

# Memo

**To:** Honorable Mayor and Members of the City Council Mike Calhoun, Interim City Administrator

**From:** Ashlee Wright, City Clerk

**Cc:** Marc Weiner, Senior Planner

**Date:** February 1, 2016

**Re:** AB 1090 Rio Park Project – Resolutions

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It has been brought to my attention that two resolutions, which should have been attached to AB 1090 Rio Park/Larsen Field Update, were inadvertently left out of the agenda packet. They are herein included for your review. Print copies will be provided at the dais for tomorrow's meeting and additionally they will be uploaded to the webpage for public review.

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

**CITY COUNCIL**

**RESOLUTION 2016-\_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA  
AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE AMENDMENT NO. 2  
TO PROFESSIONAL SERVICES AGREEMENT PBD-PSA-MBPS-008-13-14 WITH  
MONTEREY BAY PLANNING SERVICES FOR CONTRACT PLANNING SERVICES IN AN  
AMOUNT NOT TO EXCEED \$21,500**

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WHEREAS, Monterey Bay Planning Services (MBPS) provides contract planning services for the City for the Rio Park/Larsen Field Trail project; and

WHEREAS, the contract with MBPS was originally entered into on July 2, 2014 and amendment on May 4, 2015 for a not to exceed cost of \$50,000; and

WHEREAS, on December 1, 2015, the City Council adopted environmental documents for the Rio Park/Larsen Field Trail Project and directed staff to move forward in obtaining permits, easements and lot line adjustments as necessary; and

WHEREAS, new services are required by MBPS to assist with additional planning and permitting work pertaining to the project.

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 Amendment No. 2 to the existing agreement with Monterey Bay Planning Services for an increased cost of \$21,500 as shown in Exhibit A.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA this 2<sup>nd</sup> day of February 2016 by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

SIGNED:

ATTEST:

\_\_\_\_\_  
Jason Burnett, Mayor

\_\_\_\_\_  
Ashlee Wright, City Clerk

**Exhibit A**

**Amendment No. 2 to Contract  
PBD-PSA-MBPS-008-13-14**

1. This amendment (the "Amendment") is made by **City of Carmel-by-the-Sea** and **Monterey Bay Planning Services** parties to agreement **PBD-PSA-MBPS-008-13-14** (the "Agreement") dated July 2, 2014 and modified by Amendment Number 1 approved by Council on May 4, 2015.

2. The Agreement is amended as follows:

- a. The **Scope** of the Agreement is modified to include lot line adjustment, trail permits and easements and grant funding and pre-construction assistance as outlined in the proposal dated January 18, 2016.
- b. The **Compensation** of the Agreement is modified as follows:

The contract is amended to increase by \$21,500 for the revised scope of services. The contract total cost is for an amount not to exceed \$71,500.

3. Except as set forth in this Amendment, the Agreement is unaffected and shall continue in full force and effect in accordance with its terms. If there is conflict between this amendment and the Agreement or any earlier amendment, the terms of this amendment will prevail.

**CONSULTANT:**

By: \_\_\_\_\_  
Brian Roseth

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

**CITY:**

By: \_\_\_\_\_  
Mike Calhoun  
Interim CITY Administrator

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

**ATTEST:**

By: \_\_\_\_\_  
Ashlee Wright  
CITY Clerk

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

**RESOLUTION 2016-\_\_\_\_\_**

**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 NEILL ENGINEERS CORP FOR RIO PARK/LARSEN FIELD PROJECT IN AN  
AMOUNT NOT TO EXCEED \$35,500**

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WHEREAS, on December 1, 2015, the City Council adopted environmental documents for the Rio Park/Larsen Field Trail Project and directed staff to move forward in obtaining permits; and

WHEREAS, the project will require the services of a surveyor and engineer to assist with preparation of base maps and alignment plans; analysis of grades and possible retaining walls; and field surveying and mapping and preparation of easement descriptions.

WHEREAS, the City wishes to engage Neill Engineers Corp. to assist with this project; and

WHEREAS, contract expenditures of \$25,000 or more require Council approval.

