



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

June 6, 2023
ORDERS OF BUSINESS

TO:	Honorable Mayor and City Council Members
SUBMITTED BY:	Robert Harary, P.E, Director of Public Works
APPROVED BY:	Chip Rerig, City Administrator
SUBJECT:	Resolution 2023-063, authorizing the City Administrator to execute a Professional Service Agreement with Hammond+Playle Architects, LLP (Indigo), for preparation of a functional program report, conceptual drawings, and cost estimates for a not-to-exceed fee, including contingency, of \$300,000 for the Police Building Project -

RECOMMENDATION:

Adopt Resolution 2023-063, authorizing the City Administrator to execute a Professional Service Agreement with Hammond+Playle Architects, LLP (Indigo), for preparation of a functional program report, conceptual drawings, and cost estimates for a not-to-exceed fee, including contingency, of \$300,000 for the Police Building Project.

This recommendation implements the Council-appointed Ad Hoc Committee recommendations that were approved by the City Council at the February 7, 2023 meeting.

BACKGROUND/SUMMARY:

In February 2023, the City Council directed staff to advertise a Request for Proposal (RFP) for an architectural firm with a strong background in the design of Police Station remodels. The City received four (4) proposals. The proposals were independently reviewed and ranked by a selection committee that consisted of the Public Works Director, Community Planning & Building Director, Acting Police Chief, and the 4Leaf contract Project Manager. The evaluation resulted in the following rankings:

Rank	Firm
1	Hammond+Playle Architects, LLP (Indigo)
2	LPA, Inc.
3	COAR Design Group
4	Marjang Architecture

Indigo has completed the design of several police station remodels in Dublin, Fairfield, Yuba City, and Stockton, as well as new facilities in Woodland and Vacaville. They have assembled a team of technical subconsultants to include Studio Schicketanz, a Carmel architectural firm for exterior design, Miyamoto

International for structural engineering, Peters Engineering for electrical and mechanical engineering, Ifland Engineers for civil engineering, and Guidepost Solutions for security design. Additional specialty firms that may be needed include FACS, Inc. for hazardous materials testing and BAE for economics and grant research.

Staff met with Indigo several times to refine their proposed scope of work and negotiate their fees and schedule for performance. The resultant Professional Services Agreement is provided in Attachment #2. The Project Team also met with the Ad Hoc Committee to review the selection process, and the proposed scope of work, fees, and schedule included in the Agreement.

The proposed functional program report will assist the City Council in further decision making on the best way forward for the project.

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Functional Program Report:

Indigo's work will be structured to first define the most essential maintenance and improvements that are necessary to bring the Public Safety/Public Works building into a safe condition required for any occupancy/use. An example of essential maintenance would include evaluating the roof structure and preparing a cost estimate to replace the roof membrane so the building does not continue to leak and expose structural members to long term moisture. Building security and lighting may also be recommended.

The second level of work will be to define those improvements that should be made in the Police Department to meet minimum POST and IACP standards. Examples include a separate ventilation system in the evidence storage room and an appropriately-designed interview room.

The third component will be to identify improvements necessary to meet Building Codes that are required, such as Americans with Disabilities Act upgrades or installation of a building-wide fire suppression system, as well as code upgrades that may be desirable, such as seismic strengthening, for longer term occupancy of the building.

The fourth component will be to define those improvements that should be made to provide the Police Department with a professional work environment that is responsive to modern Police operational needs. For example, a quality working environment for sworn and non-sworn staff would provide the public with an appropriate public safety training (CERT), meeting room, proper locker rooms, and minimal Emergency Operation Center (EOC) facilities.

Because of the high level of interrelatedness between the Police and Public Works portions of the building, and the common utility systems and certain structural components, some work will be required in the Public Works portion of the building. An example would be to replace the antiquated boiler.

Other work on the Public Works side of the building may be required to ensure a safe working environment for those employees, such as repairs to near-failing roll-up doors. Indigo will also identify any added work in the Public Works environment that rationally should be done in concert with the required construction work in the Police areas for efficiency and cost-effectiveness. Note that some failing electrical components were so deteriorated that they have already been replaced on an emergency basis.

In addition, there is a high probability that the renovation work required in the Police segment of the building will necessitate vacating a portion or the whole Police wing. Indigo will provide an initial plan and cost estimate for this "swing space" development.

Scope of Services:

Indigo will perform the following tasks and services in which will be compiled into the functional program report:

- Progress Meetings with the Project Team
- Interviews with key Police and Public Works staff
- Building condition assessment and documentation of existing conditions including architectural, electrical, mechanical, civil, accessibility, security, telecom, and related issues
- Structural evaluation for meeting essential facility requirements, including consideration for constructing a second floor on plaza over the garage
- Identification of essential maintenance and safety repairs
- Identification of Police functional improvements
- Identification of required Code improvements
- Identification of professional work environment improvements
- Budget level cost estimates and a useful project life estimate for each segment of the work
- Develop schematic designs for building renovations
- Develop a budget level estimate for a new Police building for an order of magnitude comparison. The estimate will not include costs for site acquisition or site development.
- Provide a draft functional program report for City review and comment
- Present findings to City Commission(s) and Council
- Provide final report

Fee and Schedule:

The negotiated not-to-exceed base fee of \$252,800 is reasonable considering the wide range of technical experts involved in the project and the heavily-deteriorated condition of the building.

