

**ORDINANCE NO. 3644 C.S.**

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF MONTEREY**

**ADOPTING THE SECOND AMENDED DEVELOPMENT AGREEMENT  
FOR THE DEL MONTE BEACH COMMUNITY PROJECT**

THE COUNCIL OF THE CITY OF MONTEREY DOES ORDAIN, as follows:

**SECTION 1: Recitals.**

A. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, Section 65864, *et seq.*, of the Government Code and Monterey Municipal Code chapter 38, part V, article 23, authorize the City, and any person having a legal or equitable interest in the real property, to enter into a development agreement and establish certain development rights in the property. Pursuant to Government Code section 65868 and Monterey Municipal Code 38-176, development agreements may be amended by mutual consent of the parties.

B. In 2002, the City and predecessors in interest to the owners of the property that is the subject of the proposed amendment entered into a development agreement ("Agreement") for The Del Monte Beach Community Project (the "Project"), which included: (1) resubdivision of forty-eight (48) then existing legal lots, of which the City owned ten (10), the Monterey Peninsula Regional Park District ("Park District") owned nine (9), and the then owners owned twenty-nine (29), into eleven (11) legal lots; and (2) resubdivision of twelve (12) adjacent then existing lots owned by other parties into three (3) legal lots. The Agreement generally vested the right to proceed with development of the Project described therein, subject to the terms and conditions therein, for a maximum period of twenty (20) years. Since 2002, the Project has built out, except for three (3) remaining parcels, one of which is the subject of this proposed Amendment.

C. Carol Frederick ("Owner") acquired title to one (1) parcel located at 205 Dunecrest Lane within the Project.

D. The City and Owner now desire to amend the Agreement for the one (1) parcel by mutual consent pursuant to section 10.2 of the Agreement, and as authorized by California Government Code section 65868 and Monterey Municipal Code section 38-176.

E. The amendment will extend the term of the Agreement for the one subject parcel until January 17, 2028, in exchange for payment of additional funds to the City for the continued reservation of water and planning processing and other considerations provided therein.

F. The Amendment to the Agreement will not have a significant adverse impacts on the environment. It will not result in any direct physical change to the environment, or any reasonably foreseeable indirect physical change in the environment. Any potential environment impacts were previously analyzed in the certified environmental impact report for the Project.

G. On October 26, 2021, the City Planning Commission, serving as City's planning agency for purposes of development agreement review pursuant to Government Code section 65867, held a public hearing and made a recommendation to the City Council regarding this Amendment. On November 16, 2021, pursuant to Government Code section 65867 and Monterey Municipal Code section 38-172, the City Council held a public hearing regarding this Amendment and considered all comments received in writing and all testimony received at the public hearing.

## SECTION 2: Findings.

Therefore, on the basis of: (a) the foregoing recitals, which are hereby incorporated herein; (b) the City of Monterey's General Plan and General Plan EIR; (c) Del Monte Beach Re-Subdivision Environmental Impact Report; and the written and oral record at the Planning Commission and City Council, the City Council finds and determines that:

A. The Second Amended Development Agreement for the Project, attached to this Ordinance and incorporated herein by reference as Exhibit A ("the Second Amended Development Agreement"), is consistent with Monterey Municipal Code chapter 38, part V, article 23 because the Agreement as amended includes all the required contents of said article, and was considered and processed in conformance with said article.

B. The Second Amended Development Agreement is consistent with the objectives, policies, general land uses and programs specified and contained in the City's General Plan in that: (a) The subject parcel remains Low Density residential consistent with the General Plan and zoning; (b) the project is consistent with the Land Use Element of the General Plan with respect to Policy a.1 that states: Implement the Land Use Plan using the Land Use Plan Map (Figure 3) and the following land use categories: Residential. The Residential category is further divided into the following three sub-categories, one of which, Low Density Residential, applies to single-family residential areas where the average density is between two to eight dwellings per acre, such as the parcel that is the subject of the Second Amended Development Agreement; and, (c) the Second Amended Development Agreement would extend the term of the Agreement for the subject parcel, allowing time for completing the original project and complying with the City's land use vision for the site; and (d) the Second Amended Development Agreement is consistent with General Plan goals, policies and programs for water allocation and affordable housing because the subject parcel has existing water allocations and a sum will be collected to incentivize affordable housing.

C. The City Council has considered the effects of the Second Amended Development Agreement on the housing needs of the City and balanced these needs against the public service needs of its residents and available fiscal and environmental resources. The Second Amended Development Agreement will allow the build-out and infill of a nearly completed existing residential subdivision with no additional allocation of or demand for public services beyond those allocated and approved when the Project and Development Agreement were previously approved.

