



CITY OF CARMEL-BY-THE-SEA HARRISON MEMORIAL LIBRARY BOARD OF TRUSTEES

Trustees Marie -Clare Gorham, John Krisher, Susan
Murphy, Phil Pardue, and Mary Jo Williams

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

SPECIAL MEETING Thursday, March 20, 2025

9:00 AM

THIS MEETING WILL BE HELD IN PERSON AND VIA TELECONFERENCE. 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 watch the Youtube Live Stream at:

<https://www.youtube.com/@CityofCarmelbytheSea/streams>, or use the link below to view or listen to the meeting via Zoom teleconference:

<https://ci-carmel-ca-us.zoom.us/j/85323854399> Webinar ID: 853 2385 4399 Passcode: 568669 Dial in: 669-444-9171

HOW TO OFFER PUBLIC COMMENT: Public comment may be given in person at the meeting, 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 lsfenton@ci.carmel.ca.us Comments must be received 2 hours before the meeting in order to be provided to the legislative body. Comments received after that time and up to the beginning of the meeting will be made part of the record.

CALL TO ORDER AND ROLL CALL

PLEDGE OF ALLEGIANCE

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 Trustees. Matters not appearing on Trustees' agenda will not receive action at this meeting but may be referred to staff for a future meeting. Persons are not required to give their names, but it is helpful for speakers to state their names in order they may be identified in the minutes of the meeting.

ORDERS OF BUSINESS

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

1. Discuss Draft Agreement with Carmel Public Library Foundation Regarding Harrison

Memorial Library Centennial Restoration ("Project") and provide comments to City Council.

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 Board of Trustees regarding any item on this agenda, received after the posting of the agenda will be available in the Library and Community Activities Director's Office located at the Park Branch Library at the NE corner of Mission Street and Sixth Avenue during normal 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 HARRISON MEMORIAL LIBRARY BOARD Staff Report

March 20, 2025
ORDERS OF BUSINESS

TO: Harrison Memorial Library Board of Trustees

SUBMITTED BY: Brian Pierik, City Attorney

SUBJECT: Discuss Draft Agreement with Carmel Public Library Foundation Regarding Harrison Memorial Library Centennial Restoration ("Project") and provide comments to City Council.

RECOMMENDATION:

Discuss Draft Agreement with Carmel Public Library Foundation Regarding Harrison Memorial Library Centennial Restoration ("Project") and provide comments to City Council.

BACKGROUND/SUMMARY:

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.

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. CARMEL PUBLIC LIBRARY FOUNDATION

The Carmel-By-The-Sea 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 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).

The Foundation is currently proposing to fund the Harrison Memorial Library Centennial Restoration Project (“Project”). The Project is intended to provide seismic, accessibility, technology and systems upgrades for the Harrison Memorial Library. It is staff’s understanding that the estimated Project costs including Architect Services and Construction Costs will be in the range \$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. The Architect will be requested 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.

III. CITY COUNCIL ACTIONS

January 8, 2024: A Staff Report was presented to the Council with a proposed Resolution reaffirming the City’s public-private partnership with the Carmel Public Library Foundation. At that meeting, the Council adopted Resolution No. 2024-02 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 (Attachment 1).

July 8, 2024: A Staff Report was presented to the Council to receive and review the Request for Proposal for Architectural Services for the Harrison-Memorial Library. The City Council approved a Motion for Library Director Wright to 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 the Foundation outlining the Project funding obligations for Council approval.

August 6, 2024: A Staff Report was presented to the Council 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 Council approved a Motion to 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 Foundation will enter into an agreement with the City to secure funding for the Project once the architect is selected; and acknowledge that the Foundation has committed to funding \$250,000 towards the initial architectural services agreement.

August 8, 2024: Request for Proposals for Architectural Services For The Harrison Memorial Library Renovation Project (RFP) was issued by the City. 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.

