

**Veterans Committee  
War Memorial Board of Trustees  
November 10, 2022**

**STAFF REPORT  
Renewal of Agreement with American Legion War Memorial Commission**

**American Legion War Memorial Commission (“ALWMC”):**

The San Francisco Posts of the American Legion (the “Posts”) are collectively named as a beneficiary of the 1921 War Memorial Trust Agreement. Under the Trust Agreement, the Posts have rights and obligations with respect to use and occupancy of space in the Veterans Building. In 1932, there were approximately 32 American Legion Posts in San Francisco; currently in 2018 there are 11 Posts with a 2019 membership goal of 831 members. The San Francisco American Legion Posts comprise the American Legion Eighth District.

Since 1932, the Posts have acted through the American Legion War Memorial Commission (“ALWMC”) with respect to their rights under the War Memorial Trust Agreement. The ALWMC is currently a standing committee of the American Legion Eighth District Council with authority to exercise the power to act for the Posts in the conduct of the War Memorial Veterans Building and to carry out and exercise all of the rights and privileges granted to the Posts under the Trust Agreement. The ALWMC is comprised of one commissioner from each Post, each commissioner entitled to one vote.

**Background of Agreement between the War Memorial and ALWMC:**

The War Memorial Trust Agreement provides that the beneficiaries (the Posts and Museum of Modern Art) are under no obligation to pay rent. The Trust also provides that the beneficiaries shall pay for all utilities and services in or about their respective premises. While the Museum provided its own security and janitorial services and paid annual amounts to the War Memorial for utility and service charges for their premises, the War Memorial Board of Trustees has never assessed such charges to the Posts, and all utilities and services have been provided to the Posts by the War Memorial in kind.

Section (9)(i) of the 1921 Trust Agreement provides that “any auditorium in the American Legion building and rooms necessary to be used in connection therewith may be sublet by the San Francisco Posts of the American Legion...” Beginning in 1932, the ALWMC had three regular sources of revenue to support its office expenses for administering and scheduling uses of the Veterans Auditorium and other Veterans Building space allocated to the Posts:

1. Revenues from rentals of the Veterans Auditorium (now Herbst Theatre);
2. Annual donations from the American Legion Department of California (“ALDC”) and ALDC Auxiliary for their occupancy of Veterans Building office space; and
3. Donations from the Posts and other veterans’ organizations for their use and occupancy of office and/or meeting room spaces.

In the early 1970s, the Civil Grand Jury and the City’s consultant on Civic Center Planning reported on the under-utilization of Veterans Building space and recommended a study to better utilize space therein. The 1972 Civil Grand Jury report stated that the Veterans Auditorium was booked only 63 times in the last 10 months of 1972, that ALWMC did not actively solicit bookings, and that potential customers declined to use the auditorium after seeing the condition of its physical facilities. The Civil Grand Jury recommended a plan be made for effective operation and use of the Veterans Auditorium, including the necessary rehabilitation.

During that same time, the Board of Trustees received reports from ALWMC of declining ALWMC revenues due to 1) declining rentals of the Veterans Auditorium, and 2) declining donations from Posts and veterans’ organizations due to decreasing uses of veterans meeting rooms. In 1977, ALWMC revenues had declined to a level insufficient to cover ALWMC office expenses.

In July 1977, Mayor Alioto advised the Board of Trustees of an offer from the Herbst estate to donate \$650,000 to renovate the Veterans Auditorium subject to certain conditions, including 1) the War Memorial manage and control the auditorium; 2) the auditorium be re-named “Herbst Theatre;” and 3) all annual revenue from the theatre in excess of \$35,000 be disbursed for operating the theatre and making repairs and improvements. The ALWMC agreed to transfer management and control of the Veterans Auditorium and Green Room to the Trustees and simultaneously agreed to the Trustees’ reallocation of two basement rooms to the Museum of Modern Art. In exchange, the Trustees agreed to pay an annual sum to ALWMC to replace one of the ALWMC sources of income—rental revenues from the auditorium—with a more assured source of income to help cover ALWMC office expenses for administering and scheduling uses of Veterans Building space allocated to the Posts.

