHOOL.	4 DAYS/YEAR
Position: MASTERCLASS Creator & PRESENTER ON ENTREPRENEUR	Year: 2008 - 2015
Organization: MELTWAATER ENTREPRENEUR School of TECHNOLOGY / GHANA	
Position: TEACH ENTREPRENEURS HOW TO <del>CREATE</del> CREATE AND GROW TECH BUSINESSES IN AFRICA	Year: 2010



Signature

01/06/2025  
Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.



Planning Commission  
Attachment 1  
Resident



City of Carmel-By-The-Sea

JAN 07 2025

Office of the City Clerk

## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME Kevin Ruess DATE 1/7/2025  
RESIDENCE ADDRESS [REDACTED] CITY Carmel ZIP 93921  
MAILING ADDRESS [REDACTED] CITY Carmel ZIP 93921  
RESIDENCE PHONE [REDACTED] BUSINESS PHONE ([REDACTED]) [REDACTED]  
EMAIL [REDACTED]  
HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 8 years

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	<input checked="" type="checkbox"/>
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? YES

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

I value the aesthetic, both traditional and modern, that makes up Carmel's diversity, and I have long had an amateur interest in architecture and design. Having been through a major remodel of our home here in Carmel, I learned the value of the architectural design guidelines and developed tremendous respect for Carmel's planning staff. I do believe that staff and the planning commission can do a better advance job of managing local expectations about project application timelines and how submitters can manage their applications to make the process easier and shorter.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

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Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

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**Education:**

Institution	Course of Study	Degree Year (s)
George Mason University	Education	PhD 2000
University of Notre Dame	English	MA 1983
Westmont College	English	BA 1982

**Employment Experience (Start with Most Recent):**

Organization: Carmel by the Sea Library	
Position: Asst Librarian (laid off at beginning of COVID)	Year: 2020
Organization: Intelligent Automation Inc	
Position: Research Scientist	Year: 2003-2008
Organization: George Mason University	
Position: Asst Professor	Year: 2000-2003

**Prior public service, civic or volunteer activities:**

Organization: Peace Corps Volunteer	
Position: ESL Teacher Trainer	Year: 1983-1985
Organization:	
Position:	Year:
Organization:	
Position:	Year:



Signature

1/7/25  
Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the-Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

City of Carmel-By-The-Sea

JAN 06 2025

Office of the City Clerk



## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME Mel Ahlborn DATE 06 Jan 2025

RESIDENCE ADDRESS [REDACTED] CITY Carmel ZIP 93921

MAILING ADDRESS [REDACTED] CITY Carmel ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE \_\_\_\_\_

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 8+ years

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	X
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? Yes, of course

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

**Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code?** YES  NO

**Reason for Interest in the Position:**

I am deeply invested in the future of Carmel-by-the-Sea and its unique charm. My interest in joining the Planning Commission stems from a desire to contribute to the thoughtful preservation and development of our community, balancing growth with sustainability and innovation. I value the city's rich history, aesthetic beauty, and quality of life, and I am eager to explore how technological advancements can be thoughtfully integrated to enhance community infrastructure and ensure sustainable planning. My skills and experience can bring valuable perspectives to the commission's decision-making process, combining a respect for tradition with forward-thinking solutions.

**Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:**

• My client-facing work as an engineer, consultant, and programmer has consistently placed me as an integral member of project teams. In the context of a city commission, my "client" would be the people of Carmel. • I have worked in the fields of aerospace manufacturing; residential, multi-family, and commercial real estate management and renovation; CAD design and custom build for clients in National Historic Landmark properties; and, consultation with architects on the historic, symbolic, and aesthetic needs of my clients. • My regulatory experience includes extensive engagement with HCIDLA, the Housing and Community Development Department of the City of Los Angeles. • If seated as a Planning Commissioner, I would support initiatives that explore how best to streamline the city's 9-step process for development. A review of these processes has the potential to improve accessibility and compliance while offering the city, its businesses, and property owners the opportunity to save time and money. Representing the people of Carmel, my decisions and queries would be guided by the city's General Plan, Municipal Code, Local Coastal Plan, together with the archived history of approaches taken by past councils and commissioners.

**Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:**

Illumination Studio, Owner

**Education:**

Institution	Course of Study	Degree Year (s)
Tufts University	BS Chem, BS Classics	
University of Bradford	Archeological Science, Materials Testing	
UCLA	Marketing, Certificate	

**Employment Experience (Start with Most Recent):**

Organization: Illumination Studio, Owner	1989-present
Position:	Year:
Organization: Contractor - Programmer and Multimedia Specialist	2015-2020
Position:	Year:
Organization: Richard MacDonald Studios - Marketing Director	2012-2015
Position:	Year:

**Prior public service, civic or volunteer activities:**

Organization: Carmelite Monastery, Volunteer	
Position:	Year:
Organization: Carmel Cares, Volunteer	
Position:	Year:
Organization: ECVA, Inc (501c3) - 25 years of service	
Position:	Year:



Signature

6 January 2025

Date

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

Forest + Beach

Attachment 1

resident

JAN 7 '25 PM 4:29



City of Carmel-by-the-Sea

JAN 07 2025

Office of the City Clerk

### APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

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NAME Melanie C. Bellis DATE Jan. 5, 2025

RESIDENCE ADDRESS [REDACTED] CITY Carmel-by-the-Sea ZIP 93921

MAILING ADDRESS [REDACTED] CITY Carmel-by-the-Sea ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE [REDACTED]

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 1991

#### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	X
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? yes

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

My love and devotion to Carmel's unique character of the village in a forest by the sea even for California the serious neglect of the forest for many years has put it in serious jeopardy and also placed Carmel's special character and vibrancy. I believe that my commission membership would bring balance in perspective in support of the importance of our forest.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

I have served on many city committees and the Planning Commission. I understand how important the "charge" of these entities is + how important following city policies and procedures are for group effectiveness and community confidence. I have also served the City of San Luis Obispo as Mayor, Council member and Planning Commissioner and as such I also have the experience of being on the volunteer side of community participation and also being on the elected leadership side of government. This knowledge and experience working with people of all persuasions is vital to the promotion of the community goals etc. Lastly, my extensive study of our forest + coastline

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

None

Education:

Institution	Course of Study	Degree Year (s)
U.C. Berkeley	European + American History	BA 1985
Cal St., San Francisco	" "	MA 1969
	* California Life Teaching Credential in Secondary Education	



**Employment Experience (Start with Most Recent):** *Retired from teaching high school history in early 1970's. I've pursued volunteer*

Organization:		Year:
Position:		
Organization:		Year:
Position:		
Organization:		Year:
Position:		

**Prior public service, civic or volunteer activities:** *See attached list*

Organization:		Year:
Position:		
Organization:		Year:
Position:		
Organization:		Year:
Position:		

[Redacted Signature]

Signature

*Jan 5, 2025*  
Date

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Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

Public Service, Civic or Volunteer activities  
1992-2025

- Member of the Carmel Library Foundation Board of Directors
- Member of City Planning Commission
- Member of 1<sup>st</sup> Design Traditions Committee + 2nd D.T. Committee (current)
- Member of both Parking Committees
- Chairperson of Ad Hoc Committee on Undergrounding
- President of the Flanders Foundation
- Member, Hatton Canyon Advisory Committee on Aesthetics
- Friends of Forest Theatre, Member
- Friends of Carmel Forest, Member
- Friends of Pacific Repertory Theatre, Board Member
- Member and Board Member of LWVMC

## Public Service, Civic or Volunteer Activities (cont.)

### San Luis Obispo 1970's - '80's

- Mayor, San Luis Obispo
- Council Member, San Luis Obispo
- Planning Commissioner, San Luis Obispo
- Member of LAFCO
- Chair, Whale Rock Commission to manage water for the City of S.L.O., Cal Poly State University, and the California Men's Colony
- Member, countywide task force which developed San Luis Obispo County's growth management policies.

Forest + Beach  
resident

JAN 10 '25 PM 12:12  
Attachment 1



City of Carmel-By-The-Sea

JAN 07 2025

City of Carmel-By-The-Sea  
Office of the City Clerk

JAN 10 2025

Office of the City Clerk

# APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

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NAME NEAL RUTTA DATE 1-10-2025

RESIDENCE ADDRESS [REDACTED] CITY Carmel ZIP 93921

MAILING ADDRESS [REDACTED] CITY Carmel ZIP 93921

RESIDENCE PHONE [REDACTED] BUSINESS PHONE [REDACTED]

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 2 yrs 6 mos.

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	X
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? YES

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

**Reason for Interest in the Position:**

AS A FULLTIME RESIDENT, THE FOREST & BEACH COMMITTEE WILL ALLOW ME TO PARTICIPATE IN PUBLIC SERVICE FOR THE CITY. ONE OF THE REASONS FOR MOVING TO CARMEL WAS ITS UNIQUENESS, ESPECIALLY IN HOW FOREST & BEACH ISSUES ARE CONSIDERED HIGH PRIORITY FOR THE CITY. I AGREE WITH THIS APPROACH. I FEEL I CAN PROVIDE A BALANCED OPINION IN DISCUSSING ISSUES PERTAINING TO THIS WORKING GROUP. LOOKING FORWARD, I ALSO THINK THERE ARE LONGER TERM CONSIDERATIONS THAT WILL BE IMPORTANT TO DISCUSS AND I WOULD LIKE TO BE PART OF THE CONVERSATION.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

AT AAA INSURANCE (CSAA-16) I SPENT THE LAST 10 YEARS AS A SR MANAGER FOR VARIOUS SOFTWARE DEVELOPMENT TEAMS. WHILE THIS DIDN'T HAVE DIRECT RELEVANCE TO ISSUES PERTAINING TO THE FOREST & BEACH COMMISSION, I HAVE DEVELOPED SKILLS IN WORKING WITH OTHERS AND CONSIDERING DIFFERENT OPINIONS, MANAGING TERMS OF PEOPLE IN DIFFERENT CAPACITIES, AND MANAGING BUDGETS RELATED TO PEOPLE AND PROJECTS WHILE WORKING TOWARDS SPECIFIC GOALS. I WOULD ALSO LIKE TO POINT OUT THAT CSAA-16 IS AN INSURANCE COMPANY, AND WHILE IT IS NOT A GOVERNMENTAL ORGANIZATION, IT IS HIGHLY REGULATED AND THUS I HAVE AN UNDERSTANDING OF WHAT IT MEANS TO WORK WITHIN THE CONTEXT OF RULES AND REGULATIONS.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

N/A

**Education:**

Institution	Course of Study	Degree Year (s)
CALIFORNIA STATE UNIVERSITY, NORTHRIDGE	BS COMPUTER SCIENCE	1987

**Employment Experience (Start with Most Recent):**

Organization: CSAA INSURANCE GROUP	
Position: SOFTWARE ARCHITECT, Sr MANAGER	Year: 2012 - 2024
Organization: SYNASE INC	
Position: SOFTWARE ARCHITECT	Year: 2010 - 2012
Organization: YAHOO	
Position: SOFTWARE ENGINEER	Year: 2009

**Prior public service, civic or volunteer activities:**

Organization:	
Position:	Year:
Organization:	
Position:	Year:
Organization:	
Position:	Year:



Signature

1-10-2025  
Date

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Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.



City of Carmel-by-the-Sea

JAN 10 2025

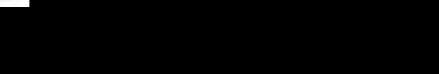
Office of the City Clerk

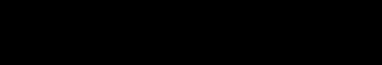
# APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

NAME PARKER LOGAN DATE 1/10/2025

RESIDENCE ADDRESS  CITY CARMEL ZIP 93921

MAILING ADDRESS  CITY CARMEL ZIP 93921

RESIDENCE PHONE  BUSINESS PHONE \_\_\_\_\_

EMAIL 

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 25 yrs

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	✓
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	✓
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	
Board of Appeals (once annually and on an as-needed basis)	

Will you be available to attend board/commission meetings regularly? YES

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

To be more involved in the direction  
CARMEL WILL drive into the future.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

4th Generation Carmelite  
with a broad range of experience across an intricate  
web of people from all walks of life.

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

NONE

**Education:**

Institution	Course of Study	Degree Year (s)
CAL STATE BAKERSFIELD	communications	2
MPC	ENGLISH	2
CWESTA college	general ed.	2



**Employment Experience (Start with Most Recent):**

Organization:	SODES COCKTAILS	
Position:	OWNER	Year: 2009 -
Organization:	LOGAN REAL ESTATE	
Position:	OWNER BROKER	Year: 2001-2021
Organization:		
Position:		Year:

**Prior public service, civic or volunteer activities:**

Organization:		
Position:	NONE	Year:
Organization:		
Position:		Year:
Organization:		
Position:		Year:

Signature 

Date 1/10/2025

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

Forest + Beach  
Attachment 1  
(Lives in Sphere)

City of Carmel-By-The-Sea

JAN 06 2025

Office of the City Clerk



## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

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NAME PETER YEAGST DATE JAN 5, 2025

RESIDENCE ADDRESS [REDACTED]

MAILING ADDRESS " CITY " ZIP "

RESIDENCE PHONE \_\_\_\_\_ BUSINESS PHONE [REDACTED]

EMAIL [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? 12+ yrs

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	<input type="checkbox"/>
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	<input type="checkbox"/>
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	<input type="checkbox"/>
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	<input checked="" type="checkbox"/>
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	<input type="checkbox"/>
Board of Appeals (once annually and on an as-needed basis)	<input type="checkbox"/>

Will you be available to attend board/commission meetings regularly? 100%

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code? YES  NO

Reason for Interest in the Position:

AFTER GROWING UP IN THE BAY AREA AND HAVING THE PRIVILEGE OF ATTENDING P.S. FOR HIGH SCHOOL, IT'S SAFE TO SAY I'VE DEVELOPED A PROFOUND RESPECT FOR OUR AREA & FIND ITS BEAUTY UNSURPASSABLE WHEN COMPARED TO OTHER PARTS OF THE WORLD I'VE VISITED. LIVED & WORKED DURING MY LIFE. 'LEAVE IT BETTER THAN YOU FOUND IT' IS AND ALWAYS WILL BE A MOTTO I LIVE BY.

Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:

- MORE THAN TWO DECADES OF MKT. RESEARCH INVOLVING CONSTRUCTION, FORESTRY & AGRICULTURE
- STRONG ECONOMIC & FINANCIAL BKGRND
- SPECIAL INTERESTS INCLUDE FINANCE, RE, SKIING & NATURE HIKES

Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:

NONE

**Education:**


Institution	Course of Study	Degree Year (s)
COLORADO STATE UNIV	ECONOMICS	1995

**Employment Experience (Start with Most Recent):**

Organization:	VENGT ASSOCIATES, INC	
Position:	PRESIDENT/OWNER	Year: 1998-2023
Organization:		
Position:		Year:
Organization:		
Position:		Year:

**Prior public service, civic or volunteer activities:**

Organization:	DALE BYRNE FOR CARMEL MAYOR	
Position:	TREASURER	Year: 2024
Organization:	BOY SCOUTS OF AMERICA (?)	
Position:	EAGLE	Year: 1988
Organization:		
Position:		Year:

Signature 

Date January 5, 2025

Citizen knowledge, interest and participation are vital ingredients to the delivery of high-quality public services. The richness that comes from citizens serving in advisory roles to the City Council contributes to making Carmel by the Sea the special place it is. The City of Carmel-by-the Sea thanks you for your interest in serving on a City board or commission.

Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.

JAN 09 2025

Office of the City Clerk



## APPLICATION TO SERVE ON A CARMEL-BY-THE-SEA CITY BOARD OR COMMISSION

In accordance with the Public Records Act, submitted applications and attachments are considered public records and will be disclosed upon receipt of a public records request. Applications may also be published (with signatures and personal contact information redacted) in the agendas of relevant meetings of the City Council, boards and commissions.

Name: Philip (Phil) Mitchell

Date: January 10, 2025

RESIDENCE ADDRESS: [REDACTED] CITY: Carmel-by-the-Sea ZIP: 93921

MAILING ADDRESS: [REDACTED] CITY: Carmel-by-the-Sea ZIP: 93921

RESIDENCE PHONE: [REDACTED] BUSINESS PHONE: [REDACTED]

EMAIL: [REDACTED]

HOW LONG HAVE YOU LIVED IN CARMEL-BY-THE-SEA? Our home purchased was by my family in 1976. I've owned it since 2007. My wife and I lived part-time there beginning in 2019 (3 years) and full-time beginning in 2022 (2.5 years).

### Board or Commission Selection:

You may apply for more than one Board or Commission. Please note, however, that members shall not serve simultaneously on more than one Council-appointed Board or Commission.

Community Activities & Cultural Commission (meets the second Tuesday of the month at 9:30 a.m.)	<input type="checkbox"/>
Harrison Memorial Library Board of Trustees (meets the fourth Wednesday of the month at 9:00 a.m.)	<input type="checkbox"/>
Planning Commission (meets the second Wednesday of the month at 4:00 p.m., tour of inspection at 2:00 p.m.)	<input checked="" type="checkbox"/>
Forest & Beach Commission (meets the second Thursday of the month at 3:30 p.m., tour of inspection at 3 p.m.)	<input type="checkbox"/>
Historic Resources Board (meets the third Monday of the month at 4:00 p.m., tour of inspection at 3:15 p.m.)	<input type="checkbox"/>
Board of Appeals (once annually and on an as-needed basis)	<input type="checkbox"/>

Will you be available to attend board/commission meetings regularly? YES

All members of boards and commissions are subject to the Conflict of Interest Laws of the State of California and are required to submit Form 700, "Statement of Economic Interest," within 30 days of assuming office. Form 700 must be filed annually thereafter, and within 30 days of leaving office as well.

In accordance with Assembly Bill (AB) 1234 appointed members are required to attend Public Service Ethics Education upon appointment and every two years thereafter.

**Do you agree to file all required statements in a timely manner as prescribed by law or the City's Conflict of Interest Code?** YES  NO

**Reason for Interest in the Position:**

I've been interested in design and architecture from an early age. Prior to high school, my family owned an historic home in the village of Mendocino. The house was built in 1878 from first growth redwood with square nails. As a teen, I contributed to the design of our family home constructed from the ground up. My father was trained as an architect – he took the lead in the design. I have been involved in design and construction professionally and in remodeling of 3 homes.

I'm eager to serve on the Planning Commission to contribute my skills and experience, my passion for design, and to help in the transition to greener building approaches.

**Please list any relevant qualifications or experience you possess that would enhance the mission and goals of the board(s) or commission(s) for which you are applying:**

I am a licensed Civil Engineer, with a specialization in water and wastewater treatment. While working for IBM in San Jose, I led a major soil and groundwater cleanup, including design and construction of multiple water treatment and reuse facilities. This role also involved negotiating a cleanup order with 4 state and federal oversight agencies, the regional water district, and 3 local water companies. I co-authored a book on international environmental management standards.

Recently, major remodels of homes in Oakland and Carmel have given me insights into design, permitting, and construction challenges. Our recent Carmel remodel involved switching to all-electric appliances and heating coupled with adding solar and battery backup with the goal of reducing our greenhouse gas emissions.

On the leadership front, my career has included managing several teams while at IBM and subsequently at 4 ventures as president, interim CEO, and Co-Founder. In multiple roles at

IBM, I was responsible for building alliances with other technology companies, primarily in Silicon Valley.

As an angel investor, I have been involved with multiple enterprises. I have also mentored student-led startups at UC Davis and judged numerous social ventures at UC Berkeley. Through my consulting company, I have helped numerous ventures improve their business approaches.

**Please list any local area associations, boards, commissions, foundations, or companies in which you have an investment, or serve as an officer or director:**

Besides investments in bonds and exchange-listed stocks, I currently have investments in 2 un-listed companies: BioLite (Brooklyn, NY) and Vision Science Labs (Palo Alto, CA).

