



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Daniel Gho, Public Works Director

**MEETING DATE:** January 6, 2016

**SUBJECT:** Amendment to the Agreement with Albert Weisfuss for Professional Arborist Services

**CEQA STATUS:** This action is not a project under section 15378 (b),(2) of the CEQA Guidelines, set forth in California Administrative Code, Title 14, Section 15000, et seq.

**RECOMMENDATION**

Approve a resolution authorizing the City Manager to amend the agreement with Albert Weisfuss for Professional Arborist Services for the City of Pacific Grove by \$20,000.

**BACKGROUND**

The City entered into a contract with Albert Weisfuss, International Society of Arboriculture Certified Arborist # WC 1388, in November of 2011, to perform contract Arborist services, in an amount not to exceed \$10,000, and then with an amendment to the original contract of an additional \$15,000. This contract and amendment expired in December of 2012 and the City entered into a two-year contract with Albert Weisfuss in January of 2013 for two years with the option to renew the contract by mutual written agreement for additional fiscal year increments, not to exceed five years from the date of the contract. This contract is set at \$48,000 per year. Mr. Weisfuss has been working under contract and providing arborist service to the City for 4 years. The Scope of the contract has Albert enforcing the tree ordinance, implementing forestry programs, conducting public outreach, reviewing tree applications, and determining the level of activity requested, coordination with tree contractors, scheduling of all City related tree activity and all other activities associated with the City's urban forest.

**DISCUSSION**

Over the last three years the City has seen a tremendous increase in the amount of tree applications that have been submitted to the City for review. All tree work in the City requires an application to be completed which is then reviewed by the City. If the reviewed application consists of trimming more than 25% of a tree or a removal of a living tree then the application is processed and payment must be made by the property owner.

In 2013 the City received 227 tree applications and in 2014 the City showed an increase to 296 applications. As of mid-December, 2015, the City had already received 500 applications, primarily due to draught and the potential El Nino weather pattern. All such applications need to be reviewed and evaluated in the field to verify their validity and scope noted on the application.

In order to properly review the permits the City Arborist's contract needs to be increased by \$20,000 to allow Mr. Weisfuss to have ample time to perform his duties, but also to provide an adequate level of service for our residents. Mr. Weisfuss's current agreement allots him only 640 hours per year--or 12 hours a week--to perform his work. By amending his agreement by \$20,000 for a total agreement of \$68,000 per fiscal year, the City would be able to utilize his service for an additional 267 hours per year, or an additional 5 hours per week. As a contract employee, Mr. Weisfuss carries his own insurance, uses his own vehicle and equipment, and supplies his own materials, similar to any City contract employee.

## **UPDATE**

At the November 18, 2015 City Council Meeting, this item was brought before the City Council after it had been pulled from the November 4, 2015 meeting and postponed until November 18<sup>th</sup>. The item had been pulled by a member of the public who noted discrepancies between the contract and scope of work that was to be carried out by the contract arborist.

The first item was the amount paid to Mr. Weisfuss for his services during the term of the existing contract. The City requested a volume of services in excess of that which could be provided for under the contract's dollar limit. The City requested work totaling over 300 hours more than was allowed, and did overpay Mr. Weisfuss by a sum of \$22,650.07 in FY 2014-5 for the work performed. This was an error by the Public Works Department.

Permit applications are submitted at the Community & Economic Development Department counter; Mr. Weisfuss receives those applications and performs the requested analysis. The total requested work load, which in addition to analysis of applications, included managing a Cal Fire grant to clean George Washington Park, attending BNRC and Council Meetings to provide expert analysis of tree appeals, and administering memorial plantings and the memorial tree program, exceeded the funding allotment. This error was not caught by Public Works until the member of the public brought this item to the attention of the Council. Mr. Weisfuss worked all of these hours. There was no intention to exceed spending authorization; this was strictly an oversight of the Public Works Department. Even with the overpayment, the Forestry Department came in significantly under budget, only expended 74% of the total budget, and gave back to the general fund \$64,000.

Such an error will be prevented in the future. The upgraded Pentamotion software that Finance is currently installing includes the capability of blocking all payments to contractors in excess of the contracted amount. An invoice input for payment that exceeded the approved limit would be rejected by the system.