During the investigative process, Indigo or the Project Team may discover additional building needs that have not been highlighted in the above discussion. Therefore, a contingency of \$47,200 (18.6%) is also recommended so that the project can proceed expeditiously if such unanticipated, but potential, supplemental services are warranted. The total not-to-exceed fee for this Agreement is \$300,000.

Development of the functional report, conceptual drawings, and cost estimates will be compiled into a comprehensive draft report. Once the report is prepared, the consultant and staff will present the findings and recommendations to the Planning Commission, Ad Hoc Committee, and City Council. These presentations are scheduled in the December 2023 – January 2024 timeframe. Based on feedback received, the consultant will complete and submit the Final Report.

Upon the completion of this Phase 1 investigation and report, staff will return to the City Council with a set of Phase 2 project options and recommendations. After receiving City Council guidance, staff will negotiate with Indigo, or potentially another firm, to develop detailed design, bidding, and construction documents necessary to implement the City Council policy direction.

FISCAL IMPACT:

This project is a component of the Police Renovation Project previously authorized and appropriated by the City Council as part of the Capital Improvement Program (CIP).

Council appropriated \$2.0 million for this project in Fiscal Year 2021/22, plus an additional \$1.3 million in Fiscal Year 2022/23, for a total of \$3.3 million. A very small percentage of these funds has been expended to date for electrical safety repairs, roof repairs, and for contracted project management services. As noted

at the April 5, 2023 CIP Workshop and May 2nd CIP review, the remaining balance of these funds will be rolled over into Fiscal Year 2023/24.

Sufficient funds to award this Professional Services Agreement to Indigo are available in capital fund account #301-311-00-43008.

PRIOR CITY COUNCIL ACTION:

As described above, this project has gone through many revisions over the years. Currently it is an approved and financed project in the CIP and is considered one of the City Council's highest priorities.

ATTACHMENTS:

Attachment 1) Resolution 2023-063

Attachment 2) Professional Services Agreement with Hammond+Playle Architects

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

RESOLUTION NO. 2023-0##

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 HAMMOND+PLAYLE ARCHITECTS, LLP (INDIGO) FOR PREPARATION OF A FUNCTIONAL PROGRAM REPORT, CONCEPTUAL DRAWINGS, AND COST ESTIMATES FOR A NOT-TO-EXCEED FEE, INCLUDING CONTINGENCY, OF \$300,000 FOR THE POLICE BUILDING PROJECT

WHEREAS, the Police/Public Works building was constructed in 1967; and

WHEREAS, this facility now requires essential maintenance repairs, building code upgrades, and modernization to accommodate current and future police functionality; and

WHEREAS, in February 2023, Council directed staff to issue a Request for Proposal to retain an architectural firm with a strong background in police station remodels to prepare a detailed functional program report and other services for the building; and

WHEREAS, four proposals were received and independently ranked by a selection committee, and it was determined that Hammond+Playle Architects (Indigo) was the best qualified firm for this project; and

WHEREAS, the scope of services, fees, and schedule were extensively negotiated with Indigo, and it was agreed upon to complete the functional program report, conceptual drawings, and cost estimates within approximately eight months for a base fee of \$252,800; and

WHEREAS, a contingency of \$47,200 is recommended so that the project can proceed expeditiously if unanticipated, but potential, supplemental services are warranted; and

WHEREAS, Council appropriated \$2.0 million for this project in Fiscal Year 2021/22, plus an additional \$1.3 million in Fiscal Year 2022/23, sufficient to award this Professional Services Agreement.

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

Authorize the City Administrator to execute a Professional Services Agreement with Hammond+Playle Architect, LLP (Indigo) to prepare a functional program report, conceptual drawings, and cost estimates for a not-to-exceed fee, including contingency, of \$300,000 for the Police Building Project.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 6th day of June 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

APPROVED:

ATTEST:

Dave Potter
Mayor

Nova Romero, MMC
City Clerk

PROFESSIONAL SERVICES AGREEMENT
for Facility Condition Evaluation and Architectural and Engineering Services for the
Police Department/Public Works Building Project
Agreement #PWD-IND-23-24