**Education:**

Institution	Course of Study	Degree Year(s)
UC Davis	BS – Civil Engineering	1978
UC Berkeley	Masters, Business Administration	1984

**Employment Experience (Start with Most Recent):**

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Organization: Incubato Consulting

Position: Founder/CEO

Year: 2014 – Present

---

Organization: Vision Science Labs

Position: Founder/CEO

Year: 2018 – 21

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Organization: Oneeros

Position: Business Strategy Consultant/Interim CEO

Year: 2013 – 15

---

Organization: Four Dad Foods, Inc

Position: President

Year: 2011 – 12

---

Organization: IBM

Position: Various Engineering & Management Positions

Year: 1981 – 2010

---

**LinkedIn Profile:** [REDACTED] /

**Prior public service, civic or volunteer activities:**

---

Organization: UC Davis Student Startup Center

Position: Advisory Board Member, Mentor

Year: 2022 – Present

---

Organization: Global Social Venture Competition (at UC Berkeley)

Position: Judge

Year: 2016 – 17

---

Organization: Santa Teresa Action Group

Position: Board Member

Year: 2001 – 2003

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Organization: Silicon Valley Environmental Partnership

Position: Board Member

Year: 1996 – 2003

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1-10-2025

Signature

Date

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**Return application to the City Clerk's Office, East side of Monte Verde Street, between Ocean and Seventh Avenues or mail to PO Box CC, Carmel-by-the-Sea, 93921, attention: City Clerk's Office.**



## Contact

[www.linkedin.com/in/phil-mitchell-8253431](https://www.linkedin.com/in/phil-mitchell-8253431) (LinkedIn)

## Top Skills

New Business Development

Alliances

Business Strategy

## Certifications

Licensed Civil Engineer

## Publications

ISO 14000 Guide - The New Environmental Management Standards

# Phil Mitchell

Founder / Entrepreneur

Carmel, California, United States

## Summary

Strategy and Planning

Business Development / Alliances and Partnerships

Building / Leading Teams

Product Development (Software, Solutions)

Product Marketing

Project Management

Specialties: Managing people, product development, alliances, and projects, identifying market opportunities, capturing new business opportunities, setting business and technology strategy, starting up new ventures

## Experience

Incubato Consulting

Founder/CEO

2014 - Present (11 years)

Oakland, CA

Business consulting aimed at helping start-ups. Clients have included a broad range of industries, including nutraceuticals, therapy services, financial services and technology, health technology, and nutrition to boost wellness.

Vision Science Labs

3 years 6 months

Founder

January 2018 - June 2021 (3 years 6 months)

SF Bay Area

CEO

January 2018 - November 2018 (11 months)

Oakland, CA

An early-stage company focused on improving eye fitness. Developing science-based software applications to assess and improve eye fitness for

reading, sports, and eSports performance, and use of computer and mobile screens.

**Oneeros, Inc.**

**Business Strategy Consultant/Interim CEO**

2013 - 2015 (2 years)

Oakland, CA

Prepared business strategy, plans, and financial projections for innovative medical device start-up for sleep apnea detection and monitoring. Helped hire CEO and other key HR tasks.

**Four Dads Foods, Inc**

**President**

2011 - 2012 (1 year)

Oakland, CA

Led an early stage start-up in the food industry, including product planning, branding, financial projections, financing, and manufacturing planning.

**IBM**

14 years

**Manager, ISV Business Strategy and Enablement**

January 2008 - December 2010 (3 years)

Managed team responsible for major IBM alliance software partner relationship. Integrated partner software with IBM servers/storage and associated virtualization technology. Developed business development strategy and oversaw ongoing business development activities.

**Manager, Software Development**

November 2004 - December 2007 (3 years 2 months)

Managed team developing new software technology to ease use and migration. Successfully developed and demonstrated proof of technology, then integrated technology into ongoing product versions.

**Manager, Strategy and Planning**

November 2003 - November 2004 (1 year 1 month)

Managed team that developed strategic directions and plans across a rapidly growing software product portfolio. Evaluated market information, formulated detailed product and technology plans, and managed key partners.

**Project Manager and Manager**

January 2000 - November 2003 (3 years 11 months)

Managed team that developed software/hardware solutions and managed partners key to driving growth of storage products. Key founder in creating new open storage integration lab that grew to over 50 team members within 2 years.

#### Marketing Manager

January 1997 - January 2000 (3 years 1 month)

Performed lead marketing roles for new venture within IBM to sell key storage technology to outside companies. Achieved \$400M revenue within first 2 years.

#### Santa Teresa Action Group

Board Member

2001 - 2004 (3 years)

Led efforts aimed stopping or improving a power plant proposed for our community. Directed significant litigation activities. Improved resulting project to better protect community.

#### Silicon Valley Environmental Partnership

Board Member

1996 - 2003 (7 years)

San Jose

Served on board of organization which periodically produces the Silicon Valley Environmental Index. This Index has been on the cutting edge of identifying and tracking key sustainability metrics within Silicon Valley.

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## Education

University of California, Berkeley, Haas School of Business

MBA, Marketing and Finance · (1981 - 1984)

University of California, Davis

BS, Civil Engineering · (1973 - 1978)

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

**RESOLUTION NO. 2025-019**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
RATIFYING APPOINTMENTS TO THE FOREST AND BEACH COMMISSION AND THE  
PLANNING COMMISSION**

WHEREAS, the City recognizes the valuable contributions of its Boards and Commissions in providing expert advice and recommendations on matters of importance to the community; and

WHEREAS, vacancies have occurred on the Forest and Beach Commission and the Planning Commission due to the election of former Commissioners Hans Buder and Bob Delves to the City Council following the November 5, 2024, election; and

WHEREAS, in order to ensure the continued function of these commissions, the City initiated an appointment process in December 2024; and

WHEREAS, in January 2025, an Ad Hoc Committee, comprised of the Mayor and Mayor Pro Tempore, conducted a thorough review of twelve (12) applications received and interviewed all qualified candidates; and

WHEREAS, the Committee expresses its sincere appreciation to all applicants for their time and participation in the appointment process; and

WHEREAS, the Committee recommends the appointment of qualified individuals to fill the vacancies on the Forest and Beach Commission and the Planning Commission.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA, does hereby:**

1. Appoint Neal Rutta to the Forest and Beach Commission for a term expiring May 30, 2028; and
2. Appoint Mel Ahlborn to the Planning Commission for a term expiring May 30, 2029.

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
this 4th day of February, 2025, by the following vote:**

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

\_\_\_\_\_  
Dale Byrne, Mayor

\_\_\_\_\_  
Nova Romero, MMC, City Clerk



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

February 4, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Brian Pierik, City Attorney
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Discussion of Draft Agreement with Carmel Public Library Foundation Regarding Harrison Memorial Library Centennial Restoration and Request for Direction (Estimated time - 30 min)

## RECOMMENDATION:

Discuss draft agreement with Carmel Public Library Foundation Regarding Harrison Memorial Library Centennial Restoration and provide direction to City Administrator based on options discussed in staff report.

## BACKGROUND/SUMMARY:

**OVERVIEW:** There are eight sections in this Staff Report.

1. Harrison Memorial Library
2. City Support Groups
3. Harrison Memorial Library Board of Trustees
4. Carmel Public Library Foundation
5. City Council Actions in 2024
6. Draft Agreement Proposed by Foundation Regarding Harrison Memorial Library Centennial Restoration Project
7. Analysis of Draft Agreement Proposed by the Foundation
8. Council Options

## I. HARRISON MEMORIAL LIBRARY

Library service in Carmel-by-the-Sea began in 1906, when the Carmel Free Library Association began lending books from a little redwood building. For a fee of one dollar per year, people could borrow any one of 500 books from the Association's "Reading Room" heated by a wood burning stove.

The Harrison Memorial Library building opened in 1928 and was built by local contractor M.J. Murphy with input from California architect Bernard Maybeck, and financed by a bequest from Ella Reid Harrison as a memorial to her husband, California Supreme Court Justice Ralph Chandler Harrison.

The library has had two additions: one in 1949, followed by another expansion in the 1970's. In 1988, the Crocker Bank located on the corner of Mission Street and 6th Avenue, 3 blocks away from the Harrison Library was purchased by Mayor Clint Eastwood to serve as the Children's Library and Local History repository.

The Library is a City Department and as such adheres to all City policies and procedures. The Library is governed by the Harrison Memorial Library Board of Trustees, appointed by the City Council, who approve the annual operating budget, approve and enforce library specific policies, have oversight of both Library facilities, and make recommendations to the City Council regarding the Library when needed.

The Library has three funding sources: (1) The City of Carmel-by-the-Sea which funds staff salaries and building maintenance for both library buildings; (2) The Friends of Harrison Memorial Library which formed in 1971 and raises funds to support operations; and (3) The Carmel Public Library Foundation which was established in 1990 and provides for the majority of the Library's operating budget and additional special projects from time to time.

## II. CITY SUPPORT GROUPS

October 3, 1989: City Council adopted Resolution 89-121 which adopted a Support Group Policy C89-47 (**Attachment 1**).

Policy C89-47: Adopted for the stated purpose of establishing a formal procedure for relationships with the City and its support groups (**Attachment 2**). This Policy includes the following provision in regard to implementation:

"Responsibility for Implementation of Policy:

The City Administrator is delegated as the City official responsible for the implementation of this policy."

May 1, 1990: City Council adopted Resolution No. 90-49 designating the following City Support Groups:

- a. Friends of Sunset Foundation
- b. Friends of Harrison Memorial Library
- c. Carmel Abalone Club
- d. Friends of Carmel Forest

July 7, 1992: City Council adopted Resolution No. 92-64 designating Carmel Public Library Foundation as an official City Support Group.

April 3, 2007: The City Council adopted Resolution No. 2007-19 designating the following as City Support Groups:

- a. Carmel Abalone Club
- b. Friends of the Harrison Memorial Library
- c. Carmel Public Library Foundation
- d. Friends of Carmel Forest
- e. Friends of Sunset Foundation
- f. Lester Rowntree Native Plant Garden Committee

October 2, 2012: City Council adopted Resolution No. 2012-70 designating the Friends of Mission Trail Nature Preserve as a City Support Group.

September 7, 2021: City Council adopted Resolution No. 2021-046 designating Carmel Cares as a City Support Group.

### **III. HARRISON MEMORIAL LIBRARY BOARD OF TRUSTEES**

On August 4, 1992, the City Council adopted Resolution 92-70 (**Attachment 3**) amending Policy C89-47 Support Groups to clarify the regulatory authority of the Library Board over the library facilities and equipment under its jurisdiction. Exhibit A attached to this Resolution includes underlined text regarding the authority of the Library Board.

On January 8, 2025, a Staff Report was presented to the Library Board of Trustees (**Attachment 4**) which included a discussion regarding the Library Board authority in general and with regard to the renovation project for the Harrison Memorial Library.

### **IV. CARMEL PUBLIC LIBRARY FOUNDATION**

The Carmel Public Library Foundation (“Foundation”) was established in 1989 with the mission to keep the library open, relevant and thriving and to ensure free library service in perpetuity by providing funding for books, materials, programs, equipment and services.

In 1992, the City recognized the Carmel Public Library Foundation as an official City Support Group which are defined in Policy C89-47 (**Attachment 2**) as “associations of individuals who have voluntarily joined together in a unit whose sole or primary purpose is to provide assistance – monetary, social, cultural or otherwise – but not political – to the City or one of its departments.”

Over time, the Foundation, in collaboration with the City and the Harrison Memorial Library Board of Trustees, has played a significant role in nurturing a thriving public library. This partnership has been crucial in meeting the diverse informational, educational, and cultural needs of Carmel’s residents.

Additionally, the Foundation has funded special projects such as the Gathering Place project which provided a free meeting space for the community for the first time in many years (Cost estimated at approximately \$400,000) and Park Branch lobby renovation project (Cost estimated at approximately \$40,000 with contributions from the Rotary Club).

## V. CITY COUNCIL ACTIONS IN 2024

January 8, 2024: City staff presented to the City Council a Staff Report (**Attachment 5**) with a proposed Resolution reaffirming the City's public-private partnership with the Carmel Public Library Foundation. The Council adopted Resolution 24-02 at that meeting (**Attachment 6**).

July 8, 2024: There was a City Council Staff Report submitted for Agenda item No. 11 to receive and review the Request for Proposal for Architectural Services for the Harrison-Memorial Library (**Attachment 7**). The Minutes from the July 8, 2024 Council meeting for this Item read as follows:

*Item 11 - Receive and review the Request for Proposals for Architectural Services for the Harrison Memorial Library provide staff with direction.*

*Library and Community Activities Director Ashlee Wright presented the item to Council and answered questions. She summarized the background of the Library Master Plan, community engagement workshops, and the request for proposals (RFP) development. She also spoke about the project scope and timeline and requested any input from Council on the RFP before moving forward with issuance.*

*Public Comment:*

*John Krisher*

*Alexandra Fallon*

*Councilmember Baron requested clarity on the city's financial obligations once the RFP is issued. He also suggested an agreement between the city and the Carmel Public Library Foundation (CPLF) to outline funding and contingency obligations. Additionally, he said he would like to see the list of people on the RFP evaluation committee that includes city staff and local architects. Councilmember Ferlito agreed, stating that addressing these questions before starting the project would help avoid confusion. Mayor Potter acknowledged the need to protect the city's interests and ensure good project management but expressed concerns about potential project delays.*

*Motion by Mayor Potter to have Library Director Wright return in August with a list of the Library Master Plan RFP evaluators, amend the RFP specifically in the criteria section calling out the necessity of a library consultant for the project, and an agreement between the City and CPLF outlining the project funding obligations for Council approval, seconded by Mayor Pro Tem Richards, and approved 5-0-0-0 by the following roll call vote:*

*AYES: Councilmembers Baron, Dramov, Ferlito, Richards, and Mayor Potter*

*NOES: None*

*ABSENT: None*

*ABSTAIN: None*

August 6, 2024: There was a City Council Staff Report (**Attachment 8**) submitted for Agenda Item No. 5 to Review the Request for Proposals (RFP) for Architect Services for the renovation of the: Harrison Memorial Library and the list for the Architect Selection Committee. The Minutes from the August 6, 2024 Council meeting for this Item read as follows:

*Item 5 - Review the Request for Proposals (RFP) for Architect Services for the renovation of the*



## *Harrison Memorial Library and the list for the Architect Selection Committee*

*Library and Community Activities Director Ashlee Wright presented the item to Council and answered questions from Council. She outlined the project timeline to date, the goal of the RFP, and summarized the role of the Harrison Memorial Library Board of Trustees Carmel Public Library Foundation (CPLF), and the Friends of the Harrison Memorial Library. She requested direction from Council on releasing the RFP, as well as provide direction on the architect selection committee members. CPLF Executive Director Alexandra Fallon answered questions from Council in regard to the list of members on the architect selection committee. She announced that the CPFL has a donor willing to make a \$5 million lead gift that has a matching donation requirement by June 2025.*

*Mayor Pro Tem Richards made a motion to approve and release the RFP for Architect Services for the renovation of the Harrison Memorial Library and approve the list of 19 people on the Architect Selection Committee, seconded by Mayor Potter.*

*Council discussion resumed. Councilmember Baron asked about the status of the agreement between the City and with CPLF to secure funding for the Library Master Plan project, and expressed concerns that the agreement has not been entered into. Ms. Fallon said that the CPLF is committed to providing the initial \$250,000 towards the architectural services agreement for the Library Master Plan.*

*Mayor Pro Tem Richards amended his motion to add that the city acknowledges that the CPLF has committed to funding \$250,000 towards the architectural services agreement, in addition to approving and releasing the RFP, and approving the list of 19 people on the architectural selection committee. Amended motion seconded by Councilmember Baron.*

*Motion by Mayor Pro Tem Richards to approve and release the RFP for Architect Services for the renovation of the Harrison Memorial Library; approve the list of 19 people on the Architect Selection Committee; that the CPLF will enter into an agreement with the City to secure funding for the project once the architect is selected; and acknowledge that the CPLF has committed to funding \$250,000 towards the initial architectural services agreement, seconded by councilmember Baron, and approved 5-0-0-0 by the following roll call vote:*

*AYES: Councilmember Baron, Dramov, Ferlito, Richards, and Mayor Potter*

*NOES: None*

*ABSENT: None*

*ABSTAIN: None*

August 8, 2024: Request for Proposals for Architectural Services For The Harrison Memorial Library Renovation Project (RFP) was issued by the City. A copy of the RFP is **Attachment 9**.

The City received six Proposals in response to the RFP. The City has not entered into a contract with any of the Proposers who responded to the RFP pending the City and Foundation entering into an Agreement as directed by the City Council on July 8, 2024.

## **VI. DRAFT AGREEMENT PROPOSED BY FOUNDATION REGARDING HARRISON MEMORIAL LIBRARY CENTENNIAL RESTORATION PROJECT**

Since the City Council meeting of August 6, 2024, as directed by the City Council, the City has had

discussions with the Foundation regarding a draft Agreement to present to the City Council for review and consideration of the process to be followed for what is referred to as the Centennial Restoration of the Harrison Library Project (“Project”).

It is staff’s understanding that the Foundation has estimated the Project costs including Architect Services and Construction Costs will be in the range of \$15 million to \$20 million. However, the City has not entered into a contract with the Architect or the Construction Contractor so the Project costs are not known at this time. As noted, the Architect will be asked to prepare an Engineer’s estimate which will help inform the Construction Costs, but the bids the City receives for the Construction work could be less, or more, than the Engineer’s estimate.

The latest draft Agreement is proposed by the Foundation and is dated for reference purposes as January 24, 2025 (“Draft Agreement”) and is **Attachment 10**. Here is a summary of the ten Sections of the Draft Agreement.

### **Section 1: Recitals**

The Draft Agreement includes Recitals A to J which are incorporated by reference in Section 1.

### **Section 2: Project Executive Committee**

Section 2 would create a Project Executive Committee (“Committee”) which would be comprised of Mayor Dale Byrne, Assistant Administrator Brandon Swanson, Foundation representatives Chair Marci Meaux and Alexandra Fallon. These four Committee members would select a fifth member, with the intent of this member being impartial.

The Committee is proposed to provide final decisions regarding issues relating to the Project. Those final decisions by the Committee would be communicated by the Foundation Representative (Section 5) and the City Project Manager (Section 10.1) to the City Administrator and the Foundation Executive Director for implementation.

The Committee would have the authority to create such sub-committees as it deems necessary to assist the Committee in connection with its decisions.

### **Section 3: City Resolution No. 2024-002**

Section 3 references Resolution No. 2024-002 reaffirming the City’s public-private partnership with the Carmel Public Library Foundation which is mentioned above and is **Attachment 6** to this Staff Report.

### **Section 4: Architect Services**

As noted, the City issued an RFP for Architect Services (Attachment 8 to this Staff Report) and received proposals in response to that RFP. The City has not yet entered into a Design Professional Contract (DPC) with an Architect for this Project. Section 4 provides that the DPC would be subject to approval by the Foundation and City Council.

Section 4 provides that the DPC would be divided into three Phases with a goal of completion of the Project by December 31, 2028 subject to extensions approved by the Parties:

1. Phase One: Preparation of a Historic Structures Report and Schematics/Conceptual Design subject to the Committee making a final decisions

2. Phase Two: Design Development, Engineering and Construction Drawings/Documents and specifications subject to the Committee making a final decisions

3. Phase Three: Services for support and consultation during construction subject to the Committee making a final decisions

Section 4.8 has several provisions regarding payment of the Design Professional Invoices including the following:

Section 4.8.1: The Foundation has raised all or most of the funds for Phase One.

Section 4.8.2: For Phase Two, there is a provision that the City must obtain a written acknowledgement that the Foundation has raised sufficient funds to pay for Phase Two before commencement of Phase Two and then the Foundation would pay the Architect based on invoices approved by the City Project Manager and Foundation Representative. Although not stated here, the Committee would, based on Section 2, make the final decisions regarding payment of the Architect invoices for Phase Two.

Section 4.8.3: The Architect will provide an Engineer's Estimate for the cost of the construction of the Project.