### **Annual sum paid to ALWMC:**

On September 22, 1977, the Trustees and ALWMC entered into an Agreement setting forth the transfer of these spaces and providing for the Trustees to pay ALWMC an annual sum not to exceed \$35,000 from Herbst Theatre rental revenues for a four-year period, said annual sum to include a \$6,000 annual amount paid to ALWMC by the Museum of Modern Art for the transfer of Veterans Building basement space. The Agreement provided that upon expiration of four years, the sum to be paid to ALWMC would be reviewed to determine if additional payment of sums to ALWMC is appropriate, and if so determined, the sum would be renegotiated based on the needs and requirements of ALWMC at that time, but not to exceed the original annual sum of \$35,000.

The original annual sum to be paid to ALWMC of \$35,000 was based on ALWMC’s then-current income and expenditures, which included two employees, one for booking the auditorium and one for scheduling office/meeting room uses. Discussion during the July 1977 Board of Trustees meeting acknowledged that ALWMC salary and office costs would subsequently go down, and War Memorial costs go up, as the War Memorial would be taking over booking and rental of the auditorium.

In subsequent renewals of the Agreement from 1981 to 2006, the annual sum to be paid to ALWMC decreased based on review of ALWMC financial needs and requirements at the time. As was anticipated in 1977 discussions, ALWMC office salary and other expenses decreased subsequent to the original 1977 Agreement. In the late 1970s, ALWMC staff was reduced from two to one; in 1986, ALWMC staff further decreased to one part-time office manager. ALWMC staffing level has remained at one part-time office manager since 1986, except for the 11-month period from 8/12-6/13 when War Memorial temporarily increased its monthly payments to ALWMC to allow ALWMC to increase its one part-time employee to full-time to coordinate the Posts’ move-out of the Veterans Building prior to Veterans Building construction.

The Agreement between the parties was not renewed for the 26-month period the Veterans Building was closed for seismic renovation as there were no Herbst Theatre revenues during that period from which the War Memorial could pay ALWMC. The Veterans Building Project fund paid for all moving, storage and relocation costs of the Posts during the 26-month Veterans Building construction period, totaling \$310,000.

Upon re-opening of the Veterans Building in September 2015 following the 26-month construction period, the Trustees considered the financial requirements of ALWMC and approved a Renewal Agreement for the 16-month period from September 1, 2015, to December 31, 2016. With the Museum’s departure from Veterans Building basement storage spaces in 2013, and with ALWMC no longer collecting donations from the Posts and veterans’ organizations for their use and occupancy of office and meeting room spaces, with the exception of an annual donation of \$2,400 from the ALDC Auxiliary for their occupancy of an office in the space allocated to the Posts, the War Memorial is now the sole source of revenue for ALWMC office expenses.

Trustees approved a total payment of \$35,148 for calendar year 2017, \$38,592 for calendar year 2018, and \$40,428 for each of calendar years 2019 and 2020.

On March 7, 2020, all War Memorial venues, including the Herbst Theatre, were closed by Order of the Health Officer to prevent the spread of COVID-19. Section 1.A. of the Renewal Agreement states that the annual obligations of the Trustees “shall at no time exceed the annual rental derived from the Herbst Theatre.” Despite the sudden and unexpected loss of all Herbst Theatre rental revenues, Trustees continued to pay the full amount set forth in the Agreement for 2020 and authorized a total payment of \$30,000 for 2021.

On November 10, 2021, the Board of Trustees approved a 12-month renewal agreement for calendar year 2022 with an annual sum to be paid of \$37,800. At the time, COVID-19 restrictions were still in place and the Centers for Disease Control was warning of a winter surge of the virus. ALWMC activities in the building remained far below pre-pandemic levels because many of the veterans avoided participating in most in-person activities due to health concerns.

### **2023-24 Renewal Agreement – Staff Recommendations.**

- Term of Renewal Agreement: January 1, 2023, through December 31, 2024, total 24-months.
- Annual Sums to be paid to ALWMC:
  - Calendar Years 2023-24: Total annual sums to be paid from Herbst Theatre revenues of \$53,400.
- Other Terms of Agreement: The Agreement will be renewed for a 24-month period. All other terms of the Agreement remain the same as provided in the current 2022 renewal, with exception of an addition to Section C, which reads: “At a Special Meeting on November 10, 2021, the Trustees enacted Resolution 21-35, which eliminated the Not-to-Exceed Amount for agreements between the Trustees and the Legion previously established by Resolution 4487.”