Attachment 2

THIS AGREEMENT is executed this ___ day of June, 2023, by and between the City of Carmel-By-The-Sea, a municipal corporation, (hereinafter "City"), and Indigo/Hammond+Playle Architects, LLP, (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: Preparation of a functional program report, concept drawings, and budget level cost estimates for repairs and improvements to the Carmel Police Building. 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 \$24,999 require City Council approval to be valid.
- ii. The City may order changes to the Scope of Services, consisting of additions, deletions, or other revisions, and the compensation to be paid Consultant will be adjusted accordingly. All such changes must be authorized in writing, and executed by Consultant and City. The cost or credit to City resulting from changes in the services will be determined by the written agreement between the parties. However, any increase in compensation beyond the compensation limit amount approved by the City Council must be authorized in advance by the City Council and any service provided by Consultant in the absence of such approval are at Consultant's sole risk.
- iii. Consultant will not be compensated for any services rendered in connection with its performance of this Agreement that are in addition to or outside of those set forth in the Scope of Services or otherwise required by this Agreement, unless such additional services are authorized in advance and in writing by City.
- iv. If Consultant believes that additional services are needed to complete the Scope of Services, Consultant will provide the City Administrator with written notification describing the proposed additional services, the reasons for such services, and a detailed proposal regarding cost.

C. Familiarity with Services and Site.

- i. By executing this Agreement, Consultant represents that Consultant:
 - a. has thoroughly investigated and considered the Scope of Services to be performed;
 - b. has carefully considered how the services should be performed;
 - c. understands the facilities, difficulties, and restrictions attending performance of the services under this Agreement; and

d. possesses all licenses required under local, state or federal law to perform the services contemplated by this Agreement, and will maintain all required licenses during the performance of this Agreement. Attachment 2

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"), for a fee of Two Hundred Fifty-Two Thousand Eight Hundred Dollars (\$252,800). Supplemental Services, with a budget of Forty-Seven Thousand Two Hundred Dollars (\$47,200) may be completed with prior written authorization by the City. The total compensation of Three Hundred Thousand Dollars (\$300,000) 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 (16th) 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.

AGREEMENT TERM

- G. **Term.** The work under this Agreement will commence by June 15, 2023 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 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.

- H. **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.
- I. **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.
- J. **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.

3. 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.

4. **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: Robert M. Harary, P.E.
 Title: Director of Public Works
 Address: P.O. Box CC, Carmel-by-the-Sea, CA 93921
 Telephone: 831-620-2021
 Email: rharary@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: Jonathan Hammond
 Title: Principal & Partner
 Company: Indigo/Hammond + Playle Architects, LLP
 Address: 909 Fifth Street, Davis CA 95616
 Telephone: (530) 750-0756
 Email: jhammond@indigoarch.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.

5. INDEMNIFICATION

Consultant hereby agrees to the following indemnification clause:

To the fullest extent permitted by law (including, without limitation, California Civil Code Sections 2782 and 2782.6), Consultant will defend (with legal counsel reasonably acceptable to the City), indemnify and hold harmless the City and its officers, designated agents, departments, officials, representatives and employees (collectively "Indemnitees") from and against claims, loss, cost, damage, injury expense and liability (including incidental and consequential damages, Court costs, reasonable attorneys' fees as may be determined by the Court, litigation expenses and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation) to the extent they arise out of, pertain to, or relate to, the negligence, recklessness, or willful misconduct of Consultant, any subconsultant or subcontractor, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and indemnify any Indemnitee will not apply to the extent that such Liabilities are caused in part by the active negligence or willful misconduct of such Indemnitee.

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

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

6. INSURANCE

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

- A. **Commercial General Liability Insurance** including but not limited to premises, personal injuries, bodily injuries, property damage, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- B. **Professional Liability Insurance** with limits of not less than \$1,000,000 per occurrence or claim and \$2,000,000 in the aggregate. Consultant will have a policy for professional liability coverage that provides coverage on an occurrence basis or obtain extended reporting (tail) coverage (with the same liability limits) for at least three years following the City's acceptance of the work.

- C. Automobile Liability Insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing Services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.
- D. Workers' Compensation Insurance. If Consultant employs others in the performance of this Agreement, Consultant must maintain Workers' Compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence.
- E. Other Insurance Requirements:
 - i. All insurance required under this Agreement must be written by an insurance company either:
 - a. admitted to do business in California with a current A.M. Best rating of no less than A:VI; or
 - b. an insurance company with a current A.M. Best rating of no less than A:VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.
 - ii. Each insurance policy required by this Agreement may not be canceled, except with prior written notice to the City.
 - iii. All liability and auto policies must:
 - a. Provide an endorsement naming the City of Carmel-by-the-Sea, its officers, officials, employees, and volunteers as additional insureds. General liability coverage can be provided in the form of an endorsement to the Consultant's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 23 37 forms if later revisions used).
 - b. Provide that such Consultant's insurance is primary as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City 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. Attachment 2

- 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.