Section 4.8.4: The Architect will be requested to provide, if reasonably feasible, a description of Phases for the construction of the Project which must be discreet work meaning that if the work on a Phase is completed that the Library will be fully functional even if later Phases are not constructed due to lack of funding by the Foundation. If Phases are provided, then the Architect be asked to provide an Engineer's Estimate for the cost of each Construction Phase.

Section 4.8.5: In order to proceed to Phase Three, the City must obtain a written acknowledgement that the Foundation has raised sufficient funds to pay for the Phase Three services and, if so, then the Foundation would pay the invoices as approved by the City Project Manager and Foundation Representative. Although not stated here, the Committee would, based on Section 2, make the final decisions regarding payment of the Architect invoices for Phase Three.

Section 4.8.6 confirms that all fundraising shall be done on a best-efforts basis and that at the time of entering into the proposed Agreement, the only funding formally available is for Phase One of the Architect Services.

Section 4.8.7 states that the Foundation agrees not to unreasonably withhold payments on the invoices of the Architect.

## **Section 5: Foundation Representative**

The Foundation will select and pay for a Foundation Representative who will work and consult with the City, Architect, City Project Manager, the Engineer, Contactor, Committee and any sub-committees and others.

The Foundation Representative is responsible for reviewing and approving all Construction Costs and request for payment and compliance by the Contractor with Construction Agreement and will carry out any final decisions of the Committee which includes the authority to approve, and presumably disapprove, invoices from the Architect and Construction Contractor.

## **Section 6: Construction Costs**

Section 6.1: Construction Costs include the costs as defined in the Construction Agreement.

Section 6.2: The Notice Inviting Bids is subject to approval by the City and Foundation.

Section 6.3: Before the City issues the Notice Inviting Bids, the City must obtain from the Foundation an acknowledgement that the Foundation has raised sufficient funds for the Construction Costs based on the Engineer's Estimate.

Section 6.4: If the Architect has prepared Construction Phases, then the City must obtain an acknowledgment from the Foundation that the Foundation has raised sufficient funds for the Construction Costs for each Phase based on the Engineer's Estimate in order for a Phase to commence.

Section 6.5: Upon receipt of the Foundation's acknowledgement in Section 6.2 (may be intended to be 6.3), the City shall issue the Notice Inviting Bids.

Section 6.6: After receipt of bids, City and Foundation Representative will review the bids and decide whether to award a contract to the lowest responsible bidder. Although not stated here, the Committee would, based on Section 2, make the final decisions regarding awarding a contract.

Section 6.7: Invoices from the Construction Contractor are subject to approval by the Foundation and if there is an objection to payment of an invoice, then the objection is resolved by the Committee. Invoices, if approved, are paid by the Foundation to the Contractor.

Section 6.8: Foundation will pay the Contractor's invoice if no objections.

Section 6.9: The Foundation will execute a "guarantee of payment" for approved invoices.

Section 6.10: Foundation to provide a monthly accounting of Project expenditures to the Committee and City Project Manager.

## **Section 7. Termination of Agreement**

Section 7.1: Termination by the City. City may terminate the Agreement if Foundation breaches the Agreement with 30 days for Foundation to cure the breach. There is no right of the City to terminate the Agreement without cause. Section 7.1.4 provides that if there is a termination of the Agreement that the City agrees to refund any Deposits made by the Foundation that are not due. However, the Agreement as written does not require the Foundation to make any deposits with the City.

Section 7.2: Termination by Foundation. Foundation may terminate the Agreement if City breaches the Agreement only until the City award a contract to the Contractor with 30 days for the City to cure the breach. There is no right of the Foundation to terminate the Agreement without cause. After the City awards a contract to the Contractor, the Foundation may terminate the Agreement after each Phase of Construction is completed if there are Construction Phases.

## **Section 8: Indemnity**

Section 8.1: The City indemnifies the Foundation for any conduct of the City which is in breach of the Agreement and the City also indemnifies the Foundation for any "third-party Claims" which could include claims by the Architect and/or the Construction Contractor for non-payment of invoices.

Section 8.2: The Foundation indemnifies the City for claims arising from conduct of the Foundation which is in breach of the Agreement.

### **Section 9: Dispute Resolution**

Disputes which arise relating to a Termination of the Agreement (as provided in Section 7) are to be submitted mediation with the costs shared equally by the parties.

If the dispute is not resolved by mediation, then either party can request arbitration. Although not stated in the Agreement, the costs for the arbitrator would presumably be shared equally by the parties.

### **Section 10. General Provisions**

Section 10.1 provides that the City shall, with the approval of the Foundation, designate a City Project Manager a qualified independent contractor to represent the City and the Foundation agrees to reimburse the City for the costs of the City Project Manager.

Section 10.2 provides that the City will provide the Foundation with electronic copies of records regarding the Project.

Section 10.3 to 10.10.9 are standard contract provisions.

Section 10.10 provides that public communications must be approved by the parties in advance.

Section 10.11 provides that Project Costs includes the cost for an alternative Library location during construction if required and subject to approval by the Committee.

## **VII. ANALYSIS OF DRAFT AGREEMENT PROPOSED BY THE FOUNDATION**

### **A. Contract Issues – Risk of Potential Litigation**

The Harrison Memorial Library Centennial Restoration would be a City Project. The City would be entering into the contract with the Architect and, as such, the City would be legally responsible for payment of the services of the Architect. The City would be entering into the contract with the Construction Contractor and, as such, the City would be legally responsible for payment of the work by the Construction Contractor.

Contracts impose legal obligations upon the parties to the contract. One of the primary obligations of a contract is for the party or parties who are required to perform services under the contract do so in a manner consistent with the terms of the contract. Here, that would include the contract between the City and the Architect and the contract between the City and the Construction Contractor. If the party performs the services required by the contract, then the other party to the contract (i.e. the City) has the obligation to make payment to that party.

#### **1. Contract with Architect**

Contracts with Architects can result in disputes on a number of issues including whether the Architect, when performing the services, has complied with the terms of the contract and is entitled to payment for an invoice or invoices. In the event of a dispute, the Architect has the right to file a legal action against the other party to the contract (here, the City) including arbitration or a lawsuit filed in court depending upon the terms of the contract with the Architect.

## 2. Contract with Construction Contractor

Contracts with a Construction Contractor can result in disputes on a number of issues including, but not limited to, whether the Contractor has complied with the terms of the contract, whether the Contractor is entitled to additional compensation based on what the contractor claims is “extra work” (i.e. work that is outside the scope of the contract work), whether the City (or Foundation) has caused delays to the contractor in completing the work, disputes with sub-contractors and/or suppliers which can lead to the filing to claims and multiple other possible issues. In the event of a dispute, the Contractor has the right to file a legal action against the other party to the contract (here, the City) including arbitration or a lawsuit filed in court depending upon the terms of the contract with the Contractor.

Also, as mentioned, Section 6.9 of the Draft Agreement states that the Foundation will execute a “guarantee of payment” for approved invoices. However, this “guarantee” is limited to approved invoices, it does not address the issue of what will happen if the Foundation and/or the Committee does not approve an invoice.

## 3. Contract with Foundation

This Draft Agreement with the Foundation also could result in disputes between the parties on a number of issues including whether an invoice or invoices from the Architect should be paid, whether an invoice or invoices from the Construction Contractor should be paid, whether the City is in breach of one or more terms of the Draft Agreement, whether the Foundation is in breach of one or more terms of the Draft Agreement and multiple other possible issues.

## 4. Evaluation of Risk of Litigation

It is difficult to quantify the extent of the risk of litigation because there are a number of unpredictable factors to consider in evaluating the risk. As noted, there are three contracts (Architect, Construction Contract and Foundation) which could, in the event of a dispute, result on litigation.

Anytime the City is involved in a public works project, there is always a risk of litigation with the architect and/or the construction contractor. The difference with this Project is that, based on the terms of the Draft Agreement proposed by the Foundation in Section 2, the City is not making the “final decisions” (which is proposed to be done by the Committee) and the City is not in control of the payment to the Architect or the Contractor (which is proposed to be done by the Foundation).

All parties to these three contracts will certainly enter into the contracts with the hope and expectation that the Project will go as planned and without disputes during the Project. However, disputes can arise on public works projects, as with all contracts, and if and when the dispute arises, then question becomes how to address the dispute or disputes. This analysis requires a consideration of the issues involved with the Draft Agreement proposed by the Foundation for this Project addressed below.

## **B. Potential Issues with Draft Agreement**

### 1. Project Executive Committee - Section 2

The provisions of Section 2 are summarized above. This Committee is proposed to have final decision making authority regarding the Project including the payment, or non-payment, of invoices from the Architect and the Construction Contractor. If the Committee decides not to pay an invoice or invoices from the Architect and/or the Construction Contractor, or makes some other “final decision” that give rise to a

dispute, then there is a risk of a legal action being filed against the City which is the other party to those contracts.

The creation of this Commission also gives rise to an issue regarding an improper delegation of authority by the City to the Committee. The City only has two representatives on the Committee out of five members. This structure delegates the authority to make final decisions to three non-City members of the Committee who would be a majority of the Committee. Under the law, a city may delegate the performance of administrative functions to a private entity provided that the city retains ultimate control over administration so that it may safeguard the public interest. *International Longshoremen's and Warehousemen's Union v. Los Angeles Export Terminal, Inc.* (1999) 69 Cal. App. 4th 287, 297-298. Here, the Committee is proposed to have final decision-making authority so the City will not have ultimate control over the administration of the Project.

Also, as noted, City Policy C89-47 (**Attachment 2**) which established City Support Groups, including the Foundation, delegated to the City Administrator the responsibility for the implementation of the Policy.

## 2. Architect Services – Section 4

The primary issues regarding the Architect Services is Section 4.8 which has the payment process for the invoices from the Architect. The invoices are subject to approval by the Foundation and the Committee. These provisions create two issues which have been addressed above, namely the risk of litigation if disputes arise with the Architect and the delegation of authority to the Committee to make “final decisions” including payment, or non-payment, of Architect invoices.

Another issue is that under the contract between the City and the Architect, the City would have the right to terminate the contract with or without cause. In light of Section 2 of the Draft Agreement with the Foundation, there is an issue as to whether the City could terminate the contract with the Architect without approval of the Committee which has final decision making authority regarding the Project.

## 3. Construction Costs - Section 6

The same considerations apply here as for the Architect, namely the risk of litigation if disputes arise with the Contractor and the delegation of authority to the Committee to make “final decisions” including payment, or non-payment, of Contractor invoices.

As with the Architect, there would be the same issue under the contract between the City and the Contractor on whether the City would have the right to terminate the contract with the Contractor with or without cause. In light of Section 2 of the Draft Agreement with the Foundation, there is an issue as to whether the City could terminate the contract with the Architect without approval of the Committee which has final decision making authority regarding the Project.

## 4. Indemnity – Section 8

“8.1 City shall indemnify, defend and hold harmless the Foundation and Foundation's employees, officers, directors, representatives, members, and agents (collectively the “Foundation's Affiliates”) from any costs, expenses, damages, judgments, actions, attorneys' fees, liabilities, claims, court costs, expert witness costs, appellate costs, or losses (collectively, the “Claims”) with respect to, or arising from any conduct of the City which is in breach of this Agreement. City shall further indemnify, defend and hold

harmless the Foundation and Foundation's Affiliates from any Claims with respect to, or arising in connection with any third-party Claims relating to the Project."

The effect of the last sentence in Section 8.1 (underlined) is that if the Architect and/or Contractor files a legal action against the City, even if due to the "final decisions" of the Committee (such as non-payment of an invoice or other decisions), then the City would have to indemnify the Foundation in that litigation.

### **C. Potential Minimization of Risks**

#### 1. Project Executive Committee - Section 2

Section 2 of the Agreement can be modified to provide that the Committee makes recommendations to the City on Project issues, but the final decision making authority, including the payment of invoices, rests with the City.

This modification would resolve the issue of delegation of final authority by the City to the Committee which is not permitted under the law. However, given that the Foundation is raising most, if not all, of the funds for this project, and desire to play a decision making role in the process, their preferred structure and authority for the Project Executive Committee is as-drafted.

#### 2. Architect -- Section 4

a. Phases: The Draft Agreement includes three phases: (1) Historic Structures Report and Schematics/Conceptual Design; (2) Design Development, Engineering and Construction Drawings/Documents and specifications and (3) support and consultation during construction. Each Phase will only commence if the Foundation acknowledges that it has raised sufficient funds for that Phase. It is likely that the great majority of the expense for the Architect will be for Phase Two.

b. Termination of Contract: If a dispute arises with the Architect which cannot be resolved and creates a situation where further services by the Architect is not workable, then City can terminate the contract. However, in order to make sure that the City has the authority to terminate the contract, Section 2 of the Draft Agreement would need to be modified as described above to give the Committee the authority to make recommendations, but not make final decisions.

c. Deposit process. The Draft Agreement could be modified to include a provision that the Foundation would make a deposit with the City for the estimated cost of each of the three Phases of the Architect Services and then the City would pay the invoices of the Architect from those deposits.

#### 3. Contractor – Section 6

a. Phases: As noted, Section 4.8.4 provides that the Architect will be requested to provide, if reasonably feasible, a description of Phases for the construction of the Project which must be discreet work meaning that if the work on a Phase is completed that the Library will be fully functional even if later Phases are not constructed due to lack of funding by the Foundation. If Phases are provided, then the Architect be asked to provide an Engineer's Estimate for the cost of each Construction Phase. If there are Phases for the Construction work, then this could reduce the exposure risk as each Phase would only commence upon the City and Foundation agreeing to authorize the Contractor to proceed.

b. Termination of Contract: If a dispute arises with the Contractor which cannot be resolved and creates a



situation where further services by the Contractor is not workable, then City can terminate the contract. However, in order to make sure that the City has the authority to terminate the contract, Section 2 of the Draft Agreement would need to be modified as described above to give the Committee the authority to make recommendations, but not make final decisions.

c. **Deposit Process:** The Draft Agreement could be modified to include a provision that the Foundation would make a deposit with the City for the estimated cost of the Construction work and then the City would pay the invoices of the Contractor from those deposits. If the Construction work is performed in Phases, then the amount of the deposit would be for the Engineer's estimate for the cost of each phase as the work progresses through the phases. If there are Phases, then the contract with the Contractor would have to include provisions confirming that the Contractor agrees to perform the work in Phases if and when those Phases are approved to proceed.

#### 4. Indemnification -- Section 8

The risk to the City would be further reduced if the last sentence in Section 8.1 about the City indemnifying the Foundation for third party claims is removed. However, if the changes are made to the Agreement as described above, including use of phasing and deposits, then the Foundation may be less at risk of third party claims since the City would have the final decision making authority, including responsibility for payment of invoices, and the City may wish to consider allowing the last sentence to remain in Section 8.1.

#### 5. Claims for Additional Compensation by Architect and/or Contractor

There can be claims by parties contracting with the City on a public works projects, including Architects and Contractors, that work they are being asked to perform by the City (or the Foundation) is beyond the scope of work in the contract and that additional compensation is due.

Another type of claim with public works projects arises from delays in performance which the contracting party may contend is due to the conduct of the City and/or, in this case, the Foundation.

As noted, the Draft Agreement does have language regarding indemnification for claims due to the breach of the Agreement by the City or the Foundation. However, claims for out of scope work or for damages due to delays or other claims, may not be the result of the breach of the Agreement between the City or the Foundation, but could still give rise to a need for additional payments to be made to the Architect or Contractor.

The Draft Agreement would need to include language addressing how these claims for additional compensation are to be addressed. One solution which is common with public works project is to include a contingency amount above contract amount (often 15%) for such unexpected costs. However, it is possible that the additional compensation might exceed to the contingency amount which raises the issue of who is responsible for payment of that additional compensation which should be considered in contract drafting.

#### 6. Payment Bond – Also known as a Labor and Material Bond

The City requires that a Contractor post a Payment Bond with the City to guarantee payment to the sub-contractors and suppliers of the Contractor.

#### 7. Performance Bond

The City will require the Contractor to post a Performance Bond so that if the Contractor does not complete the work in a satisfactory manner and refuses to correct the work, then the City can make a demand upon the Surety which issues the Payment Bond to complete the work.

## **VIII. COUNCIL OPTIONS**

The City has discussed with the Foundation the issues with the Draft Agreement proposed by the Foundation (**Attachment 10**) and suggested potential revisions to the Draft Agreement to address these issues. There are a number of Options available to the City Council on how to proceed including the following:

1. Motion to direct the City Administrator to continue negotiations with the Foundation with modifications to reduce the risks to the City as described in Section VII C of this Staff Report. This direction could include specifics on which sections should be modified to address certain potential risks.
2. Motion to direct the City Administrator to work with City staff to present the Draft Agreement Version January 24, 2024 (Attachment 10) as currently written to the Library Board of Trustees for review and recommendation to the City Council.
3. Other action as the City Council may deem appropriate.

### **FISCAL IMPACT:**

No direct fiscal impact for this action.

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

January 8, 2024 - City Council Adoption of Resolution No. 2024-002

July 8, 2024 - City Council direction to staff as described above in this Staff Report

### **ATTACHMENTS:**

Attachment 1) Council Resolution No. 89-21

Attachment 2) Policy C89-47

Attachment 3) Council Resolution 92-70

Attachment 4) Staff Report to Library Board dated January 8, 2025

Attachment 5) Staff Report to City Council dated January 8, 2024

Attachment 6) Council Resolution 2024-002

Attachment 7) Staff Report to City Council dated July 8, 2024

Attachment 8) Staff Report to City Council dated August 6, 2024

Attachment 9) Request for Proposals for Architecture Services

Attachment 10) Draft Agreement Version January 24, 2025 Submitted by Carmel Public Library Foundation

CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 89-121

Attachment 1

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
CARMEL-BY-THE-SEA ADOPTING A SUPPORT GROUPS POLICY

WHEREAS, the City Council determined on 7 February 1989 that a policy should be developed to formalize its relationship with volunteer groups; and

WHEREAS, two members of the City Council were appointed to work with City staff to develop such a policy; and

WHEREAS, the Committee met with representatives of each of the existing support groups during the evolution of the policy, and

WHEREAS, the Committee has amended the draft policy numerous times in response to comments received from the representatives of the support groups;

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

1. Adopt the attached Support Groups Policy dated 21 September 1989; and
2. Instruct the City Clerk to include the Support Groups Policy in the City's Policy Manual and to forward copies of the Policy to each of the four existing support groups and to any groups which are established in the future.

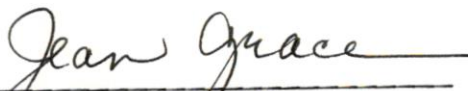
PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 3rd day of October, 1989, by the following roll call vote:

AYES: COUNCIL MEMBERS: Fischer, Laiolo, White, Wright, Grace

NOES: COUNCIL MEMBERS: None

ABSENT: COUNCIL MEMBERS: None

SIGNED,

  
\_\_\_\_\_  
JEAN GRACE, MAYOR  
City of Carmel-by-the-Sea

ATTEST:

  
\_\_\_\_\_  
Jeanne Brehmer, City Clerk

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

<b>Subject:</b> Support Groups Policy	<b>Policy/Procedure No:</b> C89-47
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<b>Effective Date:</b> 3 October 1989	<b>Authority:</b> Resolution No. 89-121
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<p><b><u>Purpose:</u></b> To establish a formal procedure for relationships between the City and its support groups.</p> <p><b><u>Policy/Procedure:</u></b> As fully set forth in the policy document, attached.</p> <p><b><u>Responsible Party:</u></b> City Administrator/City Council</p> <p><b><u>Department of Origin:</u></b> Administration/City Council</p>
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<p><b><u>Revision Dates:</u></b> 6 March 1990 (Resolution No. 90-26) 4 August 1992 (Resolution No. 92-70) 3 April 2007 (Resolution No. 2007-19) 2 October 2012 (Resolution No. 2012-70)</p> <p><b><u>Rescinded Date:</u></b></p>
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## Support Groups Policy September 21, 1989

### General:

The City Council recognizes that individuals of the community will join together from time to time in support groups to assist the municipal organization (City) or one of its departments for a variety of reasons. The City Council also recognizes the value of the assistance so provided by support groups and encourages the formation of such groups where appropriate and/or a need exists. So that both the City and its entities and the support groups have a clear understanding of the nature and extent of the relationship, the following guidelines have been developed and adopted by the City Council.