February 4, 2025: A Staff Report was presented to the Council for discussion of a Draft Agreement presented by the Foundation regarding the Project. At that meeting, the Council gave direction regarding proposed revisions to the Draft Agreement to be discussed with the Foundation.

IV. DRAFT AGREEMENT REGARDING HARRISON MEMORIAL LIBRARY CENTENNIAL RESTORATION PROJECT

Since the City Council meeting on February 4, 2025, as directed by the City Council, there have been discussions with the Foundation regarding revisions to the Draft Agreement.

Attached is a revised Draft Agreement with the Foundation (Attachment 2). This Draft Agreement with the Foundation includes provisions regarding contract administration, approval processes, funding for the

services of the Architect, funding for the Construction Contractor and other terms.

This Draft Agreement addresses the issues that were present in the previous Draft Agreement that was presented to the Council at its meeting on February 4, 2025.

V. RECOMMENDATION

Discuss the proposed Draft Agreement between the City and the Foundation regarding the Project and provide comments to the City Council which can be conveyed by staff to the City Council for its meeting on April 1, 2025.

FISCAL IMPACT:

No direct fiscal impact for this action.

ATTACHMENTS:

Attachment 1 - Council Resolution 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.

Attachment 2 - Draft Agreement with Carmel-by-the-Sea Public Library Foundation

**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

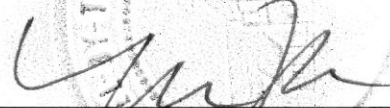
ABSTAIN: None

SIGNED:



Dave Potter, Mayor

ATTEST:



Nova Romero, MMC, City Clerk

March 13, 2025 DRAFT

**AGREEMENT BETWEEN THE CITY OF CARMEL-BY-THE-SEA
AND THE CARMEL-BY-THE-SEA PUBLIC LIBRARY FOUNDATION
REGARDING HARRISON MEMORIAL LIBRARY**

This Agreement between the City of Carmel-by-the-Sea and the Carmel-by-the-Sea 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-by-the-Sea 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 and the City affirms that the Project is a high priority for the City Council.

K. It is the intention of the Parties to cooperate in good faith throughout the course of the Project as partners dedicated to achieving the goals of the Project and to establish effective lines of communication in connection therewith.

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. RELATIONSHIP OF THE PARTIES AND APPROVAL RIGHTS

2.1 The City and the Foundation agree to act in good faith throughout the course of the Project as partners to achieve the goals of the Project, in accordance with the express intent of City Resolution No. 2024-002 as recited in Section 3, below.

2.2 The City and the Foundation agree to act in good faith throughout the course of the Project as partners to achieve the goals of the Project, in accordance with the express intent of City Resolution No. 2024-002 as recited in Section 3, below.

2.3 The Foundation shall create such committees as the Foundation deems necessary and appropriate to assist the Foundation and the City in fulfilling their obligations as set forth in Sections 2.1 and 2.2, above and as set forth in this Agreement (the "Foundation Committees"). The City shall establish an Ad Hoc Committee consisting of two members of the City Council to work with the Foundation Committees in order to achieve the obligations of the Parties as set forth in Sections 2.1 and 2.2, above.

2.4 The following matters shall be subject to approval by the City and the Foundation.

2.4.1 Project Design.

2.4.2 Changes in Project Design.

2.4.3 The Contract with Project Architect and any changes thereto.

2.4.4 The Contract with Construction Contractor for the Project and any changes thereto, including, without limitation, any change orders arising during the course of construction, the Contract Contingency as said term is defined in Section 6.1, below, and the Construction Contingency, as said term is defined in Section 6.8, below.

2.4.5 The Engineer's Estimate and the Engineer's Contract if the Engineer is directly contracted with the City pursuant to Section 4.8.4, below.

2.4.6 Notice Inviting Bids

2.4.7 Award of Contract for Construction (Lowest Responsible and Responsive Bidder).

2.4.8 Phases for Construction Work if found feasible by Architect.

2.4.9 The convening of community engagement meetings during the Phase One of the Architect's services described in Section 4.4.1, to obtain input from community stakeholders related to design development.