The contract is for \$48,000 a fiscal year, to provide services for 20 hours a week, at \$75 an hour. The contract amount does not correspond with the allotted time per week allowed. If Mr. Weisfuss performed services for the City at \$75 an hour for 20 hours per week, his contract should have been executed at \$78,000 per year.

It was also stated in the letter that the resolution is for "Professional Arborist Services for Trees in Public Right-A-Way and for all Trees on City Owned Properties and Facilities". This was stated in the resolution for the amendment, which accompanied the staff report slated for the

November 4, 2015 meeting. This has now been updated as the original contract states administering tree permit process, maintain records and producing reports when requested.

**OPTIONS**

1. Do nothing
2. Approve a different amount for the amendment

**FISCAL IMPACT**

This will increase costs in the General Fund 01, Division 513, Forestry by \$20,000. The costs of processing tree permits are offset, in part, by fees. 100% cost recovery is not possible, unfortunately, as the fees would be so high as to lead to many people doing the work without a permit.

**ATTACHMENTS**

1. Resolution for amendment to the agreement with Albert Weisfuss
2. Documents provided to Council by a resident during November 18, 2015 Council Meeting
3. Current Contract
4. Fiscal Year 2014/15 payments for services history

RESPECTFULLY SUBMITTED:



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Daniel Gho  
Public Works Superintendent

REVIEWED BY:



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Thomas Frutchey  
City Manager

**RESOLUTION NO. 15-\_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE  
APPROVING A CONTRACT AMENDMENT WITH ALBERT WEISFUSS  
FOR PROFESSIONAL ARBORIST SERVICES FOR TREES IN PUBLIC  
RIGHT-OF-WAY AND FOR ALL TREES ON CITY OWNED PROPERTIES  
AND FACILITIES AND ADMINISTER THE CITY'S TREE PERMIT PROCESS**

1. The City of Pacific Grove ("City") and Albert Weisfuss are authorized by the City Council to enter into a contract amendment with regards to Professional Arborist Services for Trees in Public Right-of-Way and for all Trees on City Owned Properties and Facilities.
2. The City entered into an agreement for Profession Arborist Services with Albert Weisfuss in 2011 and 2013.
3. The Current agreement is not to exceed \$48,000 and was a two year agreement that expired in June of 2014, but was extended by mutual letter for an additional year as specified in the original agreement.
4. The City will execute all documents to amend the current contract with Albert Weisfuss to add an additional \$20,000 to the current contract for the remainder of this fiscal year and as through the life of the agreement.
5. Albert Weisfuss has the credentials, experience, is a certified arborist, and has the institutional knowledge of the City of Pacific Grove to continue to serve as the City Arborist.
6. This action is not a project under section 15378 (b),(2) of the CEQA Guidelines, set forth in California Administrative Code, Title 14, Section 15000, et seq.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE  
CITY OF PACIFIC GROVE:**

1. The work to be done under this contract consists of professional arborist services for trees in public right-of-way and for all trees on city owned properties and facilities and administer the City's tree permit process.
2. The Council authorizes the City Manager to execute all documents and perform all necessary City acts to enter into an agreement amendment with Albert Weisfuss.
3. The contract funding is allocated through General Fund 01, Public Works, Division, 513, Forestry.
4. This Resolution shall become effective immediately following passage and adoption hereof.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE**  
this 6<sup>th</sup> day of January, 2016 by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

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BILL KAMPE, Mayor

ATTEST:

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SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

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DAVID C. LAREDO, City Attorney

Here are some facts, established through public records requests that you may not have received or that may not be evident to you.

There are some discrepancies between the agenda report and the actual contract for Albert Weisfuss.

The agreement is for Arborist Consultation Services, not the position of "City Arborist" as referenced on tree permits.

The agenda item states that the current contract is not to exceed \$48,000 per year. It continues to say that based on that figure it would allow him 640 hours, or 12 hours per week. Condition 1 of the contract says "Provide services for an average of 20 hours per week".

Contract Condition 6.01 requires the arborist to submit itemized invoices. Of the invoices provided by request, one invoice is neither itemized nor identifiable. The total of those 2014-15 invoices comes to a little over \$50,000. However, per the City check register, he was paid over \$67,000 for that fiscal year, which is \$19,000 over the allotted contract limit of \$48,000 and almost equal to what is being requested tonight.