D. The Second Amended Development Agreement will not be detrimental to the health, safety and general welfare, nor will it adversely affect the orderly development of property, or the preservation of property values in that the Project will proceed in accordance with the programs and policies of the General Plan.

**SECTION 3: Approval of Amended and Restated Development Agreement.**

The City Council hereby approves the Second Amended Development Agreement, attached to this Ordinance and incorporated herein by reference as Exhibit A, and authorizes the City Manager to sign the amended Second Amended Development Agreement after the effective date of this Ordinance.

**SECTION 4: Recordation**

Within ten (10) days after the Second Amended Development Agreement is executed by the City Manager, the City Clerk shall submit the amendment to the County Recorder for recordation.

**SECTION 5: Severability.**

If any section, subsection, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of a court of competent jurisdiction, it shall not affect the remaining portions of this Ordinance that can be given effect without the invalid provision and, to this end, the provisions of this Ordinance are severable. This City Council hereby declares that it would have adopted this Ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the Ordinance be enforced.

**SECTION 6: Publication and Effective Date.**

Within fifteen (15) days after adoption, a summary of this Ordinance shall be published once in the Monterey Herald, a newspaper of general circulation printed and published in Monterey County and circulated in the City of Monterey, in accordance with Government Code section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF MONTEREY this 7th day of December, 2021, by the following vote:

AYES:	5	COUNCILMEMBERS:	Albert, Haffa, Smith, Williamson, Roberson
NOES:	0	COUNCILMEMBERS:	None
ABSENT:	0	COUNCILMEMBERS:	None
ABSTAIN:	0	COUNCILMEMBERS:	None

APPROVED:

ATTEST:

DocuSigned by:  
  
 FA1981217DEE4FB...

\_\_\_\_\_  
Mayor of said City

DocuSigned by:  
  
 ED8453A4F62C4AA...

\_\_\_\_\_  
City Clerk thereof

EXHIBIT A  
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OFFICIAL BUSINESS  
Document entitled to free recording  
Government Code Section 6103

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Monterey  
580 Pacific Street  
Monterey, CA 93940  
Attn: City Clerk

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(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

**SECOND AMENDED DEVELOPMENT AGREEMENT  
FOR THE DEL MONTE BEACH  
COMMUNITY PROJECT**

**SECOND AMENDED DEVELOPMENT AGREEMENT**

This Second Amended Development Agreement (“**Amendment**”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF MONTEREY, a municipal corporation (“**City**”), and Carol Frederick (“**OWNER**”), pursuant to the authority of Government Code section 65864 *et. seq.* and City of Monterey Municipal Code section 38-176. City and Developer are hereinafter collectively referred to as the “**Parties**” and singularly as “**Party.**”

**RECITALS**

**A. Authorization.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, California Government Code section 65864, *et seq.* and Monterey Municipal Code chapter 38, part V, article 38, authorize City and any person having a legal or equitable interest in real property to enter into a development agreement, establishing certain development rights in the property which is the subject of a development project application.

**B. Development Agreement.** In 2002, the City and predecessors in interest to OWNER entered into a development agreement (“**Agreement**”) for “The Del Monte Beach Community Project” which included: (1) resubdivision of forty-eight (48) then existing legal lots, of which the City owned ten (10), the Monterey Peninsula Regional Park District (“**Park District**”) owned nine (9), and the then owners owned twenty-nine (29), into eleven (11) legal lots; and (2) resubdivision of twelve (12) adjacent then existing lots owned by other parties into three (3) legal lots. The Agreement generally vested the right to proceed with development of the project described therein, subject to the terms and conditions therein, for a maximum period of twenty (20) years. Since 2002, the Del Monte Beach Community Project has built out, except for three (3) remaining parcels, one of which is the subject of this proposed Amendment.

**C. Property.** OWNER owns in fee title that certain area consisting of one (1) parcel located in the City of Monterey, County of Monterey, more particularly described in **Exhibit A** and **Exhibit B**, attached hereto (“**Property**”). With respect to the Property, OWNER is successor and assign in interest of the rights and obligations of the owners who entered into the Agreement. This Amendment applies only to the Property, not to any other property that was the subject of the Agreement.

**D. Proposed Amendment.** The City and OWNER now desire to amend the Agreement by mutual consent pursuant to section 10.2 of the Agreement, and as authorized by California Government Code section 65868 and Monterey Municipal Code section 38-176.