2.4.10 Cost Overruns.

2.4.11 Final design and final schematics.

2.4.12 Phase One Deliverables, Phase Two Deliverables and Phase Three Deliverables.

2.4.13 Planning and Permit applications and submittals to Community Planning and Building Department, the Historic Resources Board, the Planning Commission and the City Council.

2.4.14. Any modifications to City applications and submittals.

2.4.15 Communications and public relation protocols.

2.4.16 Donor recognition and naming rights.

2.4.17 The Project schedule for Architectural Services, Construction and achieving completion of the Project and any changes thereto.

2.4.18 Any additional approval rights granted to the Foundation in this Agreement that are not set forth in Sections 2.4.1 through 2.4.17, above.

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 the 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 specifications

and respond to questions from the Foundation Representative, City Project 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 as approved by the City and the Foundation.

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 Community Engagement and Schematics/Conceptual Design as approved by the Foundation and the City.

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 as approved by the Foundation and the City.

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. Phase Three services shall specifically include certification by the Project Architect that all progress payments issued by Construction Contractor are for completed work conforming to plans and specifications for the Project.

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 Design Professional Invoices.

4.8.1 The Foundation has already raised all or most of the anticipated cost of the Phase One deliverables and services. The Foundation will pay for Phase One

deliverables and services in accordance with the terms of the approved Design Professional Contract within 30 days of the City's submission of a Design Professional invoice to the Foundation Representative, accompanied by a certification by the City Finance Director that the invoice is due and payable in accordance with the approved Design Professional Contract (the "Approved Design Contract") and is in compliance with the payment procedures set forth therein.

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 Service. If the Project proceeds to Phase Two, the Foundation shall pay for Phase Two deliverables and services within 30 days of the City's submission of a Design Professional invoice to the Foundation Representative accompanied by a certification from the City Finance Director that the invoice is due and payable in accordance with the Approved Design Contract and is in compliance with the payment procedures set forth therein.

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 Upon completion of Phase Two services, 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 or other causes. 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 paid by the Foundation either (i) within 30 days of the City's submission of the Design Professional invoice to the Foundation accompanied by a certification by the City Finance Director that the invoice is due and payable in accordance with the Approved Design Contract and is in compliance with the payment procedures set forth therein, if the Engineer providing the Engineer's Estimate is contracted through the Project Architect, or, (ii) within 30 days of the City's submission of the Engineer's invoice to the Foundation Representative accompanied by a certification by the City Finance Director that the invoice is due and payable in accordance with the terms of the approved Engineer's Contract if the Engineer is engaged directly by the City and is in compliance with the payment procedures set forth therein.

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. The Foundation shall pay for Phase Three deliverables in accordance with the terms of the Approved Design Contract within 30 days of the City Finance Director's submission to the Foundation Representative of a Design Professional invoice accompanied by a certification from the City Finance Director that the invoice is due and payable in accordance with the Approved Design Contract and is in compliance with the payment procedures set forth therein.

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.

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 and the Contractor.

6. CONSTRUCTION COSTS

6.1 The costs for the construction of the Project shall be in the amount specified in the Construction Agreement between the City and the Contractor selected for the construction of the Project for the base amount ("Base Amount") and shall include a contingency for unforeseen or unexpected costs above the Base Amount ("Contract Contingency") as provided in the final construction Contract (the "Construction Agreement"). In no event shall the Contract Contingency exceed 15% of the Base Amount (the "Maximum Contingency Percentage").

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 and the Construction Agreement that will constitute a material part of the Notice Inviting Bids.

6.3 Prior to the City issuing a Notice Inviting Bids for the construction of the Project, the City shall obtain an acknowledgment from the Foundation that the Foundation has raised sufficient funds to pay the Base Amount as estimated in the Engineer's Estimate plus a Contingency Amount, as defined in Section 6.8, of 15%. 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 the Base Amount of each Construction Phase in order of the Construction Phases as set forth in the Engineer's Estimate plus a Contingency Amount, as defined in Section 6.8, of 15%. Funding for the Construction Costs shall be pursued by the Foundation on a best-efforts basis.