The contract states that the arborist's hourly rate is \$75.00. There is a loophole in the one page contract renewal letter for 2015-16, as was in the 2014-15 renewal, stating that the renewal is at the current rate. There is no mention of the \$48,000 limit required by the existing contract.

The City Attorney signed the "approval as to form" on the original agreement. In his job description the City Attorney is "required to draft ordinances, resolutions, contracts, or other legal documents or proceedings required by the Council or other officials". His approval and signature do not appear on the agreement renewal letter nor was he included in the cc.

The agenda item presented by Daniel Gho, Public Works Director, requests increased hours and \$20,000 based on the scope of work listed in the original agreement. However, the Resolution is for "Professional Arborist Services for Trees in Public Right-of-Way and for All Trees on City Owned Properties and Facilities".

It does not state that his responsibility would include private property. In that case, his time would be freed up to focus on City trees in the allotted time and payment schedule already provided in the original agreement.

These details need to be taken into consideration during your discussion.

Sally Moore

November 4, 2015 6-C

Continued to November 18, 2015 12-C



# PUBLIC WORKS DEPARTMENT CITY OF PACIFIC GROVE

2100 Sunset Drive  
Pacific Grove, CA 93950  
Telephone: (831)648-5722 / Facsimile: (831)375-0627

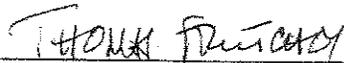
April 7, 2015

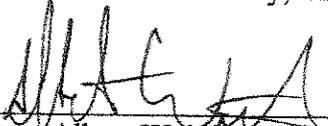
Albert Weisfuss  
P.O. Box 2263  
Monterey, CA 93942

The term of your agreement was from January 1, 2013 through June 30, 2015, and shall be renewable by mutual written agreement for additional fiscal yearly increments, not to exceed five years, from the date of the contract unless terminated pursuant to the terms of the agreement. The effective date of your contract is January 3, 2013.

This letter is to renew your current contract with the City of Pacific Grove at the current rate for FY 15/16 (July 1, 2015 through June 30, 2016), for Arborist Consultation Services.

Recommended By:  Date: 4-14-15  
Daniel Gho Public Works Superintendent

Approved By:  Date: 4-14-15  
Thomas Frutchey, City Manager

Accepted:  Date: 4-14-15  
Albert Weisfuss, Contractor

cc: Thomas Frutchey, City Manager  
Daniel Gho, Public Works Superintendent  
Albert Weisfuss, Contract City Arborist

Paid to City Arborist 2014-2015

Date	Check	Services	Amounts	Total
July 9, 2014	75675	Arborist Services	2,740.39	
			2,665.39	5,405.78
Aug. 6, 2014	75996	Arborist Services	4,540.39	4,540.39
Aug. 25, 2014	76158	Arborist Services	2,965.39	2,965.39
Sept. 12, 2014	76339	Arborist Services	4,465.39	4,465.39
Sept. 26, 2014	76449	Arborist Services	3,640.39	3,640.39
Oct. 14, 2014	76600	Arborist Services	2,665.39	2,665.39
Oct. 31, 2014	76773	Arborist Services	3,790.39	
			2,215.78	6,005.78
Nov. 25, 2014	77071	Arborist Services	2,815.39	2,815.39
Jan. 16, 2015	77530	Arborist Services	4,919.39	4,919.39
Jan. 31, 2015	77777	Arborist Services	1,465.99	
			2,890.39	4,355.78
Feb. 13, 2015	77898	Arborist Services	2,777.89	2,777.89
March 13, 2015	78190	Arborist Services	2,475	
			2,512.50	4,987.50
March 27, 2015	78302	Arborist Services	3,000	3,000.00
April 16, 2015	78578	Arborist Services	2,587.50	
			3,712.50	6,300.00
May 18, 2015	78837	Arborist Services	1,875	1,875.00
May 28, 2015	78929	Arborist Services	2,925	2,925.00
June 22, 2015	79117	Arborist Services	3,387.80	3,387.80
<b>Total for 2014-2015 Fiscal Year</b>				<b>67,031.91</b>

# Invoice

Date: 08/06/2014  
 Invoice No.: 10072  
 Due Date: 09/05/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

P A I D  
 AUG 06 2014

Ship To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950  
 P.O. #: 15000350  
 VENDOR #: 6216