**E. Public Hearing and Approval of this Amendment.** On October 26, 2021, the City Planning Commission, serving as City’s planning agency for purposes of development agreement review pursuant to Government Code section 65867, held a public hearing and made a recommendation to the City Council regarding this Amendment. On November 16, 2021, pursuant to Government Code section 65867 and Monterey Municipal Code section 38-172, the City Council held a public hearing regarding this Amendment. Following the hearing, the City Council introduced City of Monterey Ordinance No. XX-2021 approving this Amendment. The City Council approved Ordinance XX- 2021 on November 16, 2021, and it became effective on January 2, 2021.

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**F. Environmental Review.** In compliance with the California Environmental Quality Act (“CEQA”), on November 16, 2021, the City Council determined that any potential environmental impacts of this Amendment were previously analyzed in the certified environmental impact report for the Project.

**G. Consistency with General Plan.** Having duly examined and considered this Amendment and having held properly noticed public hearings hereon, in City Ordinance No. XX-2021, City found that this Amendment satisfies Government Code section 65867.5, Monterey Municipal Code 38-176, and that this Amendment is consistent with the requirements of the General Plan.

**H. Approval.** The City and OWNER have taken all actions mandated by, and fulfilled all requirements set forth in, the Agreement, California Government Code section 65864, *et seq.*, and Monterey Municipal Code chapter 38, part V to approve this Amendment.

**I. Negotiations.** The Parties have, in good faith, negotiated terms set forth in this Amendment, which terms are intended to carry out the legislative purposes of California Government Code section 65864, *et seq.*, and Monterey Municipal Code chapter 38, part V, and which provide for the mutually desirable development of the Property, consistent with the intent of the Agreement.

**AGREEMENT**

**1. Incorporation of Recitals.** The Preamble, the Recitals, all defined terms set forth herein, and all exhibits attached hereto, are hereby incorporated into this Amendment as if set forth herein in full.

**2. Relationship of City and Developer.** This Amendment is a contract that has been negotiated and voluntarily entered into by City and OWNER. Neither Party is an agent of the other Party. City and OWNER renounce the existence of any form of joint venture or partnership between them. Nothing contained in this Agreement, or in any document executed in connection with this Agreement, may be construed as making City and OWNER joint venturers or partners.

**3. Effective Date.** The effective date of this Amendment (“Effective Date”) is \_\_\_\_\_, 2021, which is the effective date of City Ordinance No. XX-2021, adopting this Amendment.

**4. Term.** Section 18 of the Agreement “Term of the Agreement” is deleted and replaced with the following:

“18. Term of Agreement. This Agreement shall terminate on January 17, 2029, notwithstanding any other provision of the Agreement, unless either (i) the Agreement is terminated on January 17, 2028, by operation of section 7 of this Agreement, (ii) the Agreement is terminated pursuant to section 11, or (iii) the Parties agree to amend this Agreement by mutual consent.”

**5. Timing of Construction and Completion of Project.** Section 7 of the Agreement “Time for Construction and Completion of Project” is deleted and replaced with the following:

“7. Time for Construction and Completion of Project. This Agreement shall automatically terminate if, on or before January 17, 2028, OWNER, or her successor in

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interest, does not secure building permits and all other required permits, and commence construction of the single-family home on \_\_\_\_\_ lot as depicted on the Subdivision Map approved by the City on \_\_\_\_\_ and recorded at \_\_\_\_\_ (“Lot \_\_\_”), which as of \_\_\_\_\_ 2021, were one (1) of the last remaining three (3) undeveloped parcels in the Project.”

**6. Force Majeure.** Section 16 of the Agreement “Force Majeure” is deleted.

**7. Water Allocations.** Immediately upon approval of this Amendment by the City, OWNER shall pay the City the sum of \$36,000 (thirty six thousand dollars) for the continued reservation of water to the Project until the termination of this Agreement. Section 4.2 of the Agreement in Section 4 “Reservation of Water” is replaced with the following:

“If water reserved to the Project by this Agreement is not allocated within the term of this Agreement, said water allocation shall revert to the City Water Allocation without further proceedings or action.”

**8. Design.** Immediately upon approval of this Amendment by the City, OWNER shall pay the City the sum of \$25,000 (twenty five thousand dollars), which the City intends to expend on planning, consulting and legal services related to the processing of the City’s Local Coastal Program, including portions of the Local Coastal Program which apply to the design of the Project as approved in the Agreement. Section 9(c) of the Agreement “Design” is unchanged by this Amendment. OWNER hereby acknowledges and agrees that it requires her to propose designs for and to construct the single family home on Lot \_\_\_ in compliance with the design guidelines approved by the City Council on January 2, 2002 which were the design standards for the ten (10) homes already constructed pursuant to the Agreement, including, without limitation, the maximum building height of one story and sixteen (16) feet.

