

AGREEMENT FOR JAIL SERVICES

City of Monterey and City of Carmel

THIS AGREEMENT for Jail Services is made and entered into this ____ day of _____, 2016, by and between the City of Monterey (hereinafter "Monterey"), a municipal corporation, as the service provider, and the City of Carmel-by-the-Sea, a municipal corporation (hereinafter "Carmel").

WHEREAS, Carmel desires to utilize the City of Monterey for jail services as outlined in detail in the attached **Exhibit A**; and

WHEREAS, Monterey is willing and qualified to provide such services to Carmel upon the terms and conditions set forth herein; and

WHEREAS, California Government Code section 54981 provides the City Councils of Monterey and Carmel with the authority to contract for performance of municipal services by the former within the territory of the latter; and

WHEREAS, the City of Monterey authorized this agreement on April 19, 2016 by the passage of Resolution No. 16-046.

NOW, THEREFORE, in consideration of the recitals and the mutual obligations of the parties as herein expressed, Monterey and Carmel agree as follows:

1. **SERVICES TO BE PROVIDED.** The City of Carmel hereby engages Monterey to perform, and Monterey hereby agrees to perform, the services described in Exhibit A in conformity with the terms of this Agreement.

1.01. **FINAL DECISION AUTHORITY.** Carmel's Police Chief shall have final decision authority over the results of the services performed on behalf of Carmel, and all work performed by Monterey shall be to the satisfaction of Carmel's Police Chief. In instances where a dispute arises over the Police Chief's determination, Carmel's City Manager shall render a final decision.

1.02. **DUTIES OF MONTEREY AND CARMEL.** See **Exhibit A**.

1.03. **EXTRA WORK.** Monterey shall not perform extra work without written authorization from Carmel's City Manager or designee. Any extra work so authorized shall be within the general scope of work set forth in this Agreement.

2. **PAYMENTS CONDITIONS.** Carmel shall pay Monterey in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this agreement.

3. **TERM OF AGREEMENT.**

3.01. **INITIAL TERM.** The term of this Agreement shall be from June 1, 2016 through May 31, 2017 unless sooner terminated pursuant to the terms set forth in section 8 herein.

3.02. **EXTENSIONS.** This Agreement may be extended by consecutive one (1) year periods, or for shorter extension periods as agreed to by the parties, by written mutual agreement of both parties' City Managers specifying the renewal and end dates. At the time of any extension, or at any other time as may be necessary during the term of the Agreement, the labor rates schedule (**Exhibit A**) may be adjusted by written agreement between the City Managers of each party. Should either party decide not to extend the Agreement beyond the initial one (1) year or subsequent one (1) year terms, notice of such decision shall be provided to the other party no later than 30 days before the expiration date of the Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement.

Exhibit A Scope of Services/Payment Provisions

5. **PERFORMANCE STANDARDS.**

5.01. Monterey's employees performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed (if applicable) to perform the work and deliver the services required under this Agreement, are its own employees, and that they are not employees of Carmel.

5.02. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. Monterey shall furnish all materials, equipment, and personnel necessary to carry out the specific services set forth in **Exhibit A** herein, except as otherwise specified in this Agreement. Monterey shall not use Carmel's premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5.04. Monterey shall perform all services set forth in **Exhibit A** in a timely manner consistent with the time Monterey would perform similar services within its own jurisdiction whenever possible; however, Monterey projects shall be given priority over Carmel's projects if scheduling conflicts arise and Monterey shall not be liable for any delays in performing jail services for Carmel if such delays are caused by such scheduling conflicts.

6. **PAYMENT CONDITIONS.**

6.01. Payment for Monterey's services under this Agreement shall be made by Carmel upon the monthly submission to Carmel by Monterey of an invoice for services rendered by Monterey in the preceding month. Payment shall be made within thirty (30) days after receipt of such invoice. An additional two percent (2%) will be paid as a late payment carrying charge for each thirty days of delinquency thereafter. Any disputed invoices shall be brought to Monterey's attention within ten (10) days of receipt or invoices will be deemed acceptable.

7. **TERMINATION.**

7.01. During the term of this Agreement, either party may terminate the Agreement for any reason by giving written notice of termination to the other party at least sixty (60) days prior to the effective date of termination. In the event of an adverse claim or litigation involving either party and related to the services of this Agreement, this Agreement may be terminated by either party giving written notice at least thirty (30) days prior to the effective date of termination. Any termination notice shall set forth the effective date of termination.