7. PERFORMANCE STANDARDS

- A. Consultant warrants that Consultant and Consultant’s agents, employees, and subconsultants performing Services under this Agreement are specially trained, experienced, and competent and have the degree of specialized expertise contemplated within California Government Code Section 37103, and further, are appropriately licensed to perform the work and deliver the Services required under this Agreement.
- B. Consultant, its agents, employees, and subconsultants must perform all Services in a safe and skillful manner consistent with the usual and customary standards of care, diligence and skill ordinarily exercised by professional consultants in similar fields in accordance with sound professional practices. All work product of Consultant must comply with all applicable laws, rules, regulations, ordinances and codes. Consultant also warrants that it is familiar with all laws that may affect its performance of this Agreement and will advise City of any changes in any laws that may affect Consultant’s performance of this Agreement. All Services performed under this Agreement that are required by law to be performed or supervised by licensed personnel must be performed in accordance with such licensing requirements.
- C. Consultant must furnish, at its own expense, all materials, equipment and personnel necessary to carry out the terms of this Agreement. Consultant may not use the City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
- D. Consultant agrees to perform all work under this Agreement to the satisfaction of City and as specified herein. The City’s Project Representative or his or her designee will evaluate the work. If the quality of work is not satisfactory, City in its discretion may meet with Consultant to review the quality of work and resolve the matters of concern, and may require Consultant to repeat the work at no additional fee until it is satisfactory.

8. 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.

9. 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.

10. 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. Attachment 2

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.

11. 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.

12. 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. Attachment 2
- 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.

13. 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; Attachment 2
- ii. Fails to supply sufficient, properly skilled workers or proper workmanship, products, material, tools and equipment to perform the Services;
- iii. Fails to observe or comply with all laws, ordinances, including all requirements of governmental or quasi-governmental authorities, including federal, state, and local government enactments, bylaws, and other regulations now or, following the date of this Agreement, in force that pertain to;
- iv. Fails to observe or comply with the City's reasonable instructions;
- v. Breaches the Conflict of Interest provisions of this Agreement; or
- vi. Otherwise violates any provision of this Agreement.

B. **Termination for Convenience.** The City may, at its option and sole discretion, terminate this Agreement, in whole or in part, with or without cause, at any time during the Agreement Term for the convenience of the City, upon ten (10) days written notice to the Consultant.

C. **Steps after Termination:**

- i. Upon termination of this Agreement by the City for any reason, the City will pay Consultant for satisfactorily performed Services and disbursements incurred by Consultant to the date of termination pursuant to this Agreement, less any amounts necessary to compensate the City for damages or costs incurred by the City arising from Consultant's default. Termination will be without prejudice to any other rights or remedies the City may have.
- ii. Upon receipt of written notice of termination of this Agreement by the City for any reason, Consultant must:
 - a. Promptly cease all Services, including Services provided by any subconsultant, unless otherwise directed by the City; and
 - b. Deliver to the City all the Materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement. Such Materials are to be delivered to the City in completed form; however, notwithstanding the provisions of Section 10, Ownership and Use of Materials, herein, the City may condition payment for services rendered to the date of termination upon Consultant's delivery to the City of such Materials.
- iii. If this Agreement is terminated by the City for any reason, the City is hereby expressly permitted to assume the projects and Services, and to complete them by any means including, but not limited to, an agreement with another party.

14. 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. Attachment 2
- 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.

15. 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 cause, 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. Attachment 2
- 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.

Attachment 2

CITY OF CARMEL-BY-THE-SEA

CONSULTANT

City Administrator

Consultant Signature

Chip Rerig 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

EXHIBIT A**Scope of Work, for Carmel Police and Public Works Facilities Study**

Indigo Hammond + Playle Architects, LLP

May 8, 2023

Existing Police Building and Garage:

1. The existing 1966 Police Building is 3 stories with a total conditioned floor area of 10,800 SF. The Police Department is primarily located on the 3,500 square foot Upper Level, including the main entry and lobby along with most departmental spaces. The 3,700 square foot Middle Level is mostly occupied by the Police shooting range and storage. The 3,600 square foot Lower Level is devoted to Public Works use.
2. A 12,150 square foot unconditioned Garage is connected to the Lower Level of the Police Building. Both the Police Building and the Garage were designed and built as one building in 1966. The roof of the garage forms the entry plaza to the Police Building's Upper Level. This plaza roof is known to leak. The Garage structure may have been designed to support a future second level, which would replace the existing plaza. The Garage features a west roll-up door onto Junipero Street, and two east roll-up doors opening onto the City's Corporation Yard.
3. There are Public Works administrative offices located in a rectangular 350 square foot mezzanine Annex of the Garage on the west side, also part of the original construction. These offices connect to a foyer, which appears to have been added later, with a main entry door opening to a path sloping up to the public sidewalk. There is also an interior door from these offices, leading into the Garage itself.
4. Total area of the Police Building, Garage, and Public Works Annex is 23,300 SF. Police, in effect, are occupying 7,200 square feet. Public Works occupies 3,950 square feet, and the shared Garage takes up the remaining 12,150 square feet.

PHASE I:**Phase I will accomplish four things:**

- Task I: Will assess the existing Police building's condition and define deficiencies and needed repairs. Information from a previous assessment report will be used to access the garage building. Included will be a budget level estimate of the cost of the repairs.
- Task II: Will define the programmatic and spatial needs of the Police Department, coordinating with as-supplied programmatic and spatial needs of Public Works Department. Included will be a budget level estimate for the programmatic requirement.