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 Neill Engineers Corp. for a Not to Exceed Cost of \$35,500.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF CARMEL-BY-THE-SEA on this 2nd day of February 2016 by the following roll call vote:

AYES:            COUNCIL MEMBERS:

NOES:            COUNCIL MEMBERS:

ABSENT:        COUNCIL MEMBERS:

ABSTAIN:       COUNCIL MEMBERS:

SIGNED:

ATTEST:

\_\_\_\_\_  
Jason Burnett, MAYOR

\_\_\_\_\_  
Ashlee Wright, City Clerk

# AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

## Neill Engineers Corp

### Rio Park/ Larsen Field Bikeway/Trail Project

THIS AGREEMENT is executed this \_\_\_\_\_day of February 2016 by and between the CITY OF CARMEL-BY-THE-SEA, a municipal corporation (hereinafter "CITY"), and Neill Engineers Corp, (hereinafter "CONSULTANT").

#### IT IS HEREBY MUTUALLY AGREED AS FOLLOWS:

1. **Scope.** CONSULTANT hereby agrees to provide to CITY, mapping and surveying services for Rio Park Bikeway/Trail Project as the scope of services under this Agreement the services set forth in the proposal for services dated January 25, 2016 (Exhibit "A), attached hereto and incorporated herein by this reference.

2. **Timely Work.** CONSULTANT shall perform all duties incidental or necessary in a timely fashion; and shall be performed diligently, competently, and in accordance with professional standards of performance. Failure to so perform is hereby deemed a material breach of this Agreement, and CITY may terminate this Agreement with no further liability hereunder. City may agree in writing with CONSULTANT to an extension of time. It is expressly agreed and understood that CONSULTANT shall not be held responsible for delays occasioned by factors beyond their control, nor by factors that could not reasonably have been foreseen at the time of execution of this AGREEMENT.

3. **Term.** The work under this Agreement shall commence on February 1, 2016 and terminate on December 31, 2016. The parties may agree to extend or amend this Agreement prior to its expiration.

4. **Compensation.** CITY shall pay CONSULTANT in an amount not to exceed \$35,500 which said sum shall include all costs, as presented in the proposal dated January 25, 2016 (Exhibit "A"), and in accordance with this Agreement.

Compensation under this Agreement shall become due and payable thirty (30) days after CITY's approval of CONSULTANT'S submission of monthly written invoices. Written invoices shall clearly itemize each charge. The payment of any compensation to CONSULTANT hereunder shall be contingent upon performance of the terms and conditions of this Agreement to the reasonable satisfaction of the City Administrator.

If the City Administrator determines that the work set forth in the written invoice has not been performed in accordance with the terms of this Agreement, CITY shall not be responsible for payment until such time as the work has been performed to the reasonable satisfaction of the City Administrator.

5. **Additional Services.** In the event that CITY should request additional services not covered by the terms of this Agreement, said additional services and compensation shall be agreed upon in advance and in writing by CONSULTANT and the City Administrator. CONSULTANT shall not be compensated for any additional services unless such additional services and compensation are approved by the City Council inasmuch as all Agreements exceeding \$24,999.00 require City Council approval to be valid.

6. **Meet and Confer.** CONSULTANT agrees to meet and confer with CITY or its agents or employees with regard to services as set forth herein as may be required by City Administrator to insure timely and adequate performance of this Agreement.

7. **Suspension or Termination of Agreement Without Cause.** CITY may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion

hereof, by serving upon the CONSULTANT at least ten (10) business days prior written notice. Upon receipt of said notice CONSULTANT shall immediately cease all work under this Agreement unless the notice provides otherwise. If CITY suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

In the event this Agreement is terminated pursuant to this section CITY shall pay CONSULTANT the actual value of the work performed up to the time of termination provided that the work performed is of value and approved by CITY. Upon termination of this Agreement pursuant to this section CONSULTANT will submit an invoice to CITY pursuant to section 4 of this Agreement.

8. **Default of CONSULTANT.** CONSULTANT'S failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, CITY shall have no obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and can terminate this Agreement immediately by written notice to CONSULTANT. If such failure by CONSULTANT to make progress in the performance of work hereunder arises out of causes beyond CONSULTANT'S control, and without fault or negligence of CONSULTANT, it shall not be considered a default.

9. **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, if applicable), CONSULTANT shall defend (with legal counsel reasonably acceptable to 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, 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 sub-consultant, anyone directly or indirectly employed by them, or anyone that they control (collectively "Liabilities"). Such obligations to defend, hold harmless and Indemnify any Indemnitee shall not apply to the extent that such Liabilities are caused in part by the negligence, or willful misconduct of such Indemnitee.

Notwithstanding the provisions of the above paragraph, CONSULTANT agrees to indemnify and hold harmless CITY from and against any and 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, Agreementors, representatives, patrons, guests or invitees.