6.5 Upon obtaining the Foundation's acknowledgment(s) as set forth in Sections 6.3 and 6.4, 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 Construction Contract is awarded and a Construction Agreement is entered into between the City and the Contractor (the “Approved Construction Contract”), the process for payment of invoices of the Contractor shall be as follows:

6.7.1 The Foundation shall pay a progress payment to the Contractor for Construction Costs within 30 days of the City’s submission of a progress payment invoice to the Foundation Representative accompanied by a certification from the City Finance Director that the progress payment invoice is due and payable in accordance with the Approved Construction Contract and is in compliance with the payment procedures set forth therein, which certification shall be accompanied by the certification from the Project Architect that all Construction Costs covered by the project payment invoice are for completed work that has been performed in accordance with construction plans and specifications for the Project.

6.7.2 The Foundation Representative shall provide the City Finance Director with a monthly accounting of progress payments made pursuant to Section 6.7.1 above prior to end of the month for all invoices paid in the preceding month.

6.8 Funding Contingency Amount.

The Parties agree that the term Contingency Amount shall mean the sum of the Contract Contingency and the Construction Contingency. The Contingency Amount shall not exceed 15% of the Base Amount. The term Construction Contingency shall mean the difference between the Maximum Contingency Percentage (15% of the Base Amount) and the Contract Contingency, but not less than zero. By way of illustration, if the Contract Contingency is 10%, then the Construction Contingency will be 5% ($15\% - 10\% = 5\%$). By way of further illustration, if the Contract Contingency is 0%, then the Construction Contingency will be 15%. The Foundation shall acknowledge, in writing, that it has raised sufficient funds to pay the Contingency Amount if it becomes due and payable to the Contractor pursuant to the Approved Construction Contract.

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 upon 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 11.1 of this Agreement) to the Foundation Representative (designated pursuant to Section 5 of this Agreement) by electronic mail and entitled “Notice of Intended Termination” and state the grounds for termination and provide any documentation in support of the termination. The Foundation shall have 30 days within which to cure the breach as provided for in the Notice of Intended Termination (the “Cure Period”).

7.1.3 The termination date shall occur on the first business day after the Cure Period, if the breach as provided for in the Notice of Intended Termination has not been cured during the Cure Period (“Termination Date”).

7.1.4 If the City terminates this Agreement, then the City agrees to release the Foundation for any payment to the Architect, Contractor and/or City Project Manager which has not been paid or is not payable to the Architect, Contractor and/or City Project Manager in accordance provisions and procedures as set forth herein.

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 upon 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 11.1 of this Agreement) by electronic mail and entitled "Notice of Intended Termination" and state the grounds for termination and provide any documentation in support of the termination. The City shall have 30 days within which to cure the breach as provided for in the Notice of Intended Termination (the "Cure Period").

7.2.3 The termination date shall occur on the first business day after the Cure Period, if the breach as provided for in the Notice of Intended Termination has not been cured during the Cure Period ("Termination Date").

7.2.4 If the Foundation terminates the Agreement as provided herein, then the City agrees to release the Foundation for any payment to the Architect, Contractor and/or City Project Manager which has not been paid, or is not payable to the Architect, Contractor and/or City Project Manager in accordance provisions and procedures set forth herein.

8. INDEMNITY

8.1 The City shall indemnify, defend and hold harmless the Foundation and the 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. The City shall further indemnify, defend and hold harmless the Foundation and the Foundation's Affiliates from any Claims with respect to, or arising in connection with any third-party Claims relating to the Project; provided, however, no such indemnity shall apply in connection with the Foundation's failure to pay the Project Architect or the Contractor in accordance with the Foundation's obligations to make such payments as provided for herein.

8.2 The Foundation shall indemnify, defend and hold harmless the City and the 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 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. LIMITATION ON FOUNDATION LIABILITY.