- Task III: Prepare Conceptual plans for a Remodel Option and a New Building Option. Included will be a budget level cost estimate for each.
- Task IV: Action Plans and accompanying Budget Level Estimates and Schedules will be described in the Final Report to assist decision makers with deciding on the best path forward.

Work Plan and Scope

Task I Assessment

1. Prepare simplified CAD Architectural Model based on existing plans.
2. Hold Kick-Off meeting with Indigo and City Staff including Police and Public Works Senior Staff. (On Site Meeting 1)
3. A&E team will tour Police Building, Plaza, and Garage to assess physical conditions, and deficiencies. (On Site Meeting 2)
4. Prepare Initial Interim Assessment Report on building condition, including:
 - a. Code issues;
 - b. Accessibility issues;
 - c. Structural issues, including essential services ASCE Tier 1 checklist for seismic, consultant will rely of previously completed checklist for garage building;
 - d. Structural evaluation of capability of existing garage to support a second story of interior space;
 - e. Electrical system;
 - f. HVAC system;
 - g. Plumbing;
 - h. Hazardous materials issues based on City's previous hazmat evaluation;
 - i. Building envelope deficiencies including signs of roof, wall, windows, air and water leakage and insulation deficiencies;
 - j. Interior finishes;
 - k. Security issues;
 - l. Telecom infrastructure;
 - m. Site /Civil above grade features and site utilities based on as-built plans;
 - n. No observations will be conducted that require destruction.
5. Meeting to discuss Interim Assessment (Meeting 3)

Task II Programming

1. Indigo to meet with Police Senior Staff to discuss departmental programmatic needs present and future. (Meeting 4)
2. Architectural team to meet with Public Works Director to receive and discuss internally generated programmatic needs present and future. (Meeting 5)

3. Prepare Program of required spaces and functional needs for Police Department.
4. Prepare Space Standards for each item listed in Police Program.
5. Prepare Functional Adjacency Diagram for Police Department.
6. Discuss and approve Program, Standards, and Adjacencies with staff. (Meeting 6)

Task III Design

1. Prepare early Budget Level Estimate of likely options, circulate to Senior Staff to facilitate decision making related to the best options to explore.
2. Discuss 1 above in order to approve the 2 best options for further study and preparation of Conceptual Designs for each. (Meeting 7)
3. Prepare Conceptual Design Options and Budget Level Estimate for the existing building addressing the deficiencies and space standards listed above to the greatest extent possible within the existing building.
4. Prepare prototype design for a new Police/Public Works Complex including Budget Level Estimate.
5. Meet with Staff to discuss new facility design and budget. (Meeting 8)
6. If needed Prepare Cost Estimate for swing space needed during remodel construction.

Task IV Final Report

1. Prepare Draft Report and circulate for staff comment.
2. Prepare final report.
3. Attend two public meetings to assist staff with presenting report, supporting plans and cost estimates. (On Site Meetings 9 and 10)

PHASE II (NIC)

Since it is unknown at this time what options the City Council will wish to pursue this proposal assumes that both the remodel/re-use option for the existing police building, and the development of a new Police/Public works complex will take place.

1. Update program for reuse or remodel of existing Police building including schedule and budget level cost estimate.
2. Update program for new Police / Public Works complex including schedule and budget level cost estimates.
3. Prepare schematic design.
4. Prepare construction documents for both options.
5. Proceed with Bidding and Construction.

FEE SCHEDULE - CARMEL-BY THE SEA
 INDIGO | HAMMOND + PLAYLE ARCHITECTS, LLP. 05/08/2023

EXHIBIT B

FEE ESTIMATE												TOTAL
	ARCHITECT INDIGO	ARCHITECT STUDIO SCHICKETANZ	MEP PETERS	STRUCTURAL MIYAMOTO	SECURITY GUIDEPOST	TELECOM INFRASTRUCTURE GUIDEPOST	AUDIO VISUAL GUIDEPOST	FIRE ALARM GUIDEPOST	HAZARDOUS FACS	ECONOMICS BAE	CIVIL & SURVEY IFLAND ENGINEERS	TOTAL
PHASE I												
TASK 1 - ASSESSMENT	\$43,000	\$0	\$18,000	\$30,000	\$7,250	\$7,250	\$0	\$0	\$0	\$0	\$9,200	\$114,700
TASK 2 - PROGRAMMING	\$27,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$27,000
TASK 3 - DESIGN	\$55,000	\$7,000	\$4,000	\$3,000	\$1,000	\$1,000	\$0	\$0	\$0	\$0	\$0	\$71,000
TASK 4 - REPORT	\$24,000	\$6,200	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$30,200
MEETING EXPENSES	\$5,000	\$200	\$1,500	\$1,000	\$1,000	\$1,000	\$0	\$0	\$0	\$0	\$200	\$9,900
PHASE II	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	
TOTAL	\$154,000	\$13,400	\$23,500	\$34,000	\$9,250	\$9,250	\$0	\$0	\$0	\$0	\$9,400	\$252,800