USE TAX: \_\_\_\_\_

Qty	Description	Unit Price	Total
1	required contract services	\$4,575.00	\$4,575.00
Total			\$4,575.00
Balance Due			\$4,575.00

7/21 5hrs  
 7/22 8.5 hrs CAL fire  
 7/23 9hrs CAL fire  
 7/24 8hrs CAL fire  
 7/25 8.5hrs CAL fire  
 7/28 4hrs  
 7/29 4hrs  
 7/30 4hrs  
 7/31 4hrs  
 8/1 4hrs  
 8/2 2hrs Memorial tree planting

PUBLIC WORKS DEPARTMENT  
 Rec'd By  
 Division

AUG 05 2014

APPROVED TO: [Signature]  
 APPROVED BY: [Signature]

Thank you for your business.

61-75 HRLT

# Invoice

Date: 07/22/2014  
 Invoice No.: 10061  
 Due Date: 08/21/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

P A I D

City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950  
 AUG 06 2014  
 5000322

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Qty	Description	Unit Price	Total
1	required contract services	\$3,937.50	\$3,937.50
Total			\$3,937.50
Balance Due			\$3,937.50

7/7 4hrs  
 7/8 5.5hrs  
 7/9 5hrs  
 7/10 7hrs  
 7/11 4hrs  
 7/14 5hrs  
 7/15 9hrs  
 7/16 5hrs  
 7/17 4hrs  
 7/18 4hrs

PUBLIC WORKS DEPARTMENT  
 Rec'd By  
 Division

JUL 23 2014

APPROVED TO: [Signature]

APPROVED BY: [Signature]

Thank you for your business.

52.5-75 HRLT

# Invoice

Date: 10/24/2014  
 Invoice No.: 10114  
 Due Date: 11/23/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID OCT 31 2014

Qty	Description	Unit Price	Total
1	required contract services	\$3,825.00	\$3,825.00

Total \$3,825.00  
 Balance Due \$3,825.00

10/14-6hrs  
 10/15-10hrs (city council)  
 10/16-5hrs  
 10/17-5hrs  
 10/20-6hrs  
 10/21-6hrs  
 10/22-4hrs  
 10/23-5hrs  
 10/24-3hrs

Thank you for your business.

P.O. #: 15001930-1  
 VENDOR #: 6216  
 USE TAX: \_\_\_\_\_

PUBLIC WORKS DEPARTMENT  
 Recd By: \_\_\_\_\_  
 Date: OCT 24 2014  
 Approved By: \_\_\_\_\_  
 Acc# 513-5701

PAID OCT 31 2014

# Invoice

Date: 09/15/2014  
 Invoice No.: 10086  
 Due Date: 10/15/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Qty	Description	Unit Price	Total
1	required contract services	\$3,675.00	\$3,675.00

Total \$3,675.00  
 Balance Due \$3,675.00

PUBLIC WORKS DEPARTMENT  
 Recd By: \_\_\_\_\_  
 Date: SEP 22 2014  
 Approved By: \_\_\_\_\_  
 Acc# 513-5701

9/2 4hrs  
 9/3 4hrs  
 9/4 5hrs  
 9/5 4hrs  
 9/8 6hrs  
 9/9 7hrs  
 9/10 8hrs  
 9/11 7hrs  
 9/12 4 hrs

Thank you for your business.

P.O. #: 15000758  
 VENDOR #: 6216  
 USE TAX: \_\_\_\_\_

49 HRS - SHIRLEY

# Invoice

Date: 09/09/2014  
 Invoice No.: 10085  
 Due Date: 10/09/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

P A I D  
 SEP 12 2014

Qty	Description	Unit Price	Total
1	required contract services	\$4,500.00	\$4,500.00

P.O. #: 15000638  
 VENDOR #: 6216  
 USE TAX:

Total \$4,500.00  
 Balance Due \$4,500.00

8/18 4hrs  
 8/19 5hrs  
 8/20 4hrs  
 8/21 4hrs  
 8/22 4hrs  
 8/25 8hrs cal fire  
 8/26 8hrs cal fire  
 8/27 7 hrs cal fire  
 8/28 8 hrs cal fire  
 8/29 8hrs cal fire

Thank you for your business.