**9. Hold Harmless and Indemnity.** Section 8 of the Agreement is replaced with the following:

8. Hold Harmless & Indemnify.

8.1 The OWNER agrees, to defend, indemnify, and hold harmless the City and its agents, officers, attorneys, and employees from any claim, action, or proceeding (collectively referred to as “proceeding”) brought against the City or its agents, officers, attorneys or employees to attack, set aside, void, or annul:

- a. Any approval of the Project or approval of permits approved to implement it by City; and/or
- b. An action taken to provide related environmental clearance under the California Environmental Quality Act (“CEQA”) by its advisory agencies, appeal boards, or City Council.

The indemnification is intended to include, but not be limited to damages, fees and/or costs awarded against the City, if any, and cost of suit, attorneys’ fees, and other costs, liabilities and expenses incurred in connection with such proceeding whether incurred by the Property Owner/Lessee, the City, and/or the parties initiating or bringing such proceeding other than that arising from the City’s or gross negligence, willful misconduct, or criminal action.

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8.2 The OWNER agrees to indemnify the City for all of the City's costs, fees, and damages incurred in enforcing the indemnification provisions of this Agreement.

8.3 In the event that the OWNER is required to defend the City in connection with such proceeding, the City shall retain the right to reasonably approve:

- a. The counsel to so defend the City;
- b. All significant decisions concerning the manner in which the defense is conducted; and
- c. Any and all settlements, which approval shall not be unreasonably withheld.

The City shall also have the right not to participate in the defense, except that the City agrees to cooperate with the OWNER in the defense of the proceeding. If the City chooses to have counsel of its own defend any proceeding where the applicant has already retained counsel to defend the City in such matters, the fees and expenses of the counsel selected by the City shall be paid by the City. Notwithstanding the immediately preceding sentence, if the City Attorney's Office participates in the defense, all City Attorney fees and costs shall be paid by the OWNER.

8.4 The defense and indemnification of the City set forth herein shall remain in full force and effect throughout all stages of litigation including appeals of any lower court judgments rendered in the proceeding."

**10. Notices.** The Parties hereby give the each other notice in writing pursuant to Section 19 of the Agreement that all notices to the pursuant to the Agreement and this Amendment shall be addressed as follows:

Notice required to be given to OWNER shall be addressed as follows:

With a copy to:

Carol Frederick  
16 Dunecrest Avenue  
Monterey, CA 93940

Notice required to be given to City shall be addressed as follows:

City Community Development Director  
570 Pacific Street  
Downstairs in Colton Hall  
Monterey, CA 93940

Copy to:

City Attorney  
512 Pierce St.  
Monterey, CA 93940



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**11. Costs of Legal and Staff Time Related to Amendment.** OWNER shall reimburse the full cost for all staff, attorney, and consultant fees and costs incurred by the City in connection with this Amendment, including all such fees and costs accruing from the date of OWNER'S first inquiry to the City regarding an extension of the term of the Agreement, through and including the recordation of the Amendment. OWNER shall make payment pursuant to this Section within fifteen days (15) days of request by the City. If OWNER fails to make any payment requested by the City under this Section, the City may stop processing the Amendment, including not signing or recording the Amendment. OWNER is obligated under this Section regardless of approval or disapproval of the Amendment.

**12. No Other Changes.** Except as provided herein, the Agreement remains unchanged, in full force and effect, and binding on the Parties.

**13. City Manager Authorization.** The City of Monterey, a municipal corporation, has authorized this Development Agreement to be executed in duplicate by its City Manager and attested to by its City Clerk under the authority of Ordinance No. \_\_\_\_\_ adopted by the Council of the City on the \_\_\_ day of \_\_\_\_\_, 2021, and has caused this Agreement to be executed.

“CITY”

“OWNER”

CITY OF MONTEREY,  
a municipal corporation

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

Name: Hans Uslar

Its: City Manager

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

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

Name: Carol Frederick

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

ATTEST:

\_\_\_\_\_  
Clementine Bonner Klein, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

Christine Davi, City Attorney

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

EXHIBIT A  
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**EXHIBIT LIST**

- Exhibit A: Map of the Property
- Exhibit B: Legal Description of the Property

EXHIBIT A



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EXHIBIT B

205 Dunecrest Lane:

5001210.1