NOTES:
 1. FEES ON A T&M NOT TO EXCEED BASIS. FEE AMOUNTS FOR EACH TASK MAY VARY AND ANY UNSPENT FEE OR FEE OVERAGE WILL BE CARRIED FORWARD FOR EACH TASK UNTIL THE TOTAL COST NTE CAP IS REACHED OR INCREASED AS AGREED TO IN WRITING.
 2. BAE'S ECONOMIC ANALYSIS, OPTIONAL SERVICE NOT TO EXCEED \$24,000.
 3. GUIDEPOST AUDIO VISUAL, OPTIONAL SERVICE NOT TO EXCEED \$9,000.
 4. GUIDEPOST FIRE ALARM, OPTIONAL SERVICE NOT TO EXCEED \$9,000.
 5. FACS HAZARDOUS MATERIALS, OPTIONAL SERVICE NOT TO EXCEED \$8,000.
 6. IFLAND ENGINEERS' SURVEY, OPTIONAL SERVICE NOT TO EXCEED \$16,700

EXHIBIT B
2023 Fee Schedule

Indigo Hammond + Playle Architects, LLP

	\$280
Principal Architect	\$235
Architect	\$205
Senior Designer	\$168
Designer/ Drafter- Level 2	\$148
Designer/ Drafter- Level 1	\$120
Clerical	

Overtime rate 1.5 times hourly rates above.

Consultants and reimbursable expenses are at 1.15 x cost.

Mileage at \$0.655 per mile.

Rates subject to change from time-to-time.

**BAE URBAN ECONOMICS
SCHEDULE OF HOURLY FEES
2023**

BAE contracts either on a fixed fee or time and material not to exceed basis. Contracts based on time and materials are subject to hourly fees for BAE professional staff.

Our hourly rates for calendar year 2023 are as follows:

Principal	\$300-\$330/hour
Associate Principal	\$285/hour
Director	\$275/hour
Vice President	\$270/hour
Senior Associate	\$210/hour
Associate	\$170/hour
Sr. Analyst	\$130/hour
Analyst	\$115/hour

Miscellaneous expenses such as data purchase, travel, document production, and conference calls are passed through to the client with no markup. Subconsultant contracts are subject to a charge of up to five percent for BAE's administrative costs. These rates are subject to revision on or after January 1, 2024.

Exhibit B
YEAR 2023 STANDARD HOURLY RATES
OFFICE SERVICES

Principal Engineer	\$ 250.00
Senior Engineer	225.00
Project Engineer	180.00
Staff Engineer	150.00
Assistant Engineer.....	130.00
Junior Engineer / CADD Technician III.....	115.00
CADD Technician I.....	100.00
Clerical Assistant.....	80.00

EXTRAORDINARY SERVICES

Court Appearances, court preparation, depositions, and expert witness opinions	\$375.00/hr.
Mileage.....	\$0.58/mile
Per Diem	\$100.00

Notes: Consultation meetings will be billed at the hourly rates indicated. Field services are billed portal-to-portal with a 2-hour minimum charge. Hourly rates shown are for ordinary engineering services and include all payroll, office overhead, taxes, supplies, and insurance. Higher rates are applicable for extra-ordinary services such as special certifications and projects which require increased limits for professional liability insurance, etc. Invoices will be prepared at semi-monthly intervals and are payable upon presentation. Invoices 30 days past due will be assessed a service charge of 1.5% per month.

DIRECT PROJECT EXPENSES

Blackline Prints	FAX Charges	Standard Overnight Mail
\$5.00 per sheet (Bond)	\$ 1.00 per page	Cost + 15% markup
\$15.00 per sheet (Mylar)		(Priority Service subject to additional charge)

Digital Plan Files..... hourly*

Mileage..... \$ 0.58/mile

*Customization of CAD files including file format and other modifications for use by others shall be billed per hourly rates.

Note: In the event consultant's fee schedule changes due to any increase of costs such as the granting of wage increases and/or other employee benefits to office employees due to the terms of any labor agreement, or rise in the cost of living, during the lifetime of this agreement, a percentage increase shall be applied to all remaining compensation.