### Definition:

Support groups are associations of individuals who have voluntarily joined together in a unit whose sole or primary purpose is to provide assistance – monetary, social, cultural or otherwise – but not political – to the City or one of its departments.

### Nature of Relationship:

The City recognizes the importance of support groups to the financial, social, cultural and environmental fabric of our community as well as the need for private support groups to be independent and freed of the restrictions which are applicable to public entities. It is also recognized by the City that a relationship will exist between support groups and the City. It is the intent of the City to keep the relationship with all support groups to a minimum, recognizing that support groups are private in existence, a status which requires neither the specific public noticing, reporting and liability responsibilities of, nor financial assistance from, the City.

While members of support groups have the freedom of association guaranteed by the Constitution, the support group is recognized by the City as a private body.

### City Involvement with Support Groups/Personnel:

City personnel, whether elected, employed or appointed, shall not serve on the board of directors (either as a member or in an ex officio capacity) of a support group. Employees of support groups are not City employees and support groups and their officers shall refrain from representing themselves as agents or officers of the City. City staff will be assigned by the City Administrator to serve in a liaison capacity and to provide technical assistance to support groups if requested.

### Use of City Facilities\*:

Support groups are entitled to free use of City facilities for meetings, either general membership, board, executive committee, or special committee as long as:

- a) The date and time are convenient to the operation and maintenance of the facility in which the meet is desired;
- b) The meeting room is not needed for a City board, committee or commission meeting;
- c) The meeting is to occur during regular hours of operation or does not require the scheduling of staff beyond regular schedules if held at a time other than regular hours;
- d) The desired room is available;
- e) The City will not incur a substantial cost for providing the room; and

- f) The use of the City facilities by the support group is in furtherance of the interests of the City.

The City shall draw up an agreement with each support group which shall outline the terms and conditions for the free use of meeting rooms and of storage space. Support groups may also store assets and belongings in a public facility subject to a valid Hold Harmless Agreement and certificate of insurance being on file with the City Clerk's office and naming the City as an additional insured party, and provided that the space is not required for municipal properties.

City facilities, with the exception of library facilities, may not be used to provide free space or equipment for the business office of the support group. The use of Library facilities shall be determined by the Harrison Memorial Library Board of Trustees, with the exception of events held at these facilities at which alcoholic beverages are offered. Limitations on such use are described in this Policy in the paragraph titled "Insurance".\*

Use of City Equipment\*:

No support group, its officers or members, shall utilize any equipment belonging to the City and/or any of its departments except audio/visual equipment and room furnishings which are normally provided upon request with the use of a room. City equipment is defined but is not limited to telephones, desks, copy machines, computers and computer terminals, mail and stamping devices, facsimile machines, typewriters and adding machines. The City Administrator may grant use of City equipment in special circumstances. The use of library equipment shall be determined by the Harrison Memorial Library Board of Trustees.\*

Membership Rolls:

Membership rolls of support groups and the City can be exchanged if an agreement is reached between the parties and is consistent with both State and Federal laws.

Postage:

Each support group shall secure and maintain its own Post Office box or mailing address. The City's or a City department's Post Office box or bulk mailing permit is to be used for official City business only. Each support group shall incur all expenses associated with the mailing of its literature, minutes, agendas and fund-raising requests.

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\* For statutory provisions governing use of library facilities and equipment, see Education Code, Title 1, Division 1, Part 11, Chapter 5, Section 18919 and Carmel-by-the-Sea Municipal Code Section 2.72.050.

Political Activities:

No support group, organized for the purpose of assisting the City or one of its departments shall partake, either officially or unofficially, in any political activity involving the City of Carmel-by-the-Sea, its officers, employees, or facilities. Political activity includes, but is not limited to:

- Mayoral and City Council elections
- Local ballot issues
- Involvement in administrative or personnel matters

Support Groups are encouraged to use proper and accepted internal City communication channels and the public appearances section of City Council meetings.

Insurance:

The City will provide general liability insurance coverage for support groups including the cost of the insurance deductible as long as the support groups are meeting or holding events in public buildings or at public facilities. If a support group meets away from a public building or public facility and/or outside the City limits, then it shall be the option of the support group as to whether it desires to secure insurance protection. The City will not provide insurance protection for activities and events held outside of the City limits or away from public buildings and/or public facilities and will not provide coverage at any activity where alcoholic beverages are being served unless such activity is officially sanctioned and cosponsored via a Resolution of the City Council.

Should support groups desire to serve alcoholic beverages at an event, either in a public building or at a public facility, the support group will be required to secure its own insurance coverage, unless the City Council adopts a Resolution of co-sponsorship.

Co-Sponsorship:

A Resolution of the City Council of the City of Carmel-by-the-Sea is required in order for the City to co-sponsor with any support group any event, performance, activity or function, whether one-time, cumulative or ongoing.

Fund-Raising Events within Public Facilities:

The City recognizes that support groups from time to time will request the utilization of public facilities for fund-raising activities. Such requests for the use of public facilities shall be forwarded to the City Council for its review at least thirty (30) days prior to the scheduled event. The City will give preferential consideration to support groups over other groups for fund-raising activities within public facilities.

Requests for the use of Library facilities shall be forwarded to the Harrison Memorial Library Board of Trustees for its review at least thirty days (30) prior to the scheduled event.\* However, any event approved by the Library Board of Trustees at which alcoholic beverages are to be offered must also have prior approval of the City Council as set forth in this Policy in the paragraph titled "Insurance".

Support Groups are cautioned that obtaining such approval by both bodies could take seven weeks or more, depending on the scheduling of their respective meetings.

Bylaws:

Each support group shall provide a copy of its current bylaws to the City Clerk.

Annual Audit:

The City requires a copy of the annual audit, review or internal financial report of each support group.

Responsibility for Implementation of Policy:

The City Administrator is delegated as the City official responsible for the implementation of this policy.

Periodic Review:

The City Council will, from time to time, review the intent and content of this policy and make any necessary amendments which it deems necessary to protect the interests of the City and the support groups. All support groups will be notified whenever a review is determined to be needed.

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\* For statutory provisions governing use of library facilities and equipment, see Education Code, Title 1, Division 1, Part 11, Chapter 5, Section 18919 and Carmel-by-the-Sea Municipal Code Section 2.72.050.



CITY OF CARMEL-BY-THE-SEA  
CITY COUNCIL

RESOLUTION 2012-70

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA DESIGNATING THE FRIENDS OF MISSION TRAIL NATURE PRESERVE (FOMTNP) AS AN OFFICIAL CITY SUPPORT GROUP**

---

WHEREAS, on 3 October 1989, the City Council adopted Resolution 89-121, the Support Groups Policy which establishes the relationship between the City and private groups; and

WHEREAS, on 1 May 1990, the City Council adopted Resolution No. 90-47 designating the support groups of the City.

WHEREAS, a group of volunteers known as the Friends of Mission Trail Nature Preserve (FOMTNP) who have been working in Mission Trail Nature Preserve has requested designation as an official support group of the City pursuant to City Council Policy 89-47.

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

1. Require the FOMTNP to provide all documentation required per Policy 89-47.
2. Designate the following groups as Support Groups pursuant to City Council Policy 89-47:
  - a. Friends of Harrison Memorial Library
  - b. Carmel Public Library Foundation
  - c. Friends of Carmel Forest
  - d. Friends of Sunset Foundation
  - e. Lester Rowntree Native Plant Garden Committee
  - f. Friends of Mission Trail Nature Preserve (after compliance with #1)
3. Authorize the City Administrator to submit the revised list of support groups to the insurance carrier.

PASSED AND ADOPTED BY THE CITY OF COUNCIL OF THE CITY OF CARMEL-BY-THE SEA this 2nd day of October 2012, by the following roll call vote:

AYES:	COUNCIL MEMBERS:	BEACH; HILLYARD; TALMAGE; THEIS & BURNETT
NOES:	COUNCIL MEMBERS:	NONE
ABSENT:	COUNCIL MEMBERS:	NONE

ATTEST: SIGNED,

\_\_\_\_\_  
Heidi Burch, City Clerk

\_\_\_\_\_  
JASON BURNETT, MAYOR

CITY OF CARMEL-BY-THE-SEA

RESOLUTION NO. 92-70

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA AMENDING CITY POLICY NO. C89-47, SUPPORT GROUPS

WHEREAS, on 3 October 1989, the City Council adopted Resolution No. 89-121 establishing City Policy No. C89-47, Support Groups; and

WHEREAS, certain language in the Policy should be amended to reflect the regulatory authority of the Harrison Memorial Library Board of Trustees over library facilities and equipment as established by the State of California Education Code;

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

1. Amend City Policy No. C89-47 as shown on the attached Exhibit "A" to clarify the regulatory authority of the Library Board over the facilities and equipment under its jurisdiction.
2. Direct the City Clerk to include the revised pages in the City's Policy Manual.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 4th day of August, 1992, by the following roll call vote:

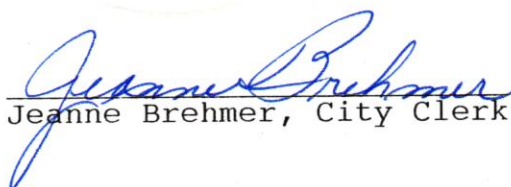
AYES: COUNCIL MEMBERS: Brooks, Coniglio, Fischer, Livingston, White  
 NOES: COUNCIL MEMBERS: None  
 ABSENT: COUNCIL MEMBERS: None

SIGNED,



KEN WHITE, MAYOR  
City of Carmel-by-the-Sea

ATTEST:

  
Jeanne Brehmer, City Clerk

USE OF CITY FACILITIES:\*

Support groups are entitled to free use of City facilities for meetings, either general membership, board, executive committee, or special committee as long as: a) the date and time are convenient to the operation and maintenance of the facility in which the meeting is desired; b) the meeting room is not needed for a City board, committee or commission meeting; c) the meeting is to occur during regular hours of operation or does not require the scheduling of staff beyond regular schedules if held at a time other than regular hours; d) the desired room is available; e) the City will not incur a substantial cost for providing the room; and f) the use of the City facilities by the support group is in furtherance of the interests of the City. The City shall draw up an agreement with each support group which shall outline the terms and conditions for the free use of meeting rooms and of storage space. Support groups may also store assets and belongings in a public facility subject to a valid Hold Harmless Agreement and certificate of insurance being on file with the City Clerk's office and naming the City as an additional insured party, and provided that the space is not required for municipal purposes.

City facilities, with the exception of library facilities, may not be used to provide free space or equipment for the business office of the support group. The use of library facilities shall be determined by the Harrison Memorial Library Board of Trustees, with the exception of events held at these facilities at which alcoholic beverages are offered. Limitations on such use are described in this Policy in the paragraph titled "Insurance".\*

USE OF CITY EQUIPMENT\*

No support group, its officers or members, shall utilize any equipment belonging to the City and/or any of its departments except audio/visual equipment and room furnishings which are normally provided upon request with the use of a room. City equipment is defined but is not limited to telephones, desks, copy machines, computers and computer terminals, mail and stamping devices, facsimile machines, typewriters and adding machines. The City Administrator may grant use of City equipment in special circumstances. The use of library equipment shall be determined by the Harrison Memorial Library Board of Trustees.\*

MEMBERSHIP ROLLS:

Membership rolls of support groups and the City can be exchanged if an agreement is reached between the parties and is consistent with both State and Federal laws.

\* For statutory provisions governing use of library facilities and equipment, see Education Code, Title 1, Divison 1, Part Part 11, Chapter 5, Section 18919 and Carmel-by-the-Sea Municipal Code Section 2.72.050.

POSTAGE:

Each support group shall secure and maintain its own Post Office box or mailing address. The City's or a City department's Post Office box or bulk mailing permit are to be used for official City business only. Each support group shall incur all expenses associated with the mailing of its literature, minutes, agendas and fund-raising requests.

POLITICAL ACTIVITIES:

No support group, organized for the purpose of assisting the City or one of its departments, shall partake, either officially or unofficially, in any political activity involving the City of Carmel-by-the-Sea, its officers, employees, or facilities. Political activity includes, but is not limited to:

- Mayoral and City Council elections
- local ballot issues
- involvement in administrative or personnel matters

Support Groups are encouraged to use proper and accepted internal City communication channels and the public appearances section of City Council meetings.

INSURANCE:

The City will provide general liability insurance coverage for support groups including the cost of the insurance deductible as long as the support groups are meeting or holding events in public buildings or at public facilities. If a support group meets away from a public building or public facility and/or outside the City limits, then it shall be the option of the support group as to whether it desires to secure insurance protection. The City will not provide insurance protection for activities and events held outside of the City limits or away from public buildings and/or public facilities and will not provide coverage at any activity where alcoholic beverages are being served unless such activity is officially sanctioned and cosponsored via a Resolution of the City Council.

Should support groups desire to serve alcoholic beverages at an event, either in a public building or at a public facility, the support group will be required to secure its own insurance coverage, unless the City Council adopts a Resolution of cosponsorship.

CO-SPONSORSHIP:

A Resolution of the City Council of the City of Carmel-by-the-Sea is required in order for the City to co-sponsor with any support

group any event, performance, activity or function, whether one-time, cumulative or ongoing.

FUND-RAISING EVENTS WITHIN PUBLIC FACILITIES:

The City recognizes that support groups from time to time will request the utilization of public facilities for fund-raising activities. Such requests for the use of public facilities shall be forwarded to the City Council for its review at least thirty (30) days prior to the scheduled event. The City will give preferential consideration to support groups over other groups for fund-raising activities within public facilities.

Requests for the use of Library facilities shall be forwarded to the Harrison Memorial Library Board of Trustees for its review at least thirty days prior to the scheduled event.\* However, any event approved by the Library Board of Trustees at which alcoholic beverages are to be offered must also have prior approval of the City Council as set forth in this Policy in the paragraph titled "Insurance."

Support Groups are cautioned that obtaining such approval by both bodies could take seven weeks or more, depending on the scheduling of their respective meetings.

BYLAWS:

Each support group shall provide a copy of its current bylaws to the City Clerk.

ANNUAL AUDIT:

The City requires a copy of the annual audit, review or internal financial report of each support group.

RESPONSIBILITY FOR IMPLEMENTATION OF POLICY:

The City Administrator is delegated as the City official responsible for the implementation of this policy.

PERIODIC REVIEW:

The City Council will, from time to time, review the intent and content of this policy and make any necessary amendments which it deems necessary to protect the interests of the City and the support groups. All support groups will be notified whenever a review is determined to be needed.

\* For statutory provisions governing use of library facilities and equipment, see Education Code, Title 1, Division 1, Part 11, Chapter 5, Section 18919 and Carmel-by-the-Sea Municipal Code Section 2.72.050.



## CITY OF CARMEL-BY-THE-SEA HARRISON MEMORIAL LIBRARY BOARD Staff Report

January 8, 2025  
ORDERS OF BUSINESS

<b>TO:</b>	Harrison Memorial Library Board of Trustees
<b>SUBMITTED BY:</b>	Ashlee Wright, Library and Community Activities Director
<b>SUBJECT:</b>	Master Plan Ad Hoc Committee review and discussion about the Harrison Memorial Library Board of Trustees' authority in general and with regards the renovation project for the Harrison Memorial Library and provide direction

### RECOMMENDATION:

Review and discuss the Harrison Memorial Library Board of Trustees' authority in general and with regards the renovation project for the Harrison Memorial Library and provide direction

### BACKGROUND/SUMMARY:

#### 2024 RENOVATION PROJECT RE-CAP

During Fiscal Year 2022-2023 the City funded a \$50,000 Phase 1 Master Plan for the Harrison Memorial and Park Branch Library buildings. The Phase 1 report provided an analysis of building systems and their remaining service life, and some preliminary design ideas. Understanding the City's competing capital infrastructure needs, the Carmel Public Library Foundation (CPLF) stepped up and offered to undertake the fundraising for the renovation of the Harrison Memorial Library.

In Fall 2024 the City issued a Request for Proposals for Architectural Services for the renovation of the Harrison Memorial Library and the Council agreed to the CPLF's proposal for an Architect Selection Committee to review applications and to make a recommendation regarding a project architect to the Trustees and Council for their final approval.

As a new year begins, negotiations between the City and CPLF regarding funding remain ongoing, the Architect Review Committee has narrowed down a recommendation for a project architect, and the CPLF continues their fundraising efforts.

#### TRUSTEES' AUTHORITY

While this work is in progress it provides an opportune time, prior to the commencement of architectural work, to clarify and discuss the Trustees' authority with regard to library operations and the library buildings and how that factors into the proposed renovation project.

Through authority vested by Chapter 2.72 of the Carmel-by-the-Sea Municipal Code (CMC) the Trustees hold broad authority to manage and oversee library operations, including property management, trusts, and donations. Chapter 2.72 Public Library Board (Attachment 1) provides for the legal authority of the Trustees with regard to the Library and Section 2.72.010 formally established the City's public Library, and by extension the Trustees, under state law, Education Code Section 18900 et seq.

- Sections 2.72.050(A) and 2.72.050(B) grant the Trustees the authority to manage, control, and administer any library building or property owned or acquired by the City, as well as to administer any trusts, gifts, devises, or bequests for the library's benefit. This authority includes holding property in trust or otherwise and, when not otherwise specified, disposing of it to benefit the library.
- Neither Section 2.72.050 nor the rest of Chapter 2.72 grants the City Council final authority over these decisions. Instead, these provisions assign operational control explicitly to the Trustees, without indication of superior control by the Council. However, Section 2.72.050(H) requires the Trustees to annually report to the City Council on the library's condition and activities, ensuring transparency.
- While the Trustees maintain operational independence, they make recommendations to the City Council during the annual budget process, particularly regarding capital work on library buildings and staffing needs. The Council relies on these recommendations, but retains the authority to approve capital projects based on funding availability and priorities relative to other City needs.

- Section 2.72.060 governs the use of library funds, including the administration of the Harrison bequest, and limits Trustees' authority over the initial construction and equipment of the Ralph Chandler Harrison Memorial Library. Since the library was completed long ago, this limitation no longer affects the Trustees' current activities, including the ongoing renovation project.
- Section 2.72.090 vests legal title to all library property with the City. However, this ownership does not conflict with or diminish the Trustees' broad operational control, as outlined in Section 2.72.050.

In summation: the Trustees have authority over library operations, including managing property, administering funds, and making recommendations on capital projects and staffing during the budget process, while the City Council retains approval for capital work based on funding priorities. Although the City holds legal title to library property, this does not limit the Trustees' operational control.

### **RENOVATION PROJECT GOING FORWARD**

What does this mean for the renovation of the Harrison Memorial Library?

The Trustees' paramount responsibility that by City Code can not be delegated is: 1. To determine whether any proposed design supports or compromises the functionality of the building - functionality which will ensure continuity and efficiency of library operations that meet Library patron needs, and 2. To base any approval, rejection or recommendation of/for the proposed design to the Council, Planning Commission, or Historic Resources Board, etc. on whether the design will meet Library patron needs.

In support of this at their April 2024 regular meeting, the Trustees adopted the following guiding principles for the renovation project that align with their authority as outlined in CMC Chapter 2.72 and are as follows:

1. Well maintained facilities that meet patrons needs
2. Maximize service hours
3. No negative impact to the workforce (Library Staff)
4. No extra cost to the City residents
5. Minimal disruption to services

In addition to overall building layout, other factors that will be considered regarding design impacts will include, but are not limited to: increased annual maintenance costs or potential costly repairs for the City in the future and potential additional staffing needs incurred with increased technology systems or program changes.

### **NEXT STEPS**

As mentioned previously, the negotiations between the City and the Carmel Public Library Foundation (CPLF) have been ongoing since July 2024. The following two key areas of the contract still remain undetermined: 1. project administration and 2. funding model.