**AGREEMENT**

The parties to this Agreement are the American Legion War Memorial Commission, a standing committee of the American Legion Eighth District Council, hereinafter referred to as "Legion," and the Board of Trustees of the San Francisco War Memorial hereinafter referred to as "Trustees." This Agreement is dated November 10, 2022.

**RECITALS**

- A. In July 1977, the Trustees received a grant from the Herbst Foundation, Inc. for the renovation of the Veterans Auditorium. The Herbst Foundation, Inc. and the Trustees entered into an agreement dated July 18, 1977 setting out conditions of the grant award which included that the Trustees agree to maintain direct and exclusive control over all aspects of the use and enjoyment of the theatre including all functions involved in arranging bookings for the theatre and to receive the revenue therefrom; and to rename and maintain the name of the Auditorium upon completion of the renovation as the "Herbst Theatre."
- B. In order that the Trustees be able to comply with the condition of the Herbst Foundation grant, the Legion agreed to relinquish management and control of the Veterans Auditorium to the Trustees. Simultaneously, the Legion agreed to relinquish any rights it had to manage and control the Green Room to the Trustees, and the use and occupancy of basement Room #1 and Auditorium #2 in the Veterans Building to the San Francisco Museum of Modern Art ("Museum").
- C. On September 22, 1977, an agreement was entered into between the Legion and the Trustees setting forth the transfer to the Trustees by the Legion of any rights it had to manage and control the Veterans Auditorium and The Green Room, including the right to receive all revenue therefrom; and the transfer of the use and occupancy of Room #1 and Auditorium #2 in the Veterans Building to the Museum. This agreement specified an annual sum to be paid by the Trustees to the Legion for a four-year period to offset the Legion's office expenses for administering and scheduling uses of Veterans Building space allocated for use by the Legion. The agreement provided that at the end of the four-year period, the sum, if any, would be "renegotiated based on the needs and requirements of the Legion at that time, but in no event shall said sum exceed the sum of Thirty-Five Thousand Dollars (\$35,000.00) annually, including such sum as is paid by the Museum to the Legion for the use and occupancy of Room #1 and Auditorium #2." At a Special Meeting on November 10, 2021, the Trustees enacted Resolution 21-35, which eliminated the Not-to-Exceed Amount for agreements between the Trustees and the Legion previously established by Resolution 4487.
- D. On each of September 22, 1981, September 22, 1983, September 22, 1985, September 22, 1987, September 22, 1989, September 22, 1991, September 22, 1993, September 22, 1995, September 22, 1997, September 22, 1999, September 22, 2001, January 1, 2005, December 14, 2006, February 11, 2011, November 10, 2011, September 10, 2015, October 13, 2016, October 11, 2018, October 8, 2020, and November 10, 2021, the Legion and the Trustees renewed an agreement for additional payment of sums to be made to the Legion by the Trustees, each renewal specifying the renegotiated annual sum to be paid by the Trustees to the Legion for an additional period.

- E. On November 10, 2022, the Trustees approved a renewal agreement with the Legion for the period of January 1, 2023, through December 31, 2024, subject to the terms and conditions provided herein.

**TERMS OF AGREEMENT**

**1. PAYMENT TO LEGION BY TRUSTEES.**

The Trustees agree to pay the Legion the sums provided herein from the revenue received from the rental of the Herbst Theatre to support the Legion's annual office budgets described in Section 2.

- A. January 2023 to December 2023: A total sum not to exceed Fifty-Three Thousand Four Hundred Dollars (\$53,400.00). Such sum shall be paid by the Trustees to the Legion at the rate of Four Thousand Four Hundred Fifty Dollars (\$4,450.00) per month, provided the monthly rental derived from the Herbst Theatre equals or exceeds said sum.
- B. January 2023 to December 2024: A total sum not to exceed Fifty-Three Thousand Four Hundred Dollars (\$53,400.00). Such sum shall be paid by the Trustees to the Legion at the rate of Four Thousand Four Hundred Fifty Dollars (\$4,450.00) per month, provided the monthly rental derived from the Herbst Theatre equals or exceeds said sum. Such sum shall be reduced by the amount of any fund balance from the sums paid by the Trustees to the Legion in 2023.