60 2875 HRLY

PUBLIC WORKS DEPARTMENT  
 Rec'd By: [Signature]  
 Division: [Signature]  
 SEP 05 2014  
 Acct# 513-5201  
 APPROVED TO PAY [Signature]  
 Approved By: [Signature]

# Invoice

Date: 10/02/2014  
 Invoice No.: 10087  
 Due Date: 11/01/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

P A I D  
 OCT 10 2014

Qty	Description	Unit Price	Total
1	required contract services	\$2,700.00	\$2,700.00

P.O. #: 15000844  
 VENDOR #: 6216  
 USE TAX:

Total \$2,700.00  
 Paid \$2,700.00

9/15 4hrs  
 9/16 8hrs BNRC  
 9/17 5hrs  
 9/22 4hrs  
 9/23 5hrs  
 9/24 4hrs  
 9/25 2hrs  
 9/26 4hrs

Thank you for your business.

36 2875 HRLY

PUBLIC WORKS DEPARTMENT  
 Rec'd By: [Signature]  
 Division: [Signature]  
 OCT 03 2014  
 Acct# 513-5201  
 APPROVED TO PAY [Signature]  
 Approved By: [Signature]

# Invoice

Date: 11/13/2014  
 Invoice No.: 10116  
 Due Date: 12/13/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID NOV 25 2014

Qty	Description	Unit Price	Total
1	required contract services	\$2,850.00	\$2,850.00
P.O. #: _____			
VENDOR #: _____			
USE TAX: _____			
PUBLIC WORKS DEPARTMENT Rec'd By: _____ Division: _____ NOV 13 2014 ACIP 513-5201 APPROVED TO PAY _____ Approved By: _____			
P.O. #: 15001759			
VENDOR #: 6216			
USE TAX: _____			
Total		\$2,850.00	\$2,850.00
Balance Due		\$2,850.00	\$2,850.00

Thank you for your business.

What for? No date - no description  
 11/13 HHR on ENV 10117 Dec. 22, 2014  
 Perhaps Oct 26 to Nov. 9??

# Invoice

Date: 10/24/2014  
 Invoice No.: 10113  
 Due Date: 11/23/2014

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID OCT 31 2014

Qty	Description	Unit Price	Total
1	required contract services	\$2,250.00	\$2,250.00
P.O. #: 15001030-2			
VENDOR #: 6216			
USE TAX: _____			
Total		\$2,250.00	\$2,250.00
Balance Due		\$2,250.00	\$2,250.00

9/29-4hrs  
 9/30-3hrs  
 10/1-4hrs  
 10/2-4hrs  
 10/3-4hrs  
 10/8-4hrs  
 10/9-3hrs  
 10/10-4hrs

Thank you for your business.

30 HRS = 75 HOURS

PUBLIC WORKS DEPARTMENT  
 Rec'd By: \_\_\_\_\_  
 Division: \_\_\_\_\_

OCT 24 2014

ACIP 513-5201  
 APPROVED TO PAY \_\_\_\_\_  
 Approved By: \_\_\_\_\_

# Invoice

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Date: 08/19/2014  
 Invoice No.: 10081  
 Due Date: 09/18/2014

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

P A I D

AUG 21 2014

P.O. #: 15001833  
 VENDOR #: 6216  
 USE TAX:

Qty	Description	Unit Price	Total
1	required contract services	\$3,000.00	\$3,000.00

Total \$3,000.00  
 Balance Due \$3,000.00

8/4 4hrs  
 8/5 4hrs  
 8/6 4hrs  
 8/7 4hrs  
 8/8 4hrs  
 8/11 4hrs  
 8/12 4hrs  
 8/13 4hrs  
 8/14 4hrs  
 8/15 4hrs

Thank you for your business.

40 = 775 HR

PUBLIC WORKS DEPARTMENT  
 Rec'd By: \_\_\_\_\_  
 Division: \_\_\_\_\_  
 8/13 AUG 20 2014  
 Acct: 515-5201  
 APPROVED TO PAY  
 Approved By: \_\_\_\_\_

# Invoice

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 weisfuss1@comcast.net

Date: 01/30/2015  
 Invoice No.: 10141  
 Due Date: 03/01/2015

City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

300 Forest Avenue  
 Pacific Grove CA  
 93950

Qty	Description	Unit Price	Total
1	required contract services	\$2,812.50	\$2,812.50

Total \$2,812.50  
 Balance Due \$2,812.50

1/20 5hrs  
 1/21 4hrs  
 1/22 4hrs  
 1/23 4hrs  
 1/26 4hrs  
 1/27 5hrs  
 1/28 3.5 hrs  
 1/29 4hrs  
 1/30 4hrs

Thank you for your business.