As the City continues negotiating a funding agreement with the CPLF the Trustees recommend that the City as the building owner and holder of any and all liability project take a stance on both of the key areas identified to ensure that the City is protected and that the Trustees are able to fulfill their authority as governed by City code.

The Trustees look forward to reviewing the agreement between the City and the CPLF when it is completed and reviewing the Architect Review Committee's recommendation for a Project Architect.

### **FISCAL IMPACT:**

N/A

### **ATTACHMENTS:**

[Attachment 1: Chapter 2.72](#)



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

January 8, 2024  
**ORDERS OF BUSINESS**

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Ashlee Wright, Director, Libraries & Community Activities
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Resolution 2024-002 reaffirming the City's public-private partnership with the Carmel Public Library Foundation

### RECOMMENDATION:

Adopt Resolution 2024-002 reaffirming the City's public-private partnership with the Carmel Public Library Foundation.

### BACKGROUND/SUMMARY:

The Carmel Public Library Foundation (CPLF) was established in 1989 with the mission to keep the library open, relevant and thriving and to ensure free library service in perpetuity by providing funding for 100% of the books, materials, programs, equipment and services.

In 1992 the City recognized the CPLF as an official City Support Group which are defined in Policy C89-47 as "associations of individuals who have voluntarily joined together in a unit whose sole or primary purpose is to provide assistance – monetary, social, cultural or otherwise – but not political – to the City or one of its departments."

Over time, the CPLF, in collaboration with the City and the Harrison Memorial Library Board of Trustees, has played a significant role in nurturing a thriving public library. This partnership has been crucial in meeting the diverse informational, educational, and cultural needs of Carmel's residents. In the 34 years since its founding, the CPLF (with some help from the Friends Of the Library) has provided 100% of funds for books, equipment, technology, and programming. Additionally, the CPLF has also funded special projects such as the Park Branch lobby renovation project and the Gathering Place project which provided a free meeting space for the community for the first time in many years.

The City prioritizes the preservation of its rich cultural and architectural heritage, with the Library standing as a vital symbol of Carmel's unique character, and as such during Fiscal Years 2022-2023 and 2023-2024 the



City allocated a total of \$150,000 for a Master Plan study of both the Harrison Memorial and Park Branch libraries. This plan seeks to determine areas for improvement and renovation, as well as identifying special opportunities for restoration at the historic Harrison Memorial Library.

While the Master Plan is still at its beginning phases, the CPLF is anticipating undertaking a significant fundraising campaign in the future to support capital projects for both library buildings. To that end it is an excellent time to reaffirm the City's partnership with the CPLF which has and will continue to provide the community with an exemplary public library.

#### **FISCAL IMPACT:**

The CPLF provides for the Library's annual operating budget.

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

The City Council recognized the CPLF as a City Support Group in 1992.

#### **ATTACHMENTS:**

Attachment 1) Resolution 2024-002

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

**RESOLUTION NO. 2024-002**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
REAFFIRMING THE CITY'S PUBLIC-PRIVATE PARTNERSHIP WITH THE CARMEL PUBLIC  
LIBRARY FOUNDATION**

WHEREAS, preservation of the local and renowned architectural, literary and cultural heritage and environment is a City priority; and

WHEREAS, the Library is both a major contributor to and symbol of the special and highly distinctive quality of life and aesthetics found in Carmel; and

WHEREAS, the Carmel Public Library Foundation has historically joined with the City of Carmel-By-The-Sea, and the Harrison Memorial Library Board of Trustees to create a thriving public library to meet the research, information, education, cultural and literary needs of the residents of Carmel; and

WHEREAS, the residents of Carmel depend on the reliability and robustness of the City's investment in a first-class public library, with such public funding continuously augmented by support from individuals, foundations, and businesses; and

WHEREAS, the raison d'être of the Foundation's funding is to complement and augment public funding in a public-private partnership for the advancement of the Library and further enhancement and preservation of Carmel; and

WHEREAS, the Foundation has continuously worked to raise increased private sector funds on an annual basis to support ongoing core needs of the Library's book collections; created permanent endowments for books and programs; and funded capital projects as appropriate; and

WHEREAS, the Foundation is about to embark on the largest fund-raising project in its history to meet major needs of the Library; and

WHEREAS, funds raised for the Library will continue to be use-restricted and Foundation investments in Library facilities/equipment will not in any way diminish or alter the City's ongoing responsibility for proper Library maintenance and upkeep; and

WHEREAS, the City reaffirms its dedication to having an exemplary public library and acknowledges the Foundation and private donors for their philanthropic contributions for the betterment of library services and facilities.

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

1. Reaffirm the City's public-private partnership with the Carmel Public Library Foundation

2. Recognize the Carmel Public Library Foundation for its commitment to keeping the library open, relevant, and thriving in past, present, and into the future
3. Assure the Carmel Public Library Foundation and its generous donors of the City's dedication to having an exemplary public library
4. Ensure that funds raised for the Library will continue to be use-restricted and that Foundation investments in Library facilities/equipment will not in any way diminish or alter the City's ongoing responsibility for proper Library maintenance and upkeep

**PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
this 8th day of January, 2024, by the following roll call vote:**

AYES: Councilmembers Baron, Dramov, Ferlito, Richards, and Mayor Potter

NOES: None

ABSENT: None

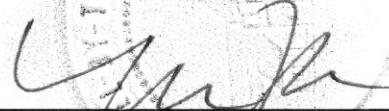
ABSTAIN: None

SIGNED:

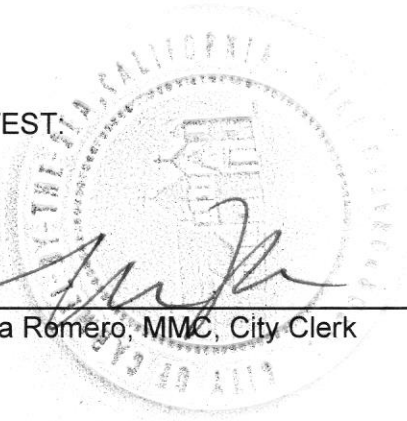


\_\_\_\_\_  
Dave Potter, Mayor

ATTEST:



\_\_\_\_\_  
Nova Romero, MMC, City Clerk





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

July 8, 2024  
ORDERS OF BUSINESS

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Ashlee Wright, Director, Libraries & Community Activities
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Receive and review the Request for Proposals for Architectural Services for the Harrison Memorial Library provide staff with direction

### RECOMMENDATION:

Receive and review the Request for Proposals for Architectural Services for the Harrison Memorial Library and direct staff to:

1. Include any further amendments
2. Release the Request for Proposals

### BACKGROUND/SUMMARY:

The Ad Hoc Committee for the Library Master Plan is made up of President John Krisher and Trustee Phil Pardue. As representatives of the Board of Trustees, the Ad Hoc Committee remains committed to ensuring that library services are continuous and facilities are well-maintained during the renovation planning process and during potential renovation.

As such the Board of Trustees adopted the following guiding principles proposed by the Ad Hoc Committee to be taking into account when the Trustees are evaluating building options and/or making recommendations to Council:

1. Well maintained facilities that meet the patrons needs
2. Maximize service hours
3. No negative impact to the workforce (Library Staff)
4. No extra cost to the City residents
5. Minimal disruption to services.

### 2024 PROJECT TIMELINE TO-DATE

- February 28, 2024: Ad Hoc Committee requested a presentation from a Public Works representative on the current maintenance requirements for both library branches and their criticality.
- March 5, 2024: City Council received a presentation on the proposed FY 2024-2025 Capital Improvement Plan projects, which included the carryover of the Library Facilities Master Plan Phases II-IV and requested an update and presentation on Phase I Library Facilities Master Plan.
- March 20, 2024: At a special Library Board meeting the Library Director and the Public Works Director presented on both the current maintenance requirements for the facilities and a high-level overview of the Master Plan Phase I report.
- April 2, 2024: At the regular City Council meeting the Library Director and the Public Works Director provided a presentation to the City Council and Council provided staff with direction to solicit community input to inform a Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library.
- May 16: The first of two workshops to solicit community input to inform the drafting of an RFP was canceled due to lack of public participation.
- May 23: The second of two workshops to solicit community input to inform the drafting of an RFP was attended by 7 members of the public in addition to representatives from the Board of Trustees and the Carmel Public Library Foundation Board.

One of the biggest themes of the workshop was that attendees did not want the library to change; library users like its cozy traditional library atmosphere with books and comfy seating, the variety of programs, and the hub-role that the library plays for the community. Further, staff has had a survey regarding library services open to the public (both digital and print) for the better part of this year and those survey results are in alignment with what was shared at the workshop. *\*Note and unrelated - At both the workshop and in the survey results the public was very clear about restoring Saturday hours which staff are working on.*

At a special meeting on June 19 the Trustees reviewed the Request for Proposals (RFP) for Architect Services, provided staff with direction for edits as follows:

1. Amend the last sentence of the second paragraph of Section "II. General Introduction and Project Description" from "validate or amend" to "validate, amend, or replace"; and replace that language where it appears throughout the RFP as it relates to the Master Plan Phase I.

2. Add language to the last paragraph of Section "III. City of Carmel and the Library" to highlight the importance of exploring opportunities for innovative design to support efficient and imaginative library services, alongside historic preservation, critical infrastructure upgrades, and gentle, community supported change.
3. Require that the Proposer include methodology and cost estimates for a phased approach to this project, in addition to the traditional cost proposal for comparison and evaluation.

Working through the development of the RFP staff originally identified three factors that need to be in balance in order for this project to be successful:

1. Community input and support of the project
2. Historic preservation needs of a public building
3. Critical infrastructure upgrades, such as seismic, electric, plumbing, ADA improvements, etc.

Based upon the input from the Trustees, staff would also include the language of #2 above regarding library innovation, as a 4th factor. These factors are discussed in section III of the RFP and serve as a theme throughout. The Architectural Firms that respond to this RFP and the firm that is ultimately awarded the contract will need to demonstrate that they are adept and experienced at balancing historic preservation needs, critical infrastructure upgrades, and innovation while ensuring that necessary changes happen gently and thoughtfully to balance infrastructure needs with community expectations.

With the aforementioned amendments, the Trustees recommend that the RFP be remanded to the City Council for final review approval and that the City Council approve the RFP for release.

**FISCAL IMPACT:**

None related to issuance of an RFP.

**PRIOR CITY COUNCIL ACTION:**

At its regular meeting held April 2, Council directed staff to solicit community input to inform a RFP for Architect Services.

**ATTACHMENTS:**

[Attachment 1\) RFP Architect Services Harrison Library](#)



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

**August 6, 2024  
ORDERS OF BUSINESS**

<b>TO:</b>	Honorable Mayor and City Council Members
<b>SUBMITTED BY:</b>	Ashlee Wright, Director, Libraries & Community Activities
<b>APPROVED BY:</b>	Chip Rerig, City Administrator
<b>SUBJECT:</b>	Review the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library and the list for the Architect Selection Committee

### RECOMMENDATION:

1. Review and provide direction on the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library.
2. Review and provide direction on the Architect Selection Committee.

### BACKGROUND/SUMMARY:

At the July 7, 2024 Special City Council meeting the City Council reviewed the Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library and provided staff with direction to return to Council at the August meeting with the following:

1. Updated language in the RFP specifically in the criteria section calling out the necessity of a library consultant for the project.
2. A draft agreement between the City and the CPLF regarding funding responsibility for the project.
3. Proposed committee members to review the RFP, including 1-2 architects.

The RFP is attached with updates requested by Council highlighted in yellow. The Trustees also received the Architect Selection Committee list from the CPLF for Council review.

At this point in time the draft legal agreement is being reviewed by the CPLF, and is not attached to this report for that reason.

### 2024 PROJECT TIMELINE TO-DATE

- February 28, 2024: Ad Hoc Committee requested a presentation from a Public Works representative on the current maintenance requirements for both library branches and their criticality.
- March 5, 2024: City Council received a presentation on the proposed FY 2024-2025 Capital Improvement Plan projects, which included the carryover of the Library Facilities Master Plan Phases II-IV and requested an update and presentation on Phase I Library Facilities Master Plan.
- March 20, 2024: At a special Library Board meeting the Library Director and the Public Works Director presented on both the current maintenance requirements for the facilities and a high-level overview of the Master Plan Phase I report.
- April 2, 2024: At the regular City Council meeting the Library Director and the Public Works Director provided a presentation to the City Council and Council provided staff with direction to solicit community input to inform a Request for Proposals (RFP) for Architect Services for the renovation of the Harrison Memorial Library.
- May 16, 2024: The first of two workshops to solicit community input to inform the drafting of an RFP was canceled due to lack of public participation.
- May 23, 2024: The second of two workshops to solicit community input to inform the drafting of an RFP was attended by 7 members of the public in addition to representatives from the Board of Trustees and the Carmel Public Library Foundation Board.
- June 19, 2024: The Trustees received the RFP for review, provided staff with feedback, and made a recommendation for Council review and approval.
- July 7, 2024: The City Council provided staff with direction to add language to the RFP, specifically in the criteria section calling out the necessity of a library consultant for the project. In addition, the City Council directed staff to return with a draft agreement between the City and the CPLF regarding funding responsibility for the project. The Council requested that this RFP and agreement return to them for review at the August Council meeting.
- July 29, 2024: The Trustees received the RFP for review, provided staff with feedback, and made a recommendation for Council review and approval. The Trustees also received the Architect Selection Committee list from the CPLF for Council review.

### FISCAL IMPACT:

None at this time.

**PRIOR CITY COUNCIL ACTION:**

Please see chronology above.

Attachment 8

**ATTACHMENTS:**

[Attachment 1\) RFP](#)

[Attachment 2\) Architect Selection Committee](#)



# City Of Carmel-by-the-Sea

REQUEST FOR PROPOSALS (RFP)

**RFP #2024-25-001**  
**REQUESTS FOR PROPOSALS FOR**  
**ARCHITECTURAL SERVICES FOR**  
**THE HARRISON MEMORIAL LIBRARY**  
**RENOVATION PROJECT**



**Proposals must be postmarked by Friday, October 4, 2024.**



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## I. REQUEST FOR PROPOSALS

The CITY OF CARMEL-BY-THE-SEA (hereinafter "City") requests proposals from qualified persons/organizations for the purpose of providing professional architectural services for the renovation of the Harrison Memorial Library. Proposals shall be submitted to

City of Carmel-by-the-Sea  
ATTN: Nova Romero  
City Clerk  
P.O. Box CC, Carmel-by-the-Sea, CA 93921

**Proposals must be postmarked no later than Friday, August 23, 2024.**

**SCOPE OF SERVICES.** The City has prepared an outline of required services in Section V. SCOPE OF SERVICES, of this Request For Proposals ("RFP").

**REQUESTS FOR CLARIFICATION OF THE RFP.** If any Proposer has any question regarding the meaning of any part of this RFP, or finds discrepancies in or omissions from this RFP, the Proposer shall submit via electronic mail a written request for clarification to City Clerk, Nova Romero, [nromero@ci.carmel.ca.us](mailto:nromero@ci.carmel.ca.us). The deadline to submit questions is Friday, September 13, 2024 by 5:00 p.m. All questions and City responses shall be posted on the City's website by 5:00 p.m. on Friday, September 20, 2024.

**PROPOSAL INSTRUCTIONS.** Instructions for the submission of proposals are set forth throughout this RFP. Proposal shall be no longer than 25 pages in length.

**CITY'S REVIEW OF PROPOSALS.** All proposals deemed responsive shall be reviewed and evaluated by a committee composed of City representatives, Carmel Public Library Foundation representatives, and members of the public in order to determine which proposal best meets the City's needs. The criteria by which to evaluate proposals is set forth in this RFP. The City reserves the right to extend an invitation for interview, to reject any and all proposals and / or waive any irregularities in any proposal.

**AWARD OF AGREEMENT.** The City currently anticipates awarding a negotiated professional services agreement for Architectural Services for the Harrison Memorial Library Restoration and Renovation Project. A copy of the City's Professional Services Agreement form is attached in Appendix 1. No proposal or professional services agreement shall be binding upon the City until the Agreement is signed by the selected Proposer and executed by the City.

**MANDATORY PRE-PROPOSAL SITE TOUR.** The City will hold a mandatory pre-proposal site tour Tuesday, August 28 beginning at 9:00 a.m. at the Harrison Memorial Library at the Northeast corner of Ocean Avenue and Lincoln Street.

## **II. GENERAL INTRODUCTION AND PROJECT DESCRIPTION**

The City of Carmel-by-the-Sea (hereinafter referred to as the “City”) is soliciting proposals from Licensed Architectural firms (hereinafter referred to as “provider” or “Proposer”) to provide professional services for design, community engagement, and preparation of bid documents and construction support for the restoration and renovation of the historic Harrison Memorial Library (herein referred to as the “Library”). The scope of work includes design development, community outreach, engineering, preparation of bid documents, and bidding/construction support for Public Works competitive bidding, construction cost estimating, schedule monitoring, preparation of reports and recommendations, and project management.

The Harrison Memorial Library restoration and renovation project will improve ADA accessibility, in addition to restoring a historic building. A Master Plan was completed by Jayson Architecture in July of 2023 for both the Harrison Memorial and Park Branch Library buildings, however the focus of this RFP and scope of work is only for the Harrison Memorial Library. The selected firm will be tasked to work with the City, Harrison Memorial Library Board of Trustees, and Carmel Public Library Foundation, project managers, and the community at large to validate, amend, or replace the current conceptual program and proceed with the Scope of Work outlined by the City.

## **III. CITY OF CARMEL AND THE LIBRARY**

Carmel-by-the-Sea was first incorporated as a City in 1916. It was founded by artists and writers – among them Jack London, George Sterling, Mary Austin and Robinson Jeffers. Carmel-by-the-Sea is rich in natural beauty and prides itself on its white sand beach, landscaped bluffs, urban forest, and natural park lands, has a wonderful downtown with diverse shopping, and an accessible and responsive government. The City is a world-renowned tourist destination located on the Monterey Peninsula in central California. Home to 3,722 residents, this one-square mile village in a forest by the sea is known for its natural beauty and rich artistic history.

The Library is a City Department and as such adheres to all City policies and procedures. The Library is governed by the Harrison Memorial Library Board of Trustees, appointed by the City Council, who approve the annual operating budget, approve and enforce library specific policies, have the oversight of both Library facilities, and make recommendations to the City Council regarding the Library when needed.

The Library has three funding sources: 1. The City of Carmel-by-the-Sea which funds staff salaries and building maintenance for both library buildings; 2. The Friends of Harrison Memorial Library which formed in 1971 and raises funds to support operations; and 3. The Carmel Public Library Foundation (“CPLF”) which was established in 1990 and provides for the majority of the Library’s operating budget and additional special projects from time to time. It is anticipated the funds for this project will be raised by the Carmel Public Library Foundation.

Library service in Carmel began in 1906, when the Carmel Free Library Association began lending books from a little redwood building. For a fee of one dollar per year, people could borrow any one of 500 books from the Association’s “Reading Room” heated by a wood burning stove. The Harrison Memorial Library building opened in 1928 and was built by local contractor M.J. Murphy with input from California architect Bernard Maybeck, and financed by a bequest from Ella Reid Harrison as a memorial to her husband, California Supreme Court Justice Ralph Chandler Harrison. The library has had two additions: one in 1949, followed by another expansion in the 1970’s. In 1988 the Crocker Bank located on the corner of Mission Street and 6th Avenue, 3 blocks away from the Harrison Library was purchased by Mayor Clint Eastwood to serve as the Children’s Library and Local History repository.