CONSULTANT further agrees to indemnify CITY for damage to or loss of CITY OF CARMEL-BY-THE-SEA property to the proportionate extent they arise out of CONSULTANT'S negligent performance of the work associated with this Agreement or to the proportionate extent they arise out of any negligent act or omission of CONSULTANT or any of CONSULTANT'S employees, agents, Agreementors, representatives, patrons, guests or invitees; excepting such damage or loss arising out of the negligence of CITY.

10. **Insurance.** CONSULTANT shall submit and maintain in full force insurance as described herein. Without altering or limiting CONSULTANT'S duty to indemnify, CONSULTANT shall maintain in effect throughout the term of this Agreement, a policy or policies of insurance with the following minimum limits of liability:

**Commercial general liability insurance** including but not limited to premises, personal injuries, bodily injuries, 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.

**Professional liability insurance** CONSULTANT shall maintain in effect throughout the term of this Agreement professional liability insurance with limits of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate. CONSULTANT will either maintain or cause to be maintained professional liability coverage in full force or obtain extended reporting (tail coverage with the same liability limits) for at least three (3) years following CITY's acceptance of work.

**Commercial 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.

**Workers' Compensation Insurance** If CONSULTANT employs others in the performance of this Agreement, CONSULTANT shall maintain workers' compensation insurance in accordance with California Labor Code section 3700 and with a minimum of \$1,000,000 per occurrence for employers' liability.

**Other Insurance Requirements**

A. All insurance required under this Agreement must be written by an insurance company either:

- 1) Admitted to do business in California with a current A.M. Best rating of no less than A:VI; OR
- 2) 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.

B. Each insurance policy required by this Agreement shall be endorsed to state that CITY shall be given notice in writing at least thirty (30) days in advance of any cancellation thereof, except CITY shall be given TEN (10) days' notice for nonpayment of the premium.

C. The general liability and auto policies shall:

- 1) Provide an endorsement naming CITY, its officers, officials, and employees as additional insureds under an ISO CG 20 10 07 04 and ISO 20 37 07 04 or their equivalent.
- 2) Provide that such insurance is primary and non-contributing insurance to any insurance or self-insurance maintained by CITY.
- 3) Contain a "Separation of Insureds" provision substantially equivalent to that used in the ISO form CG 00 01 10 01 or their equivalent.
- 4) Provide for a waiver of any subrogation rights against CITY via an ISO CG 24 01 10 93 or its equivalent.

- D. Prior to the start of work under this Agreement CONSULTANT shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with the City Administrator. CONSULTANT shall 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.
- E. Neither the insurance requirements hereunder, nor acceptance or approval of CONSULTANT'S insurance, nor whether any claims are covered under any insurance, shall in any way modify or change CONSULTANT'S obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, CONSULTANT is financially liable for its indemnity obligations under this Agreement.
- F. Any deductible or self-insured retentions must be declared to and approved by CITY. At the option of CITY either: the insured shall reduce or eliminate such deductibles or self-insured retentions as respects CITY, its officers, officials, employees, and volunteers; or CONSULTANT shall provide a financial guarantee satisfactory to CITY guaranteeing payment of losses and related investigations, claim administration, and defense expenses.

11. **Ownership of Work.** Upon completion of the work under this Agreement, ownership and title to all materials and deliverables produced as part of this Agreement will automatically be vested in CITY and no further Agreement will be necessary to transfer ownership to CITY. CONSULTANT shall not be held liable for any modification or re-use of CITY-owned materials and deliverables for purposes outside their original intent.

12. **Licensing.** CONSULTANT represents that it is properly licensed to perform the work specified under this Agreement, including but not limited to, possession of a current city business license.

13. **Termination.** This Agreement may be terminated by either party upon thirty (30) calendar day's written notice to the other party. In the event of such termination, CITY shall pay CONSULTANT for all services performed in accordance with this Agreement to the date of receipt of notice of termination. An itemized statement of the work performed to the date of termination shall be submitted to CITY. In ascertaining the services actually rendered hereunder up to the date of termination of this Agreement, consideration shall be given to both completed work and work in process of completion, and to complete and incomplete drawings and other documents whether delivered to CITY or in the possession of the CONSULTANT.

14. **Agency.** In performing the services specified under this Agreement, CONSULTANT is hereby deemed to be an independent CONSULTANT and not an agent or employee of CITY.