Guidepost Solutions LLC Hourly Rates for 2023*

Design Services	
Principal/Project Lead	\$225
Senior Consultant / Senior Project Manager / Professional Engineer	\$200
Consultant / Project Manager / Technology Designer	\$185
Associate	\$170
BIM / REVIT Coordinator	\$130
Subject Matter Expert - Advisory (Security / AV / Fire / TEL / GSOC)	\$225

Physical Security Consulting Services	
Principal / Project Lead	\$275
Senior Consultant / Project Manager	\$250
Consultant	\$200
Associate	\$175
Subject Matter Expert - Advisory (Risk / Operations / Technology / CPTED, Sub Contractors)	\$250

Cyber Security Consulting Services	
Principal / Project Lead	\$400
Senior Consultant / Project Manager	\$350
Consultant	\$300
Associate	\$250
Subject Matter Expert - Advisory (Risk / Operations / Technology)	\$350
Subject Matter Expert - Incident Response	\$450

Risk & Emergency Management Services	
Principal / Project Lead	\$300
Senior Consultant / Project Manager	\$250
Consultant	\$225
Associate	\$200
Subject Matter Expert - Advisory (Risk / Operations / Technology)	\$250
Subject Matter Expert - Incident Response	\$350
Subject Matter Expert - Threat / Behavioral	\$900

Guidepost Solutions LLC Hourly Rates for 2023*

Investigations	
Lead Investigator	\$650
Investigator	\$500
Analyst / Research	\$300
Senior Managing Director	\$650
Managing Director	\$500

Specialty Rates	
Social Media Monitoring / Analyst	\$200
Law Enforcement Liaison	\$300
Subject Matter Expert – Advisory (Executive Protection)	\$300

Managed Services	
Level 1 GPMS Technical Support	\$125
Level 2 GPMS Technical Support	\$150
Level 3 GPMS Technical Support	\$175

LABOR RATES

DESIGNATION	HOURLY RATE
Senior CIH	\$305
CIH/Principal Scientist	\$285
Senior Project Manager	\$175
Project Manager	\$160
Project Specialist	\$125
Senior Technician	\$115
Technician	\$105
Project Coordinator	\$100
Administrative Support	\$80



LABORATORY ANALYTICAL RATES (PER SAMPLE)

ANALYSIS*	TURNAROUND TIME**					
MICROBIOLOGY	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
Non-Viable Air	\$185	\$150	\$135	\$85		
Non-Viable Bulk	\$135	\$125	\$85	\$65		
Total Coliform & E. Coli (MUG)		\$180	\$135			
ASBESTOS	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
PCM (air)	\$31	\$26	\$24	\$22	\$20	\$18
TEM (air)	\$300	\$225	\$200	\$175	\$150	\$125
PLM ≤ 3 LAYERS (bulk)	\$44	\$39	\$34	\$30	\$28	\$25
PLM > 3 LAYERS (bulk)	\$70	\$55	\$50	\$45	\$41	\$38
METALS	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
Lead – Atomic Absorption	\$70	\$60	\$50	\$40	\$35	\$30
SMOKE	Same Day	1 Day	2 Days	3 Days	4 Days	5 Days
Particle Identification – Smoke	\$550	\$350	\$275	\$225	\$175	\$145

*Listed analyses and pricing are not exhaustive, but are representative of our most requested items

**Turnaround time = total business days to receive results after sample receipt at laboratory

MISCELLANEOUS

Mileage:	Cost plus 15%	Deposition/Testimony:	Labor Rate x 1.5
Reimbursables:	Cost plus 15%	Emergency Response:	Labor Rate x 2
Equipment and Consumables:	Cost plus 15%	Overtime:	Labor Rate x 1.5
Off-Hours Lab Opening Fee:	\$400		

2023 Central Valley Fee Schedule
 Please contact us for a complete list of services.



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2023 HOURLY RATE SCHEDULE

Principal	\$220.00 per hour
Senior Engineer	\$185.00 per hour
Project Manager/Engineer	\$165.00 per hour
Senior Designer	\$125.00 per hour
Designer	\$110.00 per hour
CADD	\$ 95.00 per hour
Clerical	\$ 75.00 per hour

HOURLY RATE SCHEDULE

for ARCHITECTURAL SERVICES

ARCHITECTURAL DESIGN SERVICES

- Principal's time is currently billed at the rate of three hundred and fifty dollars (\$350) per hour.
For the purposes of this agreement, Founding Principal is:
Mary Ann Schicketanz.
- Principal Architect and Principal Interior Designer is currently billed at the rate of two hundred and fifty dollars (\$250) per hour.
 - For the purposes of this agreement, Principal Architect is Kumaresh Sekaran
 - For the purposes of this agreement, Principal Interior Designer is Nicole Clapman
- Associate Licensed Architect and Senior Interior Designer's time is currently billed at the rate of one hundred and ninety-five dollars (\$195) per hour.
- Job Captain, Interior Designer time are currently billed at one hundred forty-five dollars (\$145) per hour.
- Architect and Interior Design Graduate's time is currently billed at the rate of one hundred twenty-five dollars (\$125) per hour.
- Clerical, Interior Design Assistant, and Intern's time is currently billed at the rate of ninety-five dollars (\$95) per hour.

Studio Schicketanz invoice professional services monthly.

Reimbursable expenses consist of reproduction, plotting, travel (air fare, mileage, and hotel, per diem for meals – charged at the government rate by city), consultants, permits, and other project related costs. Service charge for all reimbursable items is 15%.