**2. LEGION BUDGETS AND REPORTS.**

- A. Legion Budget: The Legion's annual budget for calendar years 2023-24 is attached hereto as Exhibit A. The Legion's expenditures of monies from the sums paid by the Trustees to the Legion shall conform in all respects to the budget set forth in Exhibit A. The Legion shall not make any unbudgeted expenditures from the sums paid by the Trustees to the Legion without advance written approval of the Trustees.
- B. Budget Carry-Forward: At the end of each year covered by this Agreement, any unexpended fund balance from the sums paid by the Trustees to the Legion shall be carried forward as revenue to the following year.
- C. Monthly Income and Expenditure Statements: Within thirty (30) days after the end of each calendar month, the Legion shall deliver to the Trustees a statement showing its income and expenditures for that calendar month.

**3. LEGION USE OF GREEN ROOM.**

At the sole discretion of the Trustees, the Legion shall be granted the use of The Green Room without rental charge.

**4. RENEWAL OF AGREEMENT.**

This Agreement shall expire on December 31, 2024. After the expiration of this Agreement, the Trustees may evaluate whether to enter into a renewal agreement, and, if so determined, the sum to be paid by the Trustees to the Legion under a renewal agreement shall be renegotiated based on the needs and requirements of the Legion at that time.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in triplicate.

BOARD OF TRUSTEES  
WAR MEMORIAL OF SAN FRANCISCO

AMERICAN LEGION  
WAR MEMORIAL COMMISSION,  
A standing committee of the American  
Legion Eighth District Council

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

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

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

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

Approved as to form:  
DAVID CHIU, City Attorney

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

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

Lauren Curry  
Deputy City Attorney

2023-24 Annual Budget

**2023-24**  
**1/1/23 - 12/31/24**  
*Staff*  
**Recommended**

**IN-KIND SUPPORT**

Utilities and Services	22,779 s.f. x \$18.36/yr.	\$418,222.44
Parking	7 spaces x \$996/yr.	\$6,972.00
<b>TOTAL IN-KIND SUPPORT</b>		<b>\$425,194.44</b>

**DIRECT SUPPORT**

**REVENUE**

War Memorial	\$53,400.00
Carry-Forward from PY	-
American Legion Auxilliary	2,400.00
Fund Balance	-
Other	-
Interest	-
<b>TOTAL REVENUE</b>	<b>\$55,800.00</b>

**EXPENSES**

**Monthly Office Expenses**

Assistant Wages 0.625 FTE (Gross)	0.75 FTE (Gross)	\$37,440.00
Payroll Taxes		3,889.00
Employee Health (\$100/mo.)	(~\$135/month)	1,600.00
<b>Total Employee Expenses</b>	Total .75 FTE	\$42,929.00
Materials/Supplies (copier, scanner, printer)		1,600.00
Administration (mailings, etc.)		200.00
Phone/Internet Service		2,160.00
Other Internet/Technology		3,055.00
Bank Charges/Payroll		900.00
Miscellaneous		1,300.00
<b>Total Monthly Office Expenses:</b>		<b>\$52,144.00</b>

**Annual Office Expenses**

Workers Compensation	\$550.00
Account/Tax Preparation	1,000.00
Liability Insurance	550.00
Equipment	1,550.00
<b>Total Annual Office Expenses:</b>	<b>\$3,650.00</b>

**TOTAL OFFICE EXPENSES** **\$55,794.00**

<b>Revenue Less Expenditures</b>	<b>\$6.00</b>
Carry-Forward to Budget Year	(\$6.00)
<b>NET REVENUE LESS EXPENDITURES</b>	<b>\$0.00</b>

Prior Year Fund Balance	\$6,933.00
Fund Balance Budgeted	-
<b>YEAR END FUND BALANCE</b>	<b>\$6,933.00</b>

**TOTAL IN-KIND AND DIRECT SUPPORT** **\$478,594.44**

2019-20 1/1/19 - 12/31/20 Staff Recommended	2023-24 1/1/23 - 12/31/24 Staff Recommended
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**IN-KIND SUPPORT**