7.03. Monterey may cancel and terminate this Agreement for good cause effective immediately upon written notice to Carmel. "Good cause" includes but is not limited to failure of Carmel to pay Monterey at the time and in the manner provided under this Agreement or other failure of Carmel to fulfill its responsibilities set forth in **Exhibit A** herein. Termination of this Agreement pursuant to this section shall not be construed to limit Monterey's right to obtain, by any means available at law, the amount Carmel still owes Monterey.

8. **IMMUNITY.** As Carmel's authorized representative, Monterey shall be recognized as having rights to any immunities it is entitled to. In no event shall any duties contained in **Exhibit A**, or otherwise herein, negate any legal protections or immunities available to the parties under local, state or federal law. Monterey's liability, including, without limitation that referenced in Section 10 herein shall be limited to an amount not to exceed the fee earned for each project.

9. **INDEMNIFICATION. EXCEPT AS MAY OTHERWISE BE SPECIFICALLY PROVIDED FOR IN THIS AGREEMENT, AND IN LIEU OF AND NOTWITHSTANDING THE PRO RATA RISK ALLOCATION WHICH MIGHT OTHERWISE BE IMPOSED BETWEEN THE PARTIES TO THIS AGREEMENT PURSUANT TO GOVERNMENT CODE SECTION 895.6, THE PARTIES AGREE THAT EACH PARTY SHALL BE RESPONSIBLE, FOR THE NEGLIGENT ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF ITS OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES, AND THAT NEITHER PARTY SHALL BE RESPONSIBLE FOR THE NEGLIGENT ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF THE OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES OF THE OTHER. EACH PARTY SHALL, TO THE EXTENT AUTHORIZED BY LAW, BE EXCLUSIVELY LIABLE FOR ANY AND ALL DAMAGES SUSTAINED AS THE RESULT OF THE NEGLIGENT ACTS, OMISSIONS, OR WILLFUL MISCONDUCT OF ITS OFFICERS, AGENTS, EMPLOYEES OR REPRESENTATIVES. EACH PARTY THEREFORE AGREES TO DEFEND, HOLD HARMLESS, AND INDEMNIFY THE OTHER PARTIES AGAINST ANY AND ALL CLAIMS, DEMANDS, SUITS, JUDGMENTS, EXPENSES, AND COSTS OF EVERY KIND, INSOFAR AS IT MAY LEGALLY DO SO, ON ACCOUNT OF ANY DAMAGE OR LOSS ARISING OUT OF THAT AGENCY, ITS OFFICERS, AGENTS, EMPLOYEES, AND REPRESENTATIVES. EACH PARTY IS RESPONSIBLE FOR ITS OWN WORKERS' COMPENSATION CLAIMS AND HEREBY WAIVES WORKERS' COMPENSATION RIGHTS OF SUBROGATION AGAINST THE OTHER PARTY.**

10. **INSURANCE.**

9.01 Each party shall maintain in effect, at its own cost and expense, the following insurance coverage provided either through a bona fide program of self-insurance, commercial insurance policies, or any combination thereof as follows:

- a. Commercial General Liability or Public Liability with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Each party shall prove that it is self insured to the limits specified or have its insurance policy endorsed to name the other party additionally insured.
- b. Auto Liability including owned, leased, non-owned, and hired automobiles, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- c. If a party employs others in the performance of this Agreement, that party shall maintain Workers' Compensation in accordance with California Labor Code section 3700 with a minimum of \$1,000,000 per occurrence for employer's liability, for the duration of time that such workers are employed.
- d. Each party shall maintain in effect throughout the term of this agreement all risk property insurance, excluding earthquake and flood, on all permanent property of an insurable nature in an amount sufficient to cover at least 100% of the replacement costs of said property.

9.02 All insurance required by this Agreement shall:

- a. Be placed (1) with companies admitted to transact insurance business in the State of California and with a current A.M. Best rating of no less than A:VI or with carriers with a current A.M. Best rating of no less than A:VII; or (2) disclosed self-insurance with limits acceptable to the other party;
- b. Provide that each party's insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by the other party and that the insurance of the other party shall not be called upon to contribute to a loss covered by a party's insurance; and
- c. Subsequent to execution of this Agreement, each party shall file certificates of insurance with the other party evidencing that the required insurance is in effect.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, Monterey, and its subcontractors, 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 (over 40), or sexual orientation, either in Monterey's employment practices or in the furnishing of services to recipients. Monterey shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. Monterey and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. **INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, Monterey is at all times acting and performing as an independent

contractor and not as an employee of Carmel. No offer or obligation of permanent employment with Carmel or particular Carmel department or agency is intended in any manner, and Monterey shall not become entitled by virtue of this Agreement to receive from Carmel any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits.

13. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to Carmel's and Monterey's contract administrators at the addresses listed below:

FOR Carmel-by-the-Sea: Chief of Police City of Carmel-by-the-Sea	FOR MONTEREY: Karen Faurot Administrative Analyst
P.O. Box 600 Carmel-by-the-Sea, California 93921	351 Madison Street Monterey, CA 93940
Ph: 831-624-6403	Ph. (831) 646-3827

14. **MISCELLANEOUS PROVISIONS.**

14.01. Conflict of Interest. Monterey represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

14.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by Carmel and Monterey.

14.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by Carmel and Monterey. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

14.04. Contractor. The term "Monterey" as used in this Agreement includes Monterey's officers, agents, and employees acting on Monterey's behalf in the performance of this Agreement.

14.05. Disputes. Monterey shall continue to perform under this Agreement during any dispute. Monterey and Carmel hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

14.06. Assignment and Subcontracting. Monterey shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of Carmel.

None of the services covered by this Agreement shall be subcontracted without the prior written approval of Carmel. Notwithstanding any such subcontract, Monterey shall continue to be liable for the performance of all requirements of this Agreement.

14.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of Carmel and Monterey under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

14.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

14.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

14.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

14.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

13.12. Non-exclusive Agreement. This Agreement is non-exclusive and both Carmel and Monterey expressly reserve the right to contract with other entities for the same or similar services.

13.13. Construction of Agreement. Carmel and Monterey agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

13.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

13.15. Authority. Any individual executing this Agreement on behalf of Carmel or Monterey 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.

13.16. Integration. This Agreement, including the exhibits and any documents incorporated by reference, represent the entire Agreement between Carmel and Monterey with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between Carmel and Monterey as of the effective date of this Agreement, which is the date that Carmel signs the Agreement.

13.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

13.18 Severability. If any of the provisions contained in the 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 this 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.

IN WITNESS WHEREOF, Carmel and Monterey have executed this Agreement as of the day and year written on the first page herein.

CITY OF MONTEREY

CITY OF CARMEL-BY-THE-SEA

By: _____
City Manager

By: _____
City Manager

EXHIBIT A

SCOPE OF SERVICES/PAYMENT PROVISIONS

CITY OF CARMEL-BY-THE-SEA JAIL SERVICES

I. City of Monterey to Provide the Following:

- A. Monterey will provide jail facilities including all necessary personnel for the purposes of holding prisoners for short periods of time in conjunction with the arrest of such prisoners for the crimes of: 647(f) PC – Drunk in Public, 11550 H&S – Under the Influence of a Controlled Substance, and 23152(a) & (b) CVC – Driving Under the Influence of Alcohol and/or Drugs. Said services shall be provided on a seven-day per week, 24-hour a day basis at such times as the same may be reasonably required by CARMEL. In the event that the demands of CARMEL exceed the capacity of the jail or would displace Monterey prisoners, Monterey shall notify CARMEL to make other arrangements for incarceration.

In addition, Monterey will accept CARMEL prisoners for the purpose of processing (booking) “for immediate release.” This process is defined as receiving prisoners that are to be immediately released via criminal citation or bail after booking into the Monterey jail.

- B. Monterey will feed and care for said prisoners in the same manner and fashion as any and all other prisoners incarcerated in the jail facility of Monterey, except as otherwise provided herein.
- C. Monterey shall submit quarterly billings to CARMEL showing the number of prisoners incarcerated pursuant to the Agreement and the amount due and owing hereunder.

II. City of Carmel-by-the-Sea to Provide the Following:

- A. CARMEL agrees that all necessary paperwork to facilitate the prisoner release will be completed and provided to Monterey booking officers prior to leaving the jail facility. The method of release shall be either 849(b)(2) PC – Detention Only or via criminal citation provided by CARMEL.
- B. CARMEL agrees to be responsible for the transportation of its prisoners to another jail facility, if required. Monterey will be under no obligation to transport CARMEL prisoners under any circumstance.
- C. CARMEL is responsible for medical care or treatment of any type or description which is, or may be, required by prisoners incarcerated at CARMEL’s request, including medical expenses incurred under Section 4011 of the CA Penal Code. CARMEL shall be responsible for, and/or will arrange suitable and timely transportation of any prisoner requiring care to an appropriate medical facility. CARMEL shall be responsible for the reasonable cost of emergency medical services as determined by Monterey.

- D. CARMEL shall compensate Monterey, at the rate of \$145.00 per day for each prisoner incarcerated in Monterey's facility pursuant to this Agreement. Bills submitted by Monterey shall be due and payable within 30 days after receipt thereof, and failure to pay within that time shall give cause for termination of this Agreement without further notice.

Note: Rates for services set forth in Sections I and II above are subject to periodic review and adjustment, upon the written mutual agreement of both cities' City Managers.