2023 HOURLY BILLING RATES

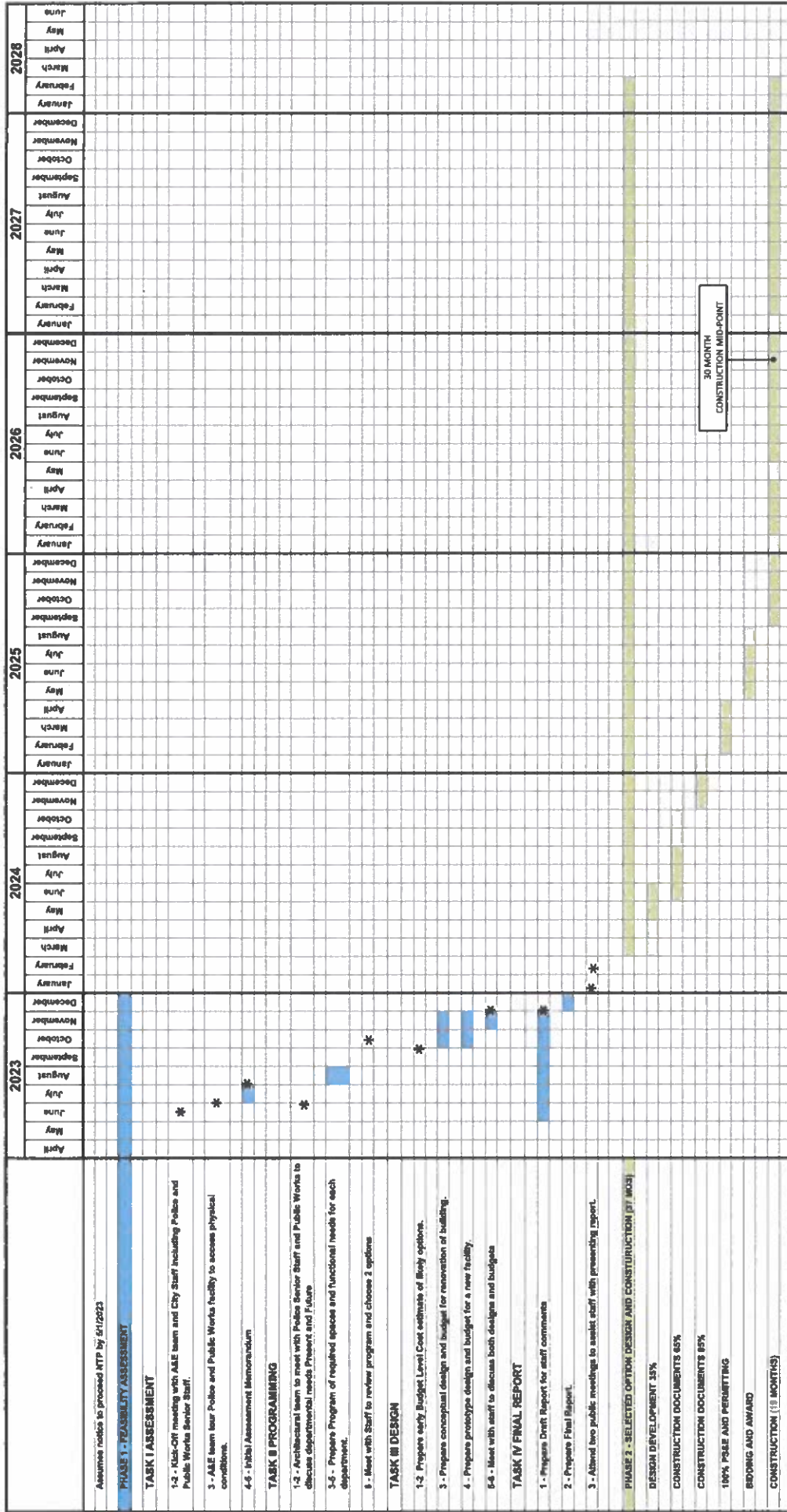
Senior Principal	\$300/hr.
Principal	\$275/hr.
Associate Principal	\$225/hr.
Senior Associate	\$170/hr.
Associate - Engineer	\$160/hr.
Associate - Designer	\$125/hr.
Senior Project Engineer	\$140/hr.
Senior Designer	\$125/hr.
Project Engineer	\$125/hr.
Staff Engineer	\$120/hr.
BIM Engineer / Designer	\$100/hr.
Administrative Assistant	\$80/hr.
Intern.....	\$80/hr.

Billing rates are subject to annual review and changes based on market conditions and necessary salary adjustments.

PROJECT SCHEDULE - CARMEL-BY-THE-SEA

EXHIBIT C

RFP: 22-23-008 ARCHITECTURAL AND ENGINEERING SERVICES FOR THE CARMEL POLICE BUILDING PROJECT.
 INDIGO | HAMMOND + PLAYLE ARCHITECTS, LLP. 05/09/2023



NOTE:
 THIS SCHEDULE CAN BE ADJUSTED TO MEET CITY'S REQUIREMENTS