In 2023 the City of Carmel-by-the-Sea engaged Jayson Architecture to prepare a Phase I conceptual design for

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both library facilities, which has been reviewed by the Library Board of Trustees and City Council. As part of this project there will be a first phase of conceptual design, during which time this conceptual design completed by Jayson Architecture will be revisited and reconsidered based upon new input from the City, the selected Architectural firm, and members of the community through public outreach. Project information and supporting documents can be viewed at [ci.carmel.ca.us/harrison-memorial-library-board-trustees](http://ci.carmel.ca.us/harrison-memorial-library-board-trustees)

This spring, at the direction of the City Council staff held two public workshops to ascertain how the community sees the library being used into the future to inform this Request for Proposals. While the first workshop held May 16 was not attended by any members of the public, the second workshop held May 23 was attended by a small group. One of the biggest themes was that attendees did not want the library to change; library users like its cozy traditional library atmosphere with books and comfy seating, the variety of programs, and the hub-role that the library plays for the community. The Architectural Firm that is awarded this contract will need to be incredibly adept at balancing historic preservation needs, exploring opportunities for innovative design to support efficient and imaginative library services, and integrating critical infrastructure upgrades, while ensuring that necessary changes happen gently and thoughtfully to balance infrastructure needs with community expectations.

#### **IV. QUALIFICATIONS AND RELATED EXPERIENCE**

The City is seeking Architectural services specializing in the preservation and rehabilitation of California's historic structures and fully versed in the Secretary of the Interior's Standards as well as, the State of California's Historical Building Code and their implications on individual projects. The selected firm will provide architectural restoration recommendations, and design plans while ensuring the integration of modern amenities without compromising the building's historical integrity. In addition the firm will have demonstrated, through its body of work, expertise in the restoration and seamless upgrading of historic buildings and a researched understanding of the region's built tradition.

Proposals will be considered only from Architectural firms who can demonstrate the following minimum qualifications:

1. Architectural firm is licensed to practice architecture in the State of California, and is able to effectively provide the required professional services.
2. The individual or individuals or sub-consultants who will be assigned the responsibility to projects shall have significant experience in design and construction consulting within the last five years in the State of California.
3. Proposer and staff shall be knowledgeable of all applicable building codes, American with Disabilities Act / Facilities
4. Experience in with building conservation, historic preservation, sustainability, and the interrelationship between older structures and community context.
5. Experience with design and construction consulting for public buildings.
6. Transition Plans, federal, state and local by-laws as applicable.
7. History of successfully managing other contracts with public or private agencies
8. Ability to meet any required timelines or other requirements.

## V. SCOPE OF SERVICES

**General Services.** The Proposer will demonstrate that they can perform all architectural, engineering and project management related work necessary to prepare plans and specifications suitable for public works bidding to restore the historic Harrison Memorial Library, including:

1. A traditional approach to renovation during which the library is closed and services are relocated for the duration of construction; and
2. A phased approach to renovation that allows the library to remain open and operational during the project, with construction impacts minimized to the fullest extent.

Consultant services shall include, but are not limited to: project management, design development, bid documents, bidding support, and construction support services.

Architectural and engineering services shall consist of all items of work necessary for verification of building program, site planning, exterior schematic design, city review, design development, City development review, construction documents, plan submittal, contract documents, and construction administration for an approximately 7,300 square foot Library. The architect selected for this project will peer review a completed Phase I conceptual program and finalize the building program. The selected Architectural Firm will perform the following services which will include but is not limited to:

- Design Development
- Conceptual design
- Schematic design
- Mechanical Engineering and design
- Electrical Engineering and design
  - Provide design and coordination of Intermediate Distribution Frame (IDF)/Main Distribution Frame (MDF) which includes the following:
    - Electrical Diagram (include circuit panels, wiring specs, power distribution)
    - Low Voltage Diagram (fiber cables, CAT 6 cables, patch panels, conduits and/or cable trays, wireless access points, card key access panels, CCTV, IP based PA system)
    - Note that design team shall coordinate with City to document all elements necessary to make low voltage system a “turn-key” process
- Structural Engineering and design including Seismic Analysis (in coordination with the Public Works Department)
- Plumbing Engineering and design (in coordination with the Public Works Department)
- Utilities Design and Coordination
- Lighting Engineering
- Acoustical Engineering to mitigate excessive site noise
  - For sensitive spaces, room acoustics for community room, meeting and study rooms and the stack/study areas and HVAC noise and vibration for all spaces
- Security System design
- Hazardous Materials handling
- Artistic renderings
- Library consulting

- Interior Design Services including interior materials, finishes, and fixtures Audio Visual (A/V) system design including related electrical and data requirements
- Full Building Energy Modeling for LEED v4 & Title 24. Needs to meet Calgreen mandatory measures and LEED Gold w/ verification by LEED AP. This item is to be an optional service and should be included as such in the cost proposal.
- Signage consultant to design turnkey signage package for informational, directional, site, and fire and life safety signage.
- Management of all engineering and specialty consultants
- Construction cost estimation
- Preparation of Construction Documents for plan check submittal and bidding
- Construction administration and support
- Post-occupancy review and minor re-designs as needed

**Project Management.** The Architectural Firm will be the primary responsible party for managing the project's schedule and consultant contract budget. In addition, the Architectural Firm is expected to attend a monthly (progress) meeting and prepare action item logs for subsequent follow-up. The Architectural Firm is expected to maintain frequent and timely communication with City staff and the CPLF throughout the duration of the project.

All project schedules shall be prepared in Gantt chart format. Three weeks for each City review shall be included. Schedule updates shall be provided at all progress meetings. Architectural Firm's own team should have provisions for quality assurance/quality control over the work product prepared for the City. A statement of peer review will be required for overall constructability, coordination, and reasonable reduction in errors and omissions. The Architectural Firm is expected to communicate often and early with respect to the schedule and budget.

The Consultant team will complete the following tasks and meetings throughout the duration of the project.

- Bi-weekly project management conference call with the City (may be combined with another project meeting as appropriate)
- Monthly Progress in person Check-in with the City
- Progress Check Ins with key stakeholders at intervals appropriate to the development of the design (may be combined with another project meeting as appropriate, if not combined, maximum of 5 separate meetings)
- Meeting Documentation (Agenda and Minutes for any ABA led or facilitated project meeting)

**Design Development.** The Architectural Firm shall be the Engineer of Record and responsible for design and preparation of complete plans and technical specifications for the project. The Architectural Firm must perform an adequate field investigation to confirm existing conditions.

Because there already exists a conceptual design for the Library, there will be a first phase of conceptual design review, during which time this conceptual design will be revisited, reconsidered and revised, or replaced based upon new input from the clients, the selected firm, and members of the community through a public outreach effort. Links to the conceptual design materials and supporting documents are available at [ci.carmel.ca.us/harrison-memorial-library-board-trustees](http://ci.carmel.ca.us/harrison-memorial-library-board-trustees)

The selected Architectural Firm shall be responsible for working with City staff, the Library Board of Trustees,

and the Carmel Public Library Foundation to facilitate the community outreach and participation process in coordination with the project manager and the City. To date the City has conducted minimal community outreach. Most of these outreach efforts will take place during the conceptual design refinement and schematic design phases, but follow up during later phases will also be required. It is incredibly important that all members of the community have an opportunity for their voice to be heard.

All work is to be in compliance with all applicable rules, regulations, code, law, and good practice for public facilities. When possible, the Architectural Firm shall incorporate “green” building/construction practices, sustainability, energy efficiency, and low operations and maintenance costs into recommendations and subsequent design.

Use of contractors, and all applicable subcontractors which are required to pay prevailing wages, requires registration with the State of California, Department of Industrial Relations (DIR) through the Public Works Contractor Registration Program (PWC Registration) before bidding, being awarded, or performing work on public works projects in California. This includes those performing surveying work, material testing, inspection, trucking, boring, potholing, concrete deliveries and temporary service companies who provide workers to prevailing wage contractors. Specifications shall be prepared accordingly.

Plans and specifications shall provide sufficient detail to result in a good quality product while allowing competitive pricing where possible and appropriate and provide options to the contractor where appropriate to obtain the same good level of quality for the best bid price. Plans and specifications shall not specify proprietary products or services.

The City will facilitate (setup, lead, document outcomes) for all Core Team meetings. The Architectural Firm will attend a total of up to 3 Core Team meetings during design development and will incorporate comments and decisions from these meetings into the design.

The Architectural Firm will prepare for, facilitate, and document meeting(s) in which the City and Firm will:

- Review Design
- Review Pertinent Regulations
- Review Regulatory Approval Process & Requirements.
- Discuss any potential issues or concern with the following groups:
  - City Council
  - City Administrator’s Office
  - Harrison Memorial Library Board of Trustees
  - Carmel Public Library Foundation Board of Directors
  - Public Works Department
  - Community Planning and Building Department (as applicable)

**Conceptual Design Refinement.** The conceptual design phase shall include refinement of the pre-existing conceptual design prepared by Jayson Architects. During this phase, there will be additional public outreach and coordination with the clients, City, CPLF, and the City Council. A presentation to City Council will be required to get approval to proceed with the 30% design.

Links to the conceptual design materials are available  
at

[ci.carmel.ca.us/harrison-memorial-library-board-trustees](http://ci.carmel.ca.us/harrison-memorial-library-board-trustees)

**30% Submittal & Design Review.** The Architectural Firm will submit the 30% complete Design Development Set of the proposed restoration and renovation of the Library for City and CPLF review, including hand drawn renderings. The Architectural Firm will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The 30% submittal will be provided three weeks prior to the following core team meeting to review City Comments. The 30% submittal will include:

- Cover sheet and plan sheets with base mapping and preliminary details.
- Hand drawn renderings
- Cut sheets for equipment/appurtenances.
- Schematic Materials Palette
- Coordination of utilities
- Project schedule update
- 30% construction cost estimate
- Table of Contents list for technical specifications
- Water Efficiency design calculations
- Energy model
- Status of application for PG&E
- LEED checklist on track to meet LEED Gold (optional)
- Documentation of outreach with franchise utility companies for facilities needing to be relocated or adjusted to grade as a result of the proposed construction activities

**Page Turn Meeting.** The Architectural Firm will prepare for, facilitate, and document a Page Turn meeting in which we will review the 30% design submittal for the renovation of the Library. The Architectural Firm will present the design submittal including key features of the plans to project reviewers and answer questions and note any initial comments. The City and CPLF team will then review the plans and provide complete comments following the meeting.

**Presentation.** The Architectural Firm shall present the 30% plans to the Harrison Memorial Library Board of Trustees, Carmel Public Library Foundation Board of Directors, as well as the City Council for review. These meetings will be open to the public and feedback from the Boards/Council/Public will be received and incorporated in the design documents.

**75% Submittal & Design Review.** The Architectural Firm will submit the 75% complete Design Development Set of the renovation of the Library for City and CPLF Review, Plan Check, Constructability Review and Bid-Ability review. Consultant will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The RFP for the Harrison Memorial Library 75% submittal will be provided three weeks prior to the following core team meeting to review City Comments. The 75% submittal will include:

- 75% Plans with all subcontracted work accounted for in this submittal. All project details have been accounted for.
- 75% specifications including technical specifications and special provisions, with recommended changes in track changes format.
  - Bid schedule and item descriptions
  - A list of minimum required submittals during construction
  - List of information available to Bidders (provided by City)
  - A table listing all inspections (including any special inspections and materials testing) and associated responsibility



- A table list of material warranties, and associated warranty periods
- Updated Materials Palette
- Project schedule update
- 75% construction cost estimate (bid schedule) Utility conflicts have been resolved or a timeline for resolution has been determined
- Responses to the City's 30% review comments
- New utilities
- LEED checklist (optional)

### **100% Submittal.**

The Architectural Firm will submit the 100% complete Design Development Set of the restoration and renovation of the Library for City and CPLF Review, Plan Check, Constructability Review and Bid-Ability review. The Architectural Firm will submit three (3) full size sets and three (3) half size sets as well as a PDF digital copy. The 100% submittal will be provided three weeks prior to the following core team meeting to review City and CPLF comments. The 100% submittal will include:

- Peer review shall have been accomplished by this stage, with the statement and signature on the cover sheet. The professional shall sign, date and seal the following Certification of Peer Review on the plan set cover sheet with the transmittal of the final plans and specifications:
  - "The undersigned hereby maintains that a professional peer review of these plans and the required designs was conducted by me, a licensed Architect with expertise and experience in the appropriate fields of architecture equal to or greater than the Architect of Record, and that to the best of my knowledge and belief the appropriate corrections have been made."
- 100% specifications
- Reviewed bid instructions
- Finalized technical specifications
- Finalized Special Provisions
- Finalized Materials Palette
- Project schedule update
- 100% construction cost estimate
- Responses to the City's 75% review comments, along with return of mark ups
- New utilities
- LEED check list (optional)
- PG&E new service
- Prepare submittal for the City building department and obtain a building permit

The Architectural Firm will complete the following:

- 100% Design Construction Document Set
- Written Responses to City Comments
- Meeting Documentation

**Submittal of Bid Package.** The Architectural Firm will submit the Bid Package. The bid package will incorporate the City's final comments from the 100% submittal, including incorporation of all other team and stakeholder comments. The Bid Package submittal will include hard copies and digital format (PDF and native format) of each of the documents listed below:

- One hard copy full size set of drawings stamped and signed on each sheet by the Architect of Record and by discipline, as well as a PDF digital copy.

- Technical specifications, with cover sheet stamped and signed by all required disciplines in PDF format.
- Final project schedule update
- Final construction cost estimate

#### Deliverables Bid Package

- Drawings
- Technical Specifications
- Revised Special Provisions
- Construction Cost Estimate
- Written Responses to City Comments
- LEED checklist (optional)

**Bid Services.** The fourth phase, Bid Services, will support the bid process through the City's project manager (PM). During bidding, all communications will be directed through the City's PM. This phase will include:

- Architectural Firm attendance at a pre-bid meeting
- Response to all bidder's requests for information (RFIs)
- Support City's coordination efforts to inform plan-holders of significant responses to RFIs.
- Preparation of addenda as necessary. If addenda to bid documents are extensive and are because of the Architectural Firm's work product, conformed documents shall be prepared at no expense to the City. City will provide reproduction services.

**Phase 4 Deliverables.** The Architectural Firm will complete the following:

- Responses to Requests for Information
- Addenda
- Conformed Documents, if required

**Construction Services.** Construction Services will support project construction through the City or the City-hired Construction Management Firm. This phase will include:

- Attend and prepare information for a coordination meeting between the design team and the construction management team. The Architectural Firm shall be prepared to address:
  - Key Project Design Drivers
  - Possible construction pitfalls as it relates to meeting design intent
  - Items for the construction management team to be aware of (special working hours, shortened timelines for submittal reviews, etc.).
  - Attend the pre-construction meeting.
  - Attend approximately 10 periodic construction progress meetings, but quantity will be adjusted as appropriate to the schedule and pace of the work
  - Participate in the final walkthrough and development of punch lists.
  - Respond to RFIs, which includes clarifying or providing revisions or additional detail where necessary on the plans and specifications. Response to RFIs shall be timely in order to avoid construction delays and claims.
  - The consultant shall stamp and sign any revisions to the contract plans as a result of responses to RFIs or as a result of executed change orders. Consultant shall ensure that all changes are in compliance with the applicable codes and coordinate with DSA.
  - Review and respond to all submittals within the period allocated in the contract documents.
  - Review any proposed substitutions, if any, for conformance to plans and specifications.

- Review and make recommendations on proposed changes to the contract (Request for Quotations and Contract Change Orders).
- Prepare Record Drawings based upon red-lines provided by the contractor and field reviews. Final Record Drawings will be submitted electronically, in PDF and CAD format.
- Participate in the “Lessons Learned Meeting” with all parties at the end of the project

**Reimbursable Expenses and Markups.** For preparation of the cost proposal template and invoicing during the project, no markups shall be allowed on reimbursable expenses and the maximum markup on each sub-consultant shall be 5%. Optional services, if any, may be included as separate line items in the cost proposal.

**Construction Deliverables.** The Architectural Firm will complete the following:

- Responses to Requests for Information
- Submittal Reviews
- Punch list
- LEED Checklist and corresponding letter by project LEED AP noting intent to achieve LEED Gold (Optional)
- As-Built Drawings
- Meeting Documentation

## VI. SUBMITTAL REQUIREMENTS

**Proposal Requirements.** The proposal should include elements and be organized in the order presented below.

1. Transmittal or Cover Letter
  - a. To the attention of: Nova Romero, City Clerk, P.O. Box CC, Carmel-by-the-Sea, CA 93921
  - b. Signed by an officer of the prime consultant. In case of joint venture or other joint-prime relationship, an officer of each venture partner shall sign.
2. Acknowledgement of Addenda
  - a. If any addenda are issued, you must acknowledge your receipt of them either by including a statement in your transmittal letter or by returning signed addenda with the proposal.
3. Firm Profile and Project Team
  - a. Project Architect description.
  - b. The prime consultant and sub-consultants (if applicable) must be able to demonstrate expertise, experience, and the ability to provide the services and complete the tasks described in Section VI Scope of Services. The expertise and experience must include, but is not limited to, electrical, mechanical, and structural engineering, library consultant(s) and architectural services. Include a brief description of the prime consultant firm (firms) and sub-consultant team (if applicable), including number of employees and years in business.
  - c. Prime(s): Provide a detailed resume of the proposed principal-in-charge, the lead engineer, and any other parties that will be responsible for this project. The lead engineer shall be a full-time employee of the prime(s). Clearly identify each individual’s relevant experience (former projects) with photos.
  - d. Sub-Consultants: Provide a detailed resume of the proposed project manager (PM), who shall be a full-time employee of each sub-consultant for this project, including library consultant(s). Clearly identify the PM’s relevant experience (former projects) with photos.
  - e. Confirm that the key project personnel identified by the prime consultant and sub-consultants

shall not be substituted without approval of the City. The City must also approve any new, key team members.

- f. A table of organization setting forth the project manager, supporting staff, and sub-consultants.
4. Relevant Experience – Prime Consultant and Sub-Consultants Describe experience in providing the necessary services for at least three (3) projects similar in size and scope to the individual projects listed in Section I.C. Project Description, with a minimum construction value of at least \$750,000 for each example project. For each project, provide the following information:
    - Client name, project name and location.
    - Description of project scope.
    - Month and year commenced and was (or will be) completed.
    - Project construction cost.
    - Contract amount.
    - Firm's project responsibility.
    - Names of key personnel involved in working on the projects.
    - Two (2) client references for each project, including contact names, addresses, and telephone numbers.
  5. Project Approach, Organization, and Local Presence
    - a. With reference to Section I. Project Information of this RFP, present your approach and organization for providing services on these projects. Indicate your understanding of the critical project elements, including library operations and functionality, and what special approaches your team will feature to manage these elements.
  6. Project Timeline and Schedule
    - a. Layout the proposed timeline of the project through completion of construction and post-construction occupancy review, including an alternative timeline that takes a phased approach to construction allowing the library to stay open during construction.
    - b. Describe the time schedule for each proposed task and subtask. Indicate proposed work periods, milestones, and proposed completion dates, as well as anticipated regular meeting periods
  7. Additional Services
    - a. The consultant may propose any additional, optional services it believes would complement or augment the scope of services requested by this RFP. The City reserves the right to consider these additional, optional services in its evaluation of proposals and may, at its sole discretion, award additional, optional services to any proposer.
  8. A summary of the consultant's understanding of the contract requirements as a whole and the unique capabilities to perform the services required.
  9. An identification of any modifications to the attached Professional Consulting Services Agreement (APPENDIX A) the consultant would require prior to entering into an agreement with the City.

**Cost Proposal and Hourly Billing Rates.** The Architect shall provide a separate fee proposal for the requested services. The actual dollar fee paid to the Architect shall be fixed. The architect's cost proposal shall also include all fees to be paid to the Architect's consultants. In addition to the fixed fee for the project, the architect shall provide a schedule of hourly billing rates for the various levels of staff who may participate in the project, should the need for extra services arise. No additional markup will be allowed on fees quoted.

The cost proposal shall be submitted with the Proposal in a separate, sealed envelope marked "LIBRARY-COST PROPOSAL", with the architectural firm name. Payments to the architect shall be made on a monthly

basis and shall be in proportion to services performed.