Notwithstanding any other provision of this Agreement, in no event shall the City have recourse to any assets of the Foundation above the amount of funds which the Foundation has acknowledged that the Foundation has raised for the specific purposes described in Recital G to this Agreement.

11. GENERAL PROVISIONS

11.1 City Project Manager. The City shall designate, with the approval of the Foundation, a qualified independent contractor to represent the City in connection with 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.

11.2 Records

11.2.1 Architect

11.2.1.1 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.

11.2.1.2 The City will include a provision in the contract between the City and the Architect that the Architect consents to the provisions of Section 11.2.1.1.

11.2.2 Engineer's Estimate. The City Project Manager shall promptly make available to the Foundation Representative an electronic copy of the Engineer's Estimate.

11.2.3 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.

11.3 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.

11.4 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.

11.5 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.

11.6 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.

11.7 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.

11.8 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.

11.9 Laws. The 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, including compliance with City design, permit and building approvals. To the extent applicable, the City shall pay all City fees and charges associated with the Project, including, without limitation, Planning and Permit applications and submittals to and approvals by the Community Planning and Building Department, the Historic Resources Board, the Planning Commission and the City Council. 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.

11.10 Public Communications. Public communications regarding or relating to the Project shall be reviewed and approved by the Parties in advance of their release.

11.11. Relocation Cost. Project Costs shall include relocation costs for an alternate Library location during construction, if the Parties make a final decision that relocation of the Library is required during construction.

IN WITNESS WHEREOF, the Parties enter into this Agreement effective on the date signed by all Parties.

CITY OF CARMEL-BY-THE-SEA

CARMEL-BY-THE SEA PUBLIC LIBRARY
FOUNDATION

Dale Byrne, Mayor

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: _____

Exhibit “A”
Aesthetics & Design Guidelines

Aesthetics & Design Guidelines

“The universe – and this world – is a communion of subjects, not merely a collection of objects.”
~ *Bernard Maybeck*

Harrison Memorial Library, designed by Bernard Maybeck, opened in 1928, and is an irreplaceable, iconic community asset for Carmel. The nearly 100-year-old building is in vital need of restoration and upgrades that will significantly enhance the public’s experience—deferred maintenance, accessibility, replacement of deteriorated and obsolete systems including lighting inside and out and technology and updating of programmatic space layouts to meet user needs.

Carmel’s main public library is of great historical significance, an iconic building at the heart of a highly distinctive community with extraordinary architectural history and unique artistic and literary traditions. Through the Centennial Restoration, Harrison Memorial Library will itself become guardian of those cultural traditions once the archive of books, manuscripts, photographs, drawings and other historic materials that document Carmel’s values and traditions are relocated from the Park Branch. Harrison Memorial Library has a special responsibility to set the highest standards in its own building restoration project and further public understanding and appreciation of Carmel’s unique community character.

The Centennial restoration of Harrison Memorial Library will observe the following guidelines and principles, beginning with the architect selection process:

- The best design architect will be identified and selected. The architect will be a Californian.
- The same standard of excellence applies to the Library Specialist Consultant.
- As was the case when the library was originally constructed, the restoration design, work, materials and finishes will be of a standard not usually seen in municipal buildings.
- The design architect will have demonstrated great experience in similar restoration projects. Because of the special residential qualities of Carmel, and the domestic feel of the Harrison Library building, the architect’s professional experience will include restoration of important California homes built in the first half of the 20th century.
- There will be a universal, single standard regarding both interior and exterior spaces. The interior restoration will restore its original beauty through refurbishment and at the same time gain increased functionality.
- The project will increase public access and usage and appreciation of this important architectural treasure.
- There will be enhanced library user movement within the building.

- Requirements of both Public and Scholarly users will be served.
- The facility will be made fully ADA compliant.
- The natural setting around the Library will be enhanced.
- Digital/technological capabilities for patrons will be state-of-the-art.