3250 = 75 hr

GOODS/SERVICES RECEIVED &  
 APPROVED TO PAY

Acct #: 63-501  
 Acct #: 15001833  
 Description:  
 Approved By: \_\_\_\_\_

PAID FEB 13 2015

# Invoice

Date: 01/22/2015  
Invoice No.: 10138  
Due Date: 02/21/2015

Albert Weistuss  
PO Box 2263  
Monterey CA  
93942  
cell 831-869-2767  
fax 831-626-3110  
weistuss1@comcast.net

PAID JAN 31 2015

Ship To:  
300 Forest Avenue  
Pacific Grove CA  
93950

Bill To:  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove CA  
93950

Qty	Description	Unit Price	Total
1	required contract services	\$2,925.00	\$2,925.00

Total \$2,925.00  
Paid \$2,925.00

GOODS/SERVICES RECEIVED &  
APPROVED TO PAY  
Acct #: 513-52.01 Amt: \$ 2,925.00  
Acct #: Amt: \$  
Description:  
Approved By: 

6 Dec  
19 HRS  
20 HRS  
1/5 4hrs  
1/10 2hrs  
1/12 4hrs  
1/13 4hrs  
1/14 4hrs  
1/15 4hrs  
1/16 4hrs

Thank you for your business.

P.O. #: 15001671-2

VENDOR #: 1211

USE TAX:

39 = \$75

# Invoice

Date: 06/02/2015  
 Invoice No.: 10181  
 Due Date: 07/02/2015

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 weisfuss1@comcast.net

300 Forest Avenue  
 Pacific Grove CA  
 93950

City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID JUN 2 2015

Qty	Description	Unit Price	Total
1	required contract services	\$3,337.50	\$3,337.50
P.O. #: 15002762			
VENDOR #: 6216			
USE TAX:			
Total			\$3,337.50
Balance Due			\$3,337.50

22.5  
 11RS  
 4/11 4.5 hrs  
 4/13 4hrs  
 4/14 4hrs  
 4/15 5hrs  
 4/18 4hrs  
 4/19 6hrs  
 4/20 4hrs  
 4/21 5hrs  
 4/22 4hrs

GOODS/SERVICES RECEIVED & APPROVED TO PAY

Acct #: 513-2201 Amt: \$ 3,337.50  
 Acct #: Amt: \$  
 Description:  
 Approved By: [Signature]

Thank you for your business.

23  
 14RS = 75 HR

# Invoice

Date: 12/22/2014  
 Invoice No.: 10112  
 Due Date: 01/21/2015

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767  
 fax 831-626-3110  
 weisfuss1@comcast.net

Ship To:  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

Bill To:  
 City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID JAN 16 2015

Qty	Description	Unit Price	Total
1	required contract services	\$4,950.00	\$4,950.00
Total			\$4,950.00
Balance Due			\$4,950.00

11-11 4hr  
 11-12 6hr  
 11-13 4hr  
 11-17 4hr  
 11-18 3hr  
 11-19 4hr  
 11-20 4hr  
 11-21 4hr  
 12-3 2hr  
 12-4 5hr  
 12-5 2hr  
 12-10 5hr  
 12-11 4hr  
 12-12 2hr  
 12-17 6hr  
 12-18 4hr  
 12-19 4hr

GOODS/SERVICES RECEIVED & APPROVED TO PAY

Acct #: 513-2201 Amt: \$ 4,950  
 Acct #: Amt: \$  
 Description:  
 Approved By: [Signature]

P.O. #: 15004157  
 VENDOR #: 6216  
 USE TAX:

Thank you for your business.