All prints and reproduction charges for documents used by Architect and their consultants for their "in house" use are to be included in the contract price. Electronic copies of any prints are preferred for City check sets, progress sets and all plans required for City plan checks. If paper copies are needed they will be requested specifically by the City and will be considered reimbursable expenses. All reimbursable expenses shall require prior authorization from the City.

1. The prime consultant shall provide a cost proposal to accomplish each deliverable and phased task (per Section I.D. Scope of Services).
2. The prime consultant and sub-consultants shall provide a complete list of all staff hourly rates of the positions by name that would be invoiced, i.e., Principal, Lead Engineer, CAD drafter, Administrative Support, etc. Hourly rates shall be divided into base salary, fringe benefits, overhead, indirect cost surcharges, profit, consistent with Caltrans Local Assistance Procedures Manual for federally-funded A&E contracts.
3. The prime consultant shall self-perform at least 50% of its proposed contract amount.
4. The contract amount will be an actual cost-plus-fixed fee with a maximum not-to-exceed amount. During the contract term, there is no provision for hourly rate increases or adjustments. If an amendment to extend the contract expiration becomes necessary, hourly rate increases/adjustments will be permitted in accordance with Caltrans LAPM and applicable local ordinances.
5. The proposal shall show a lump sum cost estimate for each task identified with a breakdown. In addition, sub-consultants should be identified in the scope of work.
  - a. Provide cost estimates for each subtask by classifications, providing hourly billing rates for personnel, with the estimated total based on hourly estimates. The estimate shall include all clerical, administrative, and support functions.
  - b. The cost estimate shall include provisions for meeting with the agency to report progress of the work
6. The proposal will included cost estimates for both:
  - a. A traditional approach to renovation during which the library is closed and services are relocated for the duration of construction; and
  - b. A phased approach to renovation that allows the library to remain open and operational during the project, with construction impacts minimized to the fullest extent.

## VII. INSTRUCTIONS FOR PROPOSAL

**Format Of Envelope For Proposal.** The Submitter shall deliver the proposal in a sealed envelope clearly marked on the outside: "**PROPOSAL FOR HARRISON MEMORIAL LIBRARY**" as well as the name of the proposer.

**Quality Of Proposals.** Unnecessarily elaborate or glossy proposals are neither expected nor desired. The emphasis of the proposal should be on responding to the core requirements set forth in this RFP.

**Proposer's Signature / Cover Letter.** An authorized representative of the Proposer shall sign the cover letter which identifies the legal name of the Proposer, along with name of contact person, address, phone number, and email address. The cover letter may also be supplemented by a brief narrative about why the proposer is interested in this opportunity.

**Contents Of Proposal.** In addition to the cover letter, the Proposer shall provide five sections in the following order: (A) Qualifications and Related Experience of Proposer, (B) Proposed Scope of Services, (C) Approach to Architectural Services, (D) Project Timeline and Schedule, and (E) If applicable any additional proposed services not covered in this Request for Proposals. Proposals shall be no longer than 30 pages in length.

**City's Review Of Proposals.** After the proposals are received, [the Architect Selection Committee \(see Exhibit A\)](#), an evaluation committee consisting of City staff, Library Board Trustees, Carmel Public Library Foundation representatives, and community stakeholders shall review all proposals for responsiveness to the RFP. In reviewing the proposals, the City will consider all elements identified in the Evaluation Criteria section shown below. Proposers who do not meet the evaluation criteria will be notified that they will not be advancing in the evaluation process.

**Award Of Agreement.** Upon completion of the review period, the City shall notify those Proposers who will be considered for further evaluation. All Proposers so notified shall meet with the City's designated Manager(s) to discuss entering into a Professional Services Agreement for architectural services for the renovation of the Harrison Memorial Library.

1. If the City determines, after further evaluation and negotiation, to award a Contract, a Contract shall be sent to the successful Proposer for the Proposer's signature. No proposal shall be binding upon the City until after the Agreement is signed by duly authorized representatives of both the Proposer and the City.
2. The City reserves the right to reject any or all proposals, and to waive any irregularity. The award of the Agreement, if made by the City, will be based upon a total review and analysis of each proposal.

**Proposals Are Public Records.** Each Proposer is hereby informed that, upon delivery of its proposal to the City, the proposal is the property of the City.

1. Unless otherwise compelled by a court order, the City will not disclose any proposal while the City conducts its deliberative process in accordance with the procedures identified in this RFP. However, after the City either awards an agreement to a successful Proposer, or the City rejects all proposals, the City shall consider each proposal subject to the public disclosure requirements of the California Public Records Act (California Government Code Sections 6250, *et seq.*), unless there is a legal exception to public disclosure.
2. If a Proposer believes that any portion of its proposal is subject to a legal exception to public disclosure, the Proposer shall: (1) clearly mark the relevant portions of its proposal "Confidential"; and (2) upon request from the City, identify the legal basis for the exception from disclosure under the Public Records Act; and (3) defend, indemnify, and hold harmless the City regarding any claim by any third party for the public disclosure of the "Confidential" portion of the proposal.

## VII. EVALUATION CRITERIA

The City is seeking comprehensive proposals addressing all sections identified. The maximum number of

pages for the proposal, including cover letter, contents, resumes, and exhibits, shall not exceed 25 pages. Covers and tabs are not counted. The following criteria will be considered by the City:

1. Responsiveness to this RFP
2. Qualifications and related experience. **15**
3. Project Understanding – Understanding of the project requirements, familiarity with available construction methods, limitations and benefits and recognition of potential project challenges.. **15**
4. Construction Experience – Technical experience in performing work of a similar project scope and size. **15**
5. Familiarity with Local Government Project Development Procedures and projects in Carmel. **10**
6. Demonstration of an understanding of public library operations and/or plan to include a library consultant as part of the team to ensure library operational needs are met post-construction. **10**
7. Problem Solving –Firm and project team’s ability to problem solve construction issues effectively and to be situationally adaptable. **10**
8. Approach to Communicating with the City/Local Presence – Ability to commit and maintain staff for the duration of the project for management, inspection, and testing. **10**
9. Personnel Qualifications – Detailed list of qualifications of staff and consultants to be assigned to the project **10**
10. Additional Services and Firm Flexibility – Firm’s ability to provide additional services that may be a part of an individual project’s conceptual, environmental, design, or construction management phase, using other resources available within the firm or its subconsultants. **5**           **TOTAL: 100**

Based on the recommendation of the Architect Selection Committee the City will select firms to interview. Final selection will be based on the review of proposals, follow-up discussions with selected firms, and recommendations from past and current clients.

Final approval will be at the discretion of the City Council of Carmel-by-the-Sea. The City, with input from the CPLF, reserves the right to negotiate directly with only one (1) firm or discontinue this process at any time.

## APPENDIX 1:

**\*TENTATIVE SCHEDULE - RFP #2024-25-001**  
**ARCHITECTURAL SERVICES CONTRACT**  
**Harrison Memorial Library Restoration and Renovation**

Date	Activity
TBD week of July 29, 2024	HMLBT Review of RFP
Tuesday, August 6, 2024	City Council Review of RFP
Thursday, August 8, 2024	RFP released
Wednesday, August 28, 2024	Mandatory Walk-through
Friday, September 13, 2024	Questions from architects due
Friday, September 20, 2024	Answers to questions from City due
Friday, October 4, 2024	Proposals due - postmarked no later than 10/04
Week of October 7, 2024	Meet with and distribute proposals to review committee
Week of October 14, 2024	2nd meeting with review committee to select proposers for interviews
Week of October 21, 2024	Interviews with selected Architectural Firms
Week of October 28, 2024	Deliberations
Friday, November 4, 2024	Final selection
November 2024	Contract negotiations
Tuesday, December 3, 2024	City Council contract approval

\*This schedule is subject to change. Proposers will be notified of any amendments to this schedule.



**PROFESSIONAL SERVICES AGREEMENT**

for the

**[Name of the Project and/or type of services  
Agreement # ]**

**THIS AGREEMENT** is executed this \_\_day of \_\_\_\_\_, 202\_, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and **[Name of Consultant]**, (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: **[insert general description of the scope of work]**. The Scope of Services is attached hereto as Exhibit "A." The Scope of Services under this Agreement shall 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.

B. **Change Orders.** Agreements and Change Orders exceeding \$24,999 require City Council approval to be valid. The City may, from time to time, by written notice to Consultant, make changes to the Scope of Services as defined in Section 1.A above, and Consultant shall carry out the Services subject to such changes, within the time limits agreed to by the parties. The compensation and/or Project Schedule shall be increased or decreased by written Change Order to this Agreement ("Change Order"), signed by the City and Consultant, prior to commencement of any such changes of the Services. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by Council. The City shall not be liable to pay additional compensation to Consultant for any additional services performed without an executed Change Order issued prior to proceeding with amended services. All other terms of this Agreement shall apply to authorized Change Orders.

**2. COMPENSATION**

A. **Total Fee.** 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 Fee Schedule (Exhibit "B"), in a total amount not-to-exceed \_\_\_\_\_ **Thousand \_ Hundred and \_ Dollars (\$\_\_\_\_\_ .00)**. Such compensation shall be considered the "Maximum Authorized Expenditure" under this Agreement. The Fee Schedule shall include, 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. Payment of any compensation to Consultant hereunder shall be 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 shall not be responsible for payment until the Services have been satisfactorily performed.

B. **Invoicing.** Consultant shall submit to the City monthly written invoices to the City's Project Representative, identified in Section 5 herein. Invoices shall 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 shall provide invoicing format upon request. Consultant shall not bill the City for duplicate services performed by more than one person. Consultant's invoices shall 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 shall be in full accord with any and all applicable provisions of this Agreement. Consultant shall 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 shall make payment 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, the City shall not be obligated to process any payment to Consultant until thirty (30) days after a correct and complying invoice has been submitted by Consultant.

The City shall not be 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 shall be 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 Fees.** 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 shall so 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 shall not be 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, shall be made by the City to Consultant in accordance with the various hourly rates as set forth in the Consultant’s Fee Schedule (Exhibit “B”).

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 Fee Schedule (Exhibit “B”). All reimbursable expenses shall be considered as included within the Maximum Authorized Expenditure. Consultant shall be solely responsible for payment to subconsultants and vendors of services or goods, and the City shall not be responsible or liable for any payments to subconsultants and vendors, either directly or indirectly.

F. **Audit and Examination of Accounts:**

i. Consultant shall 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 shall be in accordance with generally accepted professional standards and guidelines for auditing.

iii. Consultant hereby agrees to 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 shall 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 services hereunder. All records, which pertain to actual disputes, litigation, appeals or claims, shall 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.

[INCLUDE THE FOLLOWING SECTION IF PSA IS FOR AN ON-CALL AGREEMENT OR CONTAINS OPTION FOR ON-CALL WORK]

G. **On-Call Agreements.** The amount of work (scope of services) to be requested during the Agreement term cannot be well defined at the outset. The Consultant agrees to perform the work on an on-call basis in such increments and at such times as defined in written work requirements issued by the City as the need arises. The Consultant agrees that the offer to perform the work at the various rates as set forth in the Consultant's Fee Schedule (Exhibit "B") remains in effect for all work requirements issued by the City during the Agreement term or until the exhaustion of the Agreement funding limit, whichever occurs first. The City does not guaranty a minimum dollar value of work.

### 3. AGREEMENT TERM

A. **Term.** The work under this Agreement shall commence by [start date of contract] and shall be completed by [end date of contract] 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 shall survive the termination or completion of this Agreement. Consultant shall 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 shall 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 hereby 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 shall be completed by Consultant in accordance with the Project Schedule attached hereto as Exhibit "C". The parties may, from time to time, by Change Order, alter the Project Schedule. Consultant shall 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 shall promptly notify the City in writing and provide a revised Project Schedule for review and consideration by City.

[THE FOLLOWING PARAGRAPH TO BE INCLUDED IF A PROJECT SCHEDULE IS NOT REQUIRED BUT SPECIFIC PROJECT DATES ARE KNOWN OR REQUIRED]

If a Project Schedule is not required, Consultant shall perform the Services under this Agreement in accordance with the following phase, task and/or milestone dates:

[List phase, task, milestone, funding, design, design review, construction and other deadline dates as applicable]

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, the City shall 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 shall diligently proceed with the Services authorized and complete those Services within the agreed time specified in said notice. Consultant shall 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 shall perform the Services using the individuals listed in the Key Employees and Subconsultants List attached hereto in Exhibit "A".

##### B. Substitution of Employees or Subconsultants:

i. Consultant shall not substitute any key employee or subconsultant listed in Exhibit "A" without the prior written approval of the City, and such approval shall not be unreasonably withheld. The City shall 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 shall, on written request from the City, replace such employee or subconsultant. Consultant shall, subject to scheduling and staffing considerations, make reasonable efforts to replace the individual with an individual of similar competency and experience.

iii. Regardless of whether or not the City consents to, or requests a substitution of any employee or subconsultant of Consultant, the City shall not be liable to pay additional compensation to Consultant for any replacement or substitution.

C. **Sub-agreements with Subconsultants.** Consultant shall 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 shall be 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 shall be interpreted so as 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

Attachment 9  
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 shall 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 herein. Consultant shall be 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 shall 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 shall 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. In connection therewith, Consultant shall 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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: \_\_\_\_\_ Telephone: \_\_\_\_\_  
Email: \_\_\_\_\_

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 set forth herein 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, shall 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 shall be deemed to 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 shall 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 shall 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.

Consultant further agrees to indemnify the City for damage to or loss of City property to the proportionate extent they arise out of Consultant's negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of Consultant or any of Consultant's employees, agents, subconsultants, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of the City.

## 7. INSURANCE

Consultant shall submit and maintain in full force all insurance as described herein. Without altering or limiting Consultant's duty to indemnify, Consultant shall 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 either maintain or cause to be maintained professional liability coverage in full force 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 shall 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 shall not be canceled, except with prior written notice to the City.
  - iii. The general liability and auto policies shall:
    - 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 shall be excess to the Consultant's insurance and shall 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 shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City. Consultant shall 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, shall in any way modify or change Consultant's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. All coverage available to the Consultant as named insured shall also be available and applicable to the additional insured. Notwithstanding the insurance requirements contained herein, Consultant is financially liable for its indemnity obligations under this Agreement.

vi. All policies shall 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 shall reduce or eliminate such deductibles or SIR as respects the City, its officers, officials, employees and volunteers; or Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expenses. In no event shall 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 shall require and verify that all subconsultants and subcontractors maintain insurance meeting all the requirements stated herein.

## **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 shall perform all Services in a safe and skillful manner consistent with the highest 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 shall 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 shall 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 shall be performed in accordance with such licensing requirements.

C. Consultant shall furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant shall 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 shall perform evaluation of 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 shall 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 shall be entitled to 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 shall not be liable for any resulting delay in the Services or failure to meet the Project Schedule, but in no event shall such delay or failure to provide City resources constitute a breach of this Agreement by the City, nor shall Consultant be entitled to extra compensation for same.

C. **Obligations of Consultant.** No reviews, approvals, or inspections carried out or supplied by the City shall derogate from the duties and obligations of Consultant, and all responsibility related to performance of the Services shall 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 shall 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, shall 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 shall 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



Consultant shall 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.** It is understood and agreed that the provisions contained in Section 10, Ownership and Use of Materials, shall survive the expiration or earlier termination of this Agreement, and that this Section is severable for such purpose.

E. **Additional Copies.** If the City requires additional copies of reports, or any other material that Consultant is required to furnish as part of the Services under this Agreement, Consultant shall provide such additional copies, and the City shall compensate Consultant for the actual costs related to the production of such copies by Consultant.

## 11. CONFIDENTIALITY

A. **No Disclosure.** Consultant shall keep confidential and shall 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 shall 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 shall promptly transmit to the City any and all requests for disclosure of any such confidential information or records. The obligations under this Section shall 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 shall 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 shall 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 shall not be liable or responsible for the disclosure of any such records and the Consultant shall indemnify, defend, and hold the City harmless for any such disclosure.

## 12. CONFLICT OF INTEREST

Consultant is required to file a Form 700 in compliance with the City's Conflict of Interest Code unless a written determination by the City Administrator is made modifying or eliminating said requirement, or unless otherwise exempted by law.

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

A. That they shall conduct their duties related to this Agreement with impartiality, and shall, 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. Shall 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. Shall 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. Shall 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 shall promptly declare it to the City, and;

E. Shall 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 shall 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 shall make reasonable efforts to resolve any Dispute by amicable negotiations and shall 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 shall be promptly referred to the City Administrator or designee, and the Consultant's Principal, who shall 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 shall not exceed 2 hours unless otherwise agreed to by the parties. The cost of the mediation (including fees of mediators) shall be borne equally by the parties, and each party shall bear its own costs of participating in mediation. The mediation shall 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 shall 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 shall 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 shall 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 shall be subject to appellate review upon the same terms and conditions as the law permits for judgments of Superior Courts. A “Prevailing Party” shall be determined in the Arbitration, and the prevailing party shall be entitled to reasonable attorney’s fees and costs incurred, and accrued interest on any unpaid balance that may be due. Costs shall include the cost of any expert employed in the preparation or presentation of any evidence. All costs incurred and reasonable attorney fees shall 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 shall be in writing, shall set forth the effective date of termination, shall 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, terminate this Agreement, in whole or in part, at any time during the Agreement Term for the convenience of the City.

#### C. **Steps after Termination:**

- i. Upon termination of this Agreement by the City for any reason, the City shall 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 shall:

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. In the event 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 shall 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 shall 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 shall be entitled to 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, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, 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 shall be 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 appearing herein shall not be deemed to 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 shall 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 shall take precedence.
- G. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and may be signed in counterparts, but all of which together shall 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 shall take precedence 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 shall not be impaired thereby. Limitations of liability and indemnities shall 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 shall not be assignable, delegable, or transferable without the prior written consent of the City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which the City may terminate this Agreement and be entitled to damages.

M. **City Business License.** Prior to receiving a Notice to Proceed from the City, Consultant shall obtain and maintain a valid City of Carmel-by-the-Sea Business License for the duration of the Agreement. Costs associated with the license are the responsibility of Consultant.

N. **Laws.** Consultant agrees that in the performance of this Agreement it will reasonably comply with all applicable federal, state and local laws and regulations. This Agreement shall 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

Consultant Signature

\_\_\_\_\_

\_\_\_\_\_

Printed Name

Printed Name

\_\_\_\_\_

\_\_\_\_\_

Title

Title

\_\_\_\_\_

Consultant Legal Company Name

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

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

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
City Attorney

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

[EDIT LIST OF ATTACHMENTS]

- Exhibit "A"     Scope of Services, including Key Personnel
- Exhibit "B"     Fee Schedule
- Exhibit "C"     Project Schedule

**DRAFT 1.24.25 SUBMITTED BY FOUNDATION**  
**AGREEMENT BETWEEN THE CITY OF CARMEL-BY-THE-SEA**  
**AND THE CARMEL PUBLIC LIBRARY FOUNDATION**  
**REGARDING HARRISON MEMORIAL LIBRARY**

This Agreement between the City of Carmel-by-the-Sea and the Carmel Public Library Foundation Regarding Harrison Memorial Library (“Agreement”) is entered into by the City of Carmel-by-the-Sea (“City”), a municipal corporation, and the Carmel Public Library Foundation (“Foundation”), a 501 (c)(3) nonprofit organization and shall be effective on the date this Agreement is signed by all of the Parties hereto (“the Effective Date”).

**RECITALS**

A. The City and the Foundation shall hereinafter collectively be referred to as the “Parties” and individually as a “Party.”

B. The purpose of this Agreement is to set forth the terms, covenants and conditions regarding the Parties rights and obligations concerning the project commonly known as the Centennial Restoration of the Harrison Memorial Library (the “Project”).

C. Preservation of the local and renowned architectural, literary, and cultural heritage and environment is a City priority.

D. The Harrison Memorial Library (the “Library”) is both a major contributor to and symbol of the special and highly distinctive quality of life and aesthetics found in Carmel.

E. Pursuant to the City per the City’s Memorandum of Agreement with the Carmel Public Library Board of Trustees (the “Trustees”), the City is responsible for the maintenance and upkeep of the Library.