Utilities and Services	22,779 s.f. x \$16.34/yr.	\$372,209.00	22,779 s.f. x \$18.36/yr.	\$418,222.44
Parking	7 spaces x \$1,020/yr.	\$7,140.00	7 spaces x \$996/yr.	\$6,972.00
<b>TOTAL IN-KIND SUPPORT</b>		<b>\$379,349.00</b>		<b>\$425,194.44</b>

**DIRECT SUPPORT**

**REVENUE**

War Memorial	\$40,428.00	\$53,400.00
Carry-Forward from PY	-	-
American Legion Auxilliary	2,400.00	2,400.00
Fund Balance	-	-
Other	-	-
Interest	-	-
<b>TOTAL REVENUE</b>	<b>\$ 42,828.00</b>	<b>\$55,800.00</b>

**EXPENSES**

**Monthly Office Expenses**

Assistant Wages 0.625 FTE (Gross)	(25 hrs/wk @ \$24/hr)	\$31,200.00	0.75 FTE (Gross)	\$37,440.00
Payroll Taxes		2,700.00		3,889.00
Employee Health (\$100/mo.)	(\$100/month)	1,200.00	(~\$135/month)	1,600.00
<b>Total Employee Expenses</b>	Total .625 FTE	<b>\$35,100.00</b>	Total .75 FTE	<b>\$42,929.00</b>
Materials/Supplies (copier, scanner, printer)		1,100.00		1,600.00
Administration (mailings, etc.)		100.00		200.00
Phone/Internet Service		1,462.00		2,160.00
Other Internet/Technology		750.00		3,055.00
Bank Charges/Payroll		816.00		900.00
Miscellaneous		500.00		1,300.00
<b>Total Monthly Office Expenses:</b>		<b>\$39,828.00</b>		<b>\$52,144.00</b>

**Annual Office Expenses**

Workers Compensation	\$600.00	\$550.00
Account/Tax Preparation	600.00	1,000.00
Liability Insurance	1,800.00	550.00
Equipment	-	1,550.00
<b>Total Annual Office Expenses:</b>	<b>\$3,000.00</b>	<b>\$3,650.00</b>

**TOTAL OFFICE EXPENSES** **\$42,828.00** **\$55,794.00**

<b>Revenue Less Expenditures</b>	<b>\$0.00</b>	<b>\$6.00</b>
Carry-Forward to Budget Year		(\$6.00)
<b>NET REVENUE LESS EXPENDITURES</b>	<b>\$0.00</b>	<b>\$0.00</b>

Prior Year Fund Balance	\$0.00	\$6,933.00
Fund Balance Budgeted	-	-
<b>YEAR END FUND BALANCE</b>	<b>\$0.00</b>	<b>\$6,933.00</b>

**TOTAL IN-KIND AND DIRECT SUPPORT** **\$419,777.00** **\$478,594.44**

*NOTE: Budget comparison is being made to 2019-20 as it is the most recent example of pre-pandemic financial need and budgeted expenditures.*