15. **Authority of the City Administrator.** CONSULTANT shall perform all necessary services provided under this Agreement and outlined in the proposal and shall do, perform, and carry out said work in accordance with this Agreement as determined by and to the reasonable satisfaction of the City Administrator. The City Administrator reserves the right to make changes, additions or deletions, to the scope of work as deemed necessary or advisable to implement and carry out the purposes of this Agreement. The City Administrator is authorized to execute change orders.



16. **Responsibility of Consultant.** By executing this CONSULTANT represents and state to CITY that he/she possesses, or will arrange to secure from others, all necessary professional capabilities, experience, resources and facilities necessary to provide to city the services contemplated under this Agreement. CONSULTANT further represents that he/she will follow the current generally accepted practices of the profession to make findings, render opinions, prepare factual presentations, and provide professional advice and recommendations regarding the project for which services are rendered under this Agreement.

17. **Materials and Equipment.** CONSULTANT shall furnish at his/her own expense, all materials and equipment necessary to carry out the terms of this Agreement.

18. **Digital Files.** CONSULTANT shall furnish copies of all deliverables on compact disks (for example, final report) in digital format. Files shall be compatible with the current versions used by PC computers.

19. **Audit Authority.** CONSULTANT shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement; the accounting and control systems shall be satisfactory to CITY. CITY and CITY's auditor shall be afforded access to CONSULTANT's records, books, correspondence and other data relating to this Agreement. CONSULTANT shall preserve these records, books, correspondence and other data relating to this Agreement for a period of four (4) years after final payment or for such longer period as may be required by law. In addition, CONSULTANT agrees to make said records, books, correspondence and other data relating to this Agreement available to CITY at CITY's principle place of business upon seventy-two (72) hours advance written notice. The City Administrator, or his or her designee, shall at all times have the right to inspect the work, services, or materials. CONSULTANT shall furnish all reasonable aid and assistance required by CITY for the proper examination of the work or services and all parts thereof. Such inspection shall not relieve CONSULTANT from any obligation to perform said work or services strictly in accordance with the specifications of any modifications thereof and in compliance with the law.

20. **Notices.** All notices herein provided to be given, or which may be given by either party to the other, shall be considered fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

CITY: City Administrator  
City of Carmel-by-the-Sea  
P.O. Box CC  
Carmel-By-The-Sea, CA 93921

CONSULTANT: Sherman Low  
Neill Engineers Corp  
P.O. Box LL  
Carmel- By-the- Sea, CA 93921

21. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior Agreements, whether oral or written, relating to the subject matter thereof. Any modification of this Agreement will be effective only if it is in writing signed by both parties hereto.

22. **Validity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

23. **Assignment of Interest.** The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of CITY. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which CITY may terminate this Agreement and be entitled to damages.

24. **Conflict of Interest/Political Reform Act.** CONSULTANT shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement.

During the term of this Agreement CONSULTANT shall not directly or indirectly, either as a partner, employer, employee, consultant, principal, and agent or in any individual or representative capacity, engage or participate in any business or voluntary activity on behalf of any other party on any property located within the City of Carmel-by-the-Sea without notification to City Administrator.

If CITY determines CONSULTANT comes within the definition of CONSULTANT under the Political Reform Act (Government Code Sections 87100 et seq.) CONSULTANT shall complete and file, and shall require any other person doing work under this Agreement, to complete and file a "Statement of Economic Interest" with CITY disclosing CONSULTANT'S and/or such other person's financial interests.

25. **Non-discrimination/Affirmative Action.** CONSULTANT will not discriminate against any employee or applicant for employment because of race, creed, color, sex, age, national origin, marital status, physical or other motor handicap, unless based upon bonafide occupational disqualification.

CONSULTANT will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, age, national origin, marital status, physical or other motor handicap.

26. **Counterparts.** This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

27. **Laws.** CONSULTANT agrees that in the performance of this Agreement it will reasonably comply with all applicable state, federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Carmel-By-The-Sea.

28. **Attorneys Fees and Court Venue.** Should either party to this Agreement bring legal action against the other, (formal judicial proceeding, mediation or arbitration), the case shall be handled in Monterey County, California, and the party prevailing in such action shall be entitled to a reasonable attorney's fee which shall be fixed by the judge, mediator or arbitrator hearing the case and such fee shall be included in the judgment, together with all costs.

29. **Severability.** If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto in Carmel, California, on the day and year first written above.

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

By: \_\_\_\_\_  
Michael Calhoun  
Interim CITY Administrator

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

**CONSULTANT:**

By: \_\_\_\_\_  
Sherman Low

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

**ATTEST:**

By: \_\_\_\_\_  
Ashlee Wright  
CITY Clerk

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