F. The Project will be funded largely by private contributions to the Foundation, both restricted and unrestricted, which contributions will be utilized by the Foundation to pay for project costs, including architectural design, engineering and construction (the “Project Costs”).

G. The Foundation is committed to utilizing best efforts to raise funds for the restoration and renovation of the historic Harrison Memorial Library and will be embarking on the largest fund-raising campaign in its history to meet major needs of the Library.

H. Funds raised by the Foundation for the Project shall be separately identified by the Foundation for use in connection with payment of Project Costs. The City will support the Foundation’s fund-raising efforts.

I. The restoration and renovation of the Library will not affect or alter the City’s Memorandum of Agreement with the Trustees with regard to the City’s ongoing responsibility for maintenance and upkeep of the Library and will not affect the Foundation’s significant support of the Library’s ongoing operational funding.

J. The City reaffirms its dedication to having an exemplary public library and acknowledges the Foundation and private donors for their philanthropic contributions for the betterment of library services and facilities.

**NOW, THEREFORE**, in consideration of the terms and conditions set forth below, the Parties hereby agree as follows:

**1. RECITALS.**

The Parties agree that the foregoing Recitals are true and correct and hereby incorporate these Recitals as though set forth in full here.

**2. PROJECT EXECUTIVE COMMITTEE**

2.1 The City and the Foundation shall establish a Project Executive Committee within thirty (30) days from the Effective Date of this Agreement.

2.2 The Project Executive Committee will have as its Co-Chairs, the Mayor of the City and the Chair of the Board of the Foundation, (as of the Effective Date, Dale Byrne and Marci Meaux, respectively).

2.3 The other members of the Project Executive Committee will include City Assistant Administrator Brandon Swanson and Alexandra Fallon. There will also be a fifth member of the Project Executive Committee who shall be chosen by the four designated Committee members.

2.4 The purpose of the Project Executive Committee shall be to provide final decisions to the Foundation Representative (as referenced in Section 5 of the Agreement) and the City Project Manager (as referenced in Section 10.1 of the Agreement) n regard to the Project including, but not limited to, all final decisions relating to the services of the Project Architect and the Construction Contractor, the Project Design, the bids documents for the construction, payment of invoices of the Architect and Construction Contractor and other issues which arise during the design and construction phases of the Project.

2.5 The Foundation Representative and City Project Manager shall promptly communicate the final decision of the Project Executive Committee to the City Administrator and Executive Director of the Foundation in order for the Foundation and the City to take any appropriate action, if any, that is appropriate in order to implement the final decisions of the Project Executive Committee.

2.6 The Project Executive Committee shall create such sub-committees as it deems necessary and appropriate to assist the Project Executive Committee in connection with its decisions.

**3. CITY RESOLUTION NO 2024-002**

3.1 As a material part of this Agreement, the City reaffirms its resolution of January 8, 2024, (“Resolution 2024-002”), which Resolution: (1) Reaffirms the City’s public-private partnership with the Foundation, (2) Recognizes the Foundation for its commitment to keeping the Library open, relevant and thriving in the past, present and future, (3) Assures the Foundation and its generous donors of the City’s dedication to having an exemplary public library, and (4) Ensures that funds raised for the Library facilities/equipment will not in any way diminish or alter the City’s ongoing responsibility for the proper Library maintenance and upkeep.3.2 In reaffirming Resolution 2024-002, the City agrees and acknowledges that the

Project will be pursued and funded in compliance with each of resolutions of the City Council as set forth in Section 3.1 , above.

#### **4. ARCHITECT SERVICES**

4.1 Under the terms of the City's August 6, 2024, RFP, the architect for the project (the "Project Architect") shall be responsible for conceptual and schematic design, design development, engineers, creation of construction documents, plans and specification and respond to questions from the Construction Manager and Contractor prior to and during the construction of the Project and provide such other services as described in the Professional Services Agreement to be entered into by and between the City and the Project Architect. .

4.2 Selection of a qualified candidate responding to the City's RFP was made by the Architect Selection Committee (the "ASC") which included local residents, -City and Carmel Public Foundation representatives and experts in architecture and history.

4.3 The ASC selection of the Project Architect was based, in part, on the Parties full confidence that the Project Architect will adhere to the Restoration Aesthetic Design Guidelines for the Harrison Memorial Library Building (the "Guidelines"), which Guidelines are attached hereto as Exhibit "A" and incorporated for all purposes herein. The Project Architect shall be contractually bound to perform all services in connection with the Project in accordance with the Guidelines.

4.4 The contract with the Project Architect (the "Design Professional Contract") shall be approved by the Foundation and the City Council. The Design Professional Contract shall be divided into the following three distinct phases:

4.4.1 Phase One: Phase One deliverables from the Project Architect pursuant to the Design Professional Contract shall consist of an Historic Structures Report and Schematics/Conceptual Design. Pursuant to Section 2 of this Agreement, the Project Executive Committee shall make final decisions in regard to the Phase One deliverables.

4.4.2 Phase Two: Phase Two deliverables from the Project Architect pursuant to the Design Professional Contract shall consist of Design Development, Engineering and Construction Drawings/Documents and specifications. Pursuant to Section 2 of this Agreement, the Project Executive Committee shall make final decisions in regard to the Phase Two deliverables.

4.4.3 Phase Three: Phase Three of the Design Professional Contract shall consist of services to be provided by the Project Architect for support and consultation during construction. Pursuant to Section 2 of this Agreement, the Project Executive Committee shall make final decisions in regard to the Phase Three deliverables.

4.5 The Project Architect's services shall be provided pursuant to a deliverable schedule that will allow for completion of the Project by no later than December 31, 2028, subject to extensions approved by the Parties in writing.

4.6 During the Project Architect selection process and each of the three phases of the Design Professional Contract, the City shall share copies of all written communications from and to the Project Architect with the Foundation.

4.7. The pace of the Foundation's fundraising shall dictate the ability to move to the next phase of the Design Professional Contract.

4.8 Payment for Approved Design Professional Invoices.

4.8.1 The Foundation has already raised all or most of the anticipated cost of the Phase One deliverables.

4.8.2 In order for the Project to progress to Phase Two, the City shall obtain a written acknowledgment from the Foundation that the Foundation has raised sufficient funds to pay for the cost of Phase Two Design Professional Services. If the Project proceeds to Phase Two, the Foundation shall pay the Project Architect for Phase Two services in accordance with the terms and conditions of the Design Professional Contract based upon invoices approved by the City Project Manager and Foundation Representative.

4.8.3 Upon completion of Phase Two services, the Project Architect shall provide the City and Foundation an estimate by an engineer (which engineer shall be subject to the approval by the Foundation) of the cost for construction of the Project ("Engineer's Estimate").

4.8.4 The Project Architect will be requested to provide to the City and Foundation, if reasonably feasible, with a description of Phases for the Construction of the Project ("Construction Phases"). Each of the Construction Phases must be discreet work meaning that if the work on a Phase is completed that the Library will be fully functional even if later Phases are not constructed due to lack of funding by the Foundation. If the Project Architect does provide the City and Foundation with a description of the Construction Phases, then the Project Architect will also be requested to provide an Engineer's Estimate for the cost of each Construction Phase. The cost of the Engineer providing the Engineer's Estimate, shall be subject to the approval of the Foundation and shall be paid by the Foundation in accordance with the terms and conditions of either (i) the Design Professional Contract, if the Engineer providing the Engineer's Estimate is contracted through the Project Architect, or, (ii) directly to the Engineer providing the Engineer's Estimate if the Engineer is engaged directly by the City. All payments for or to the Engineer providing the Engineers Estimate shall be based upon invoices approved by the City Project Manager and Foundation Representative.

4.8.5 In order for the City to progress to Phase Three, the City shall obtain from the Foundation a written acknowledgement from the Foundation that the Foundation has raised sufficient funds to pay for the Phase Three services. If the Project Proceeds to Phase Three, the Foundation shall pay the Architect for Phase Three services in accordance with the terms and conditions of the Design Professional Contract based upon invoices approved by the City Project Manager and Foundation Representative.

4.8.6 The City acknowledges that all fundraising by the Foundation for the Project shall be done on a best-efforts basis and that at the time of entering into this Agreement, the only funding formally available for the Design Professional Contract is the funding for Phase One of the Design Professional Contract identified in Section 4.4.1 above.

4.8.7. The Foundation agrees not to unreasonably withhold payments on the invoices of the Architect.

## **5. FOUNDATION REPRESENTATIVE**

The Foundation shall select and pay for a Foundation Representative (the "Foundation Representative") who shall act as the Foundation's representative in connection with all aspects of the Project. During the term of this Agreement, the Foundation Representative shall work and consult with the City, the Project Architect, the City Project Manager, the Engineer preparing the Engineer's Estimate, the Contractor, the Project Executive Committee and any other Project Sub-Committees established by the Project Executive Committee and any other parties involved in the Project and shall review and approve all Construction Costs, request for payment and compliance with the selected Contractor's obligations under its Construction Agreement with the City (the "Construction Agreement"). The Foundation Representative shall carry out the final decisions of the Project Executive Committee in regard to those matters referenced in Section 2.4 of this Agreement.

## **6. CONSTRUCTION COSTS**

6.1 The costs for the construction of the Project shall be defined in the Construction Agreement between the City and the Contractor selected for the construction of the Project ("Construction Costs").

6.2 The City and the Foundation shall agree to the terms and conditions of a Notice Inviting Bids ("Notice Inviting Bids") for the Construction of the Project.

6.3 Prior to the City issuing a Notice Inviting Bids for the construction of the Project the City shall obtain an acknowledgement from the Foundation that the Foundation has raised sufficient funds to pay the Construction Cost as estimated in the Engineer's Estimate. Funding for the Construction Costs shall be pursued by the Foundation on a best-efforts basis.

6.4 Engineer's Estimate. If the Project Architect has provided the City and Foundation with Construction Phases and an Engineer's Estimate for each phase, then the City shall obtain an acknowledgment from the Foundation that the Foundation has raised sufficient funds to pay for the cost of each Construction Phase in order of the Construction Phases as set forth in the Engineer's Estimate. Funding for the Construction Costs shall be pursued by the Foundation on a best-efforts basis.

6.5 Upon obtaining the Foundation's acknowledgement(s) as set forth in Section 6.2, above, the City shall issue a Notice Inviting Bids for the Project in compliance with the California Public Contract Code.

6.6 After receiving the bids on the Project, the City and the Foundation Representative will review the bids and decide whether to award a contract to the lowest responsible and responsive bidder or to re-bid the Project or take other actions as the City and the Foundation determines appropriate as provided by law. The City agrees to consult with the Foundation and obtain the Foundation's agreement regarding how to proceed following the receipt of bids and obtain the Foundation's agreement as to the selection of the Contractor for the Project, which shall be, if a contract is awarded, the lowest responsible and responsive bidder.

6.7 If the City, with the Foundation's approval, enters into a contract with the lowest responsible and responsive bidder on the Project ("Contractor") then prior to making any payment to the Contractor, the City agrees to submit approved invoices from the Contractor to the Foundation and the Foundation Representative for review for a period of 15 calendar days. If the Foundation submits to the City a written objection to the City to these invoices within that 15-day period, then the City agrees to consult with the Foundation in regard to the Foundation's objection. If the Foundation and the City are unable to resolve the Foundation's objection by the Foundation, the objection shall be resolved by the majority vote of the members of the Project Executive Committee. All payments to the Contractor shall be paid directly by the Foundation to the Contractor.

6.8 If no objection to the invoice is received from the Foundation within that 15-day period, then the Foundation shall make payment on the invoice.

6.9 The Foundation will execute a guarantee of payment in favor of the Contractor for the Project of all invoices approved by the Project Executive Committee pursuant to Section 6.7 above and all invoices for which there is no objection has been received by the City from the Foundation pursuant to the provisions of Section 6.8 above

6.9 The Foundation agrees not to unreasonably withhold payments on the invoices of the Contractor.

6.10 The Foundation shall provide the Project Executive Committee and the City Project Manager with a monthly accounting of the expenditure for the Project prior to end of the month all invoices paid for the in the preceding month.

## **7. TERMINATION OF AGREEMENT**

### 7.1 Termination by the City

7.1.1 The City reserves the right to terminate this Agreement upon written notice to the Foundation if the Foundation breaches any of the material terms of this Agreement.

7.1.2 Any termination of this Agreement by the City based up the Foundation's breach of any of the material terms of this Agreement must be in writing communicated by the City Project Manager (designated pursuant to Section 10.1 of this Agreement) to the Foundation Representative (designated pursuant to Section 5- of this Agreement) by electronic mail and entitled "Notice of Termination" and state the grounds for termination and provide any documentation in support of the termination.

7.1.3 The termination date shall be 30 calendar days after the date of the Notice of Termination ("Termination Date") unless the Parties agree in writing prior to the Termination Date that the breach has been cured.

7.1.4 If the City terminates this Agreement, then the City agrees to refund to Foundation the amount, if any, of Deposit No. 1 or Deposit 2 or Deposit No 3 or Deposit No. 4, or any other deposits, which have not been paid, or is not due, to the Architect, Engineer for the cost of the Engineer's estimate, Contractor or City Project Manager.

### 7.2 Termination by Foundation



7.2.1 The Foundation reserves the right to terminate this Agreement upon written notice to the City if the City breaches any of the material terms of this Agreement. only until the date the City awards a contract to the Contractor for the construction of the Project except as otherwise provided in this Agreement.

7.2.2 Any termination of this Agreement by the Foundation based up the City's breach of any of the material terms of this Agreement must be in writing communicated by the Foundation Representative (designated pursuant to Section 5 of this Agreement) to the City Project Manager (designated pursuant to Section 9.1 of this Agreement) by electronic mail and entitled "Notice of Termination" and state the grounds for termination and provide any documentation in support of the termination. .

7.2.3 The termination date shall be 30 calendar days after the date of the Notice of Termination ("Termination Date") unless the Parties agree in writing prior to the Termination Date that the breach has been cured.

7.2.4 After the City awards the contract to the Contractor for the construction of the Project, the Foundation shall have no right to terminate this Agreement except that, if there are Construction Phases, then the Foundation may terminate this Agreement based up the City's breach of any of the material terms of this Agreement after each Construction Phase is completed.

7.2.5 If the Foundation terminates this Agreement prior to the award by the City of the contract to the Contractor, then the City agrees to release the Foundation for payment to the Architect or the Engineer, which have not been paid, or is not due, to the Architect or the Engineer for the cost of the Engineer's estimate.

7.2.6 If the Foundation terminates the Agreement based up the City's breach of any of the material terms of this Agreement prior to the award of a contract by the City to the Contractor, or upon completion of a Construction Phase, then the City agrees to release the Foundation for any payment to the Contractor which have not been paid, or is not due, to the Contractor and/or Construction Manager.

## **8. INDEMNITY**

8.1 City shall indemnify, defend and hold harmless the Foundation and Foundation's employees, officers, directors, representatives, members, and agents (collectively the "Foundation's Affiliates") from any costs, expenses, damages, judgments, actions, attorneys' fees, liabilities, claims, court costs, expert witness costs, appellate costs, or losses (collectively, the "Claims") with respect to, or arising from any conduct of the City which is in breach of this Agreement. City shall further indemnify, defend and hold harmless the Foundation and Foundation's Affiliates from any Claims with respect to, or arising in connection with any third-party Claims relating to the Project.

8.2 Foundation shall indemnify, defend and hold harmless the City and City's employees, officers, directors, representatives, members, and agents (collectively the "City's Affiliates") from any costs, expenses, damages, judgments, actions, attorneys' fees, liabilities, claims, court costs, expert witness costs, appellate costs, or losses (collectively, the "Claims") with respect to, or arising from conduct of the Foundation which is in breach of this Agreement.

## **9. DISPUTE RESOLUTION.**

9.1 The Parties agree that any disputes, claims or controversies arising out of or relating to a termination of this Agreement by the City pursuant to the provisions of Section 7.1, above or a termination of this Agreement by the Foundation pursuant to the provisions of Section 7.2, above, shall be submitted to JAMS, or its successor, for mediation, and if the matter is not resolved through mediation, then it shall be submitted to JAMS, or its successor, for final and binding arbitration pursuant to the provisions set forth in Section 9.5 below.

9.2 Either Party may commence mediation by providing JAMS and the other Party a written request for mediation, setting forth the subject of the dispute and the requested relief.

9.3 The Parties will cooperate with JAMS and with one another in selecting a mediator from the JAMS panel of neutrals and in scheduling the mediation proceedings. The Parties agree that they will participate in the mediation in good faith and that they will share equally in its costs.

9.4 All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

9.5 Either Party may initiate arbitration with respect to the matter submitted to mediation by filing a written demand for arbitration at any time following the initial mediation session or at any time following 45 days from the date of filing the written request for mediation whichever occurs first ("Earliest Initiation Date"). The mediation may continue after the commencement of arbitration if the Parties so desire.

9.6 At no time prior to the Earliest Initiation Date shall either side initiate an arbitration or litigation related to this agreement except to pursue a provisional remedy that is authorized by law or by JAMS rules or by agreement of the Parties. However, this limitation is inapplicable to a Party if the other Party refuses to comply with the requirements of Section 9.3 above.

9.7 All applicable statutes of limitation and defenses based upon the passage of time shall be tolled until 15 days after the Earliest Initiation Date. The Parties will take such action, if any, required to effectuate such tolling

## 10. GENERAL PROVISIONS

10.1 City Project Manager. The City shall designate with the approval of the Foundation, a qualified independent contractor to represent the City in connection the Project. Subject to the Foundation's approval of the City Project Manager and the terms and conditions of the City's contract with the City Project Manager, the Foundation will reimburse the City for the City Project Manager.

### 10.2 Records

#### 10.2.1 Architect

10.2.1.1 The City Project Manager shall promptly make available to the Foundation electronic copies of the plans, including draft plans (“Plans”) submitted to the City by the Project Architect and all information required to be made available by the Parties pursuant to this Agreement.

10.2.1.2 The City will include a provision in the contract between the City and the Architect that the Architect consents to the provisions of Section 9.2.1.1

10.2.2 Engineer’s Estimate. The City Project Manager shall promptly make available to the Foundation Representative an electronic copy of the Engineer’s Estimate.

10.2.3 Construction Contractor. The City Project Manager shall promptly make available to the Foundation Representative an electronic copy of the records submitted to the City by the Contractor for the construction of the Project.

10.3 Headings. The headings in this Agreement 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.

10.4 Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto with respect to the terms and conditions governing the Project and supersedes any and all prior proposals, understandings, communications, representations and agreements, whether oral or written, relating to the subject matter thereof.

10.5 Counterparts and Electronic Signatures. 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. This Agreement may also be executed and transmitted electronically and shall have the same force and effect as a signed original.

10.6 Authority. Any individual executing this Agreement 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.

10.7 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.

10.8 Assignment of Interest. The duties under this Agreement are not assignable, delegable, or transferable by the Foundation without the prior written consent of the City. The duties under this Agreement are not assignable, delegable, or transferable by the City without the prior written consent of the Foundation.

10.9 Laws. Foundation 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. 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. Venue for any legal action relating to this Agreement will be in Monterey County.

10.10 Public Communications. Public communications regarding or relating to the Project shall be reviewed and approved by the Parties in advance of their release.

10. 11. Relocation Costs

Project Costs shall include the cost for an alternate Library location during construction, if the Project Executive Committee makes a final decision that relocation of the Library is required during construction, the City's ability to provide relocation space and the cost associated relocation.

**SIGNATURES OF THE PARTIES APPEAR ON NEXT PAGE**

IN WITNESS WHEREOF, the Parties enter into this Agreement effective on the date signed by all Parties.

CITY OF CARMEL BY THE SEA

CARMEL PUBLIC LIBRARY FOUNDATION

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

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

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

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

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

ATTEST:

By: \_\_\_\_\_  
Nova Romero, MMC, City Clerk

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

APPROVED AS TO FORM:

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

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

By: \_\_\_\_\_  
Brian Call, Attorney for Foundation

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