**HISTORY OF SUMS PAID**  
**By War Memorial Board of Trustees**  
**To American Legion War Memorial Commission**

	Agreement Term FY	WMBT Payment	SFMoMA Payment	TOTAL PAID
Original	09/22/77 - 09/21/78	\$ 7,000	\$ 6,000	\$ 13,000 <sup>1</sup>
	09/22/78 - 09/21/79	29,550	6,000	35,550
	09/22/79 - 09/21/80	29,000	6,000	35,000
	09/22/80 - 09/21/81	29,000	6,000	35,000
Renewal #1	09/22/81 - 09/21/82	24,000	6,000	30,000
	09/22/82 - 09/21/83	24,000	6,000	30,000
Renewal #2	09/22/83 - 09/21/84	20,000	6,000	26,000
	09/22/84 - 09/21/85	20,000	6,000	26,000
Renewal #3	09/22/85 - 09/21/86	20,000	6,000	26,000
	09/22/86 - 09/21/87	20,000	6,000	26,000
Renewal #4	09/22/87 - 09/21/88	18,000	6,000	24,000
	09/22/88 - 09/21/89	18,000	6,000	24,000
Renewal #5	09/22/89 - 09/21/90	20,000	6,000	26,000
	09/22/90 - 09/21/91	20,000	6,000	26,000
Renewal #6	09/22/91 - 09/21/92	20,000	6,000	26,000
	09/22/92 - 09/21/93	20,000	6,000	26,000
Renewal #7	09/22/93 - 09/21/94	20,000	6,000	26,000
	09/22/94 - 09/21/95	20,000	6,000	26,000
Renewal #8	09/22/95 - 09/21/96	20,000	6,000	26,000
	09/22/96 - 09/21/97	20,000	6,000	26,000
Renewal #9	09/22/97 - 09/21/98	20,000	6,000	26,000
	09/22/98 - 09/21/99	20,000	6,000	26,000
Renewal #10	09/22/99 - 09/21/00	18,000	6,000	24,000
	09/22/00 - 09/21/01	18,000	6,000	24,000
Renewal #11	09/22/01 - 09/21/02	18,000	6,000	24,000
	09/22/02 - 09/21/03	18,000	6,000	24,000
	09/22/03 - 09/21/04 (12 mos.)	-	-	- <sup>2</sup>
	09/22/04 - 12/31/04 (3 mos.)	-	-	-
Renewal #12	01/01/05 - 12/31/05	18,000	6,000	24,000 <sup>3</sup>
	01/01/06 - 12/31/06	20,000	6,000	26,000
Renewal #13	01/01/07 - 12/31/07	24,000	6,000	30,000
	01/01/08 - 12/31/08	24,000	6,000	30,000
	01/01/09 - 12/31/09	24,000	6,000	30,000
Renewal #14	01/01/10 - 12/31/10	31,200	6,000	37,200
	01/01/11 - 12/31/11	31,200	6,000	37,200
Renewal #15	01/01/12 - 07/30/12 (7 mos.)	18,200	3,500	21,700
	08/01/12 - 06/30/13 (11 mos.)	40,150	5,500	45,650 <sup>4</sup>
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Renewal #16	09/01/15 - 12/01/15 (4 months)	11,124	-	11,124
	01/01/16 - 12/31/16	33,216	-	33,216
Renewal #17	01/01/17 - 12/31/17	35,148	-	35,148
	01/01/18 - 12/31/18	38,592	-	38,592
Renewal #18	01/01/19 - 12/31/19	40,428	-	40,428
	01/01/20 - 12/31/20	40,428	-	40,428
Renewal #19	01/01/21 - 12/31/21	30,000	-	30,000 <sup>6</sup>
Renewal #20	01/01/22 - 12/31/22	37,800	-	37,800
<b>TOTAL 9/22/77 - 12/31/22</b>		<b>\$ 1,028,036</b>	<b>\$ 207,000</b>	<b>\$ 1,235,036</b>

<sup>1</sup> Due to construction schedule and delay in opening of refurbished Herbst Theatre, Herbst Theatre revenues insufficient to pay ALWMC full \$35,000 in first year of agreement.

<sup>2</sup> ALWMC rejected WMBT proposals on 9/11/03 and 4/8/04 for renewal agreements.

<sup>3</sup> On 12/20/05, ALWMC approved WMBT proposal (of 11/10/05) for two-year renewal agreement retroactive to 1/1/05 and continuing through 12/31/06.

**HISTORY OF SUMS PAID**  
**By War Memorial Board of Trustees**  
**To American Legion War Memorial Commission**

- <sup>4</sup> Amendment #1 to Renewal #15 provided an increased monthly payment to the Legion from the Trustees for 11 months leading up to 7/1/13 Veterans Building closure to allow ALWMC to increase its one half-time employee to full-time to coordinate Posts' move-out. Renewal #15 expired 6/30/13 upon closure of Veterans Building for seismic retrofit.
- <sup>5</sup> Veterans Building closed from 7/1/13 to 8/31/15 for seismic retrofit. Agreement with ALWMC not renewed during this period as there were no Herbst Theatre revenues.
- <sup>6</sup> Veterans Building closed March 2020 through May 2021 due to COVID-19. WMBT Payment reduced due to there being no Herbst Theatre revenues.