674RS = 73.88 HR

# Invoice

Date: 06/28/2015  
 Invoice No.: 10189  
 Due Date: 07/28/2015

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767

weisfuss1@comcast.net

300 Forest Avenue  
 Pacific Grove CA  
 93950

City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID JUL 17 2015

Qty	Description	Unit Price	Total
1	required contract services	\$2,700.00	\$2,700.00
GOODS/SERVICES RECEIVED & APPROVED TO PAY Acct #: 513-5201 Amt: \$ 2,700 Acct #: Amt: \$ Description: <u>PA</u> Approved By: <u>DA</u>			
		P.O. #: 16000035-1	
		VENDOR #: 6216	
		USE TAX:	

Total \$2,700.00  
 Balance Due \$2,700.00

June 9 - June 19  
 6/9 - 6/12 = 16hrs  
 6/15 - 6/19 = 20hrs

Thank you for your business.

36 HRS 2475 HR

# Invoice

Date: 06/26/2015  
 Invoice No.: 10188  
 Due Date: 07/26/2015

Albert Weisfuss  
 PO Box 2263  
 Monterey CA  
 93942  
 cell 831-869-2767

weisfuss1@comcast.net

300 Forest Avenue  
 Pacific Grove CA  
 93950

City of Pacific Grove  
 300 Forest Avenue  
 Pacific Grove CA  
 93950

PAID JUL 17 2015

Qty	Description	Unit Price	Total
1	required contract services	\$2,475.00	\$2,475.00
GOODS/SERVICES RECEIVED & APPROVED TO PAY Acct #: 513-5201 Amt: \$ 2,475 Acct #: Amt: \$ Description: <u>PA</u> Approved By: <u>DA</u>			
		P.O. #: 16000035-2	
		VENDOR #: 6216	
		USE TAX:	

Total \$2,475.00  
 Balance Due \$2,475.00

May 26 - June 5  
 5/26 - 5/29 = 17hrs  
 6/1 - 6/5 = 16hrs

Thank you for your business.

33 HRS 2475 HR

Ag. No. 12D, Attachment 3  
Page 1 of 9

**PUBLIC WORKS AND IMPROVEMENT AGREEMENT FOR  
ARBORIST CONSULTATION SERVICES**

This public works and improvement Agreement (“Agreement”) is made by and between the City of Pacific Grove, a Charter City and political subdivision of the State of California (hereinafter “City”) and Albert Weisfuss Arborist Services (hereinafter “CONTRACTOR”); and follows the requirements of Pacific Grove Municipal Code **Chapter 2.16, Article III, Purchases under \$15,000.**

In consideration of the mutual covenants and conditions set forth in this Agreement, the City and CONTRACTOR (collectively, the “Parties”) agree as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A, Scope of Services/Payment Provisions**, in conformity with the terms of this Agreement. The services are generally described as follows: **Provide Arborist contract services for the City of Pacific Grove for an average of twenty (20) hours per week.**
2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement **shall not exceed the sum of \$48,000 per fiscal year, and shall be renewable by mutual written agreement for additional fiscal yearly increments, not to exceed five years, from date of this contract.**
3. **TERM OF AGREEMENT.** The term of this Agreement is from January 1, 2013 through June 30, 2014<sup>2012</sup>, and shall be renewable by mutual written agreement for additional fiscal yearly increments, not to exceed five years, from date of this contract unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR may not commence work before City signs this Agreement.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached Exhibit is incorporated herein by reference and constitutes a part of this Agreement:

**Exhibit A    Scope of Services/Payment Provisions**

5. **PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.

5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the Deputy City Manager - Finance for payment. The City Deputy City Manager – Finance shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. TERMINATION.

7.01. During the term of this Agreement, the City may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least fourteen (14) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The City may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If City terminates this Agreement for good cause, the City may be relieved of the payment of any consideration to CONTRACTOR, and the City may proceed with the work in any manner which City deems proper. The cost to the City shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. **INDEMNIFICATION.** To the fullest extent permitted by law, CONTRACTOR shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, both severally and collectively from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees), howsoever the same may be caused, resulting directly or indirectly from or arising out of the activities, operations, or work performed by the CONTRACTOR, its employees, agents, subcontractors, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and without limiting the generality of the foregoing, the same shall include; (1) bodily injury, sickness, disease or death to any person or persons or, (2) injury to or destruction of tangible and/or property including that of the City, whether direct or consequential including the loss of use resulting therefrom. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any party or person described herein. The City, at its sole option, may choose to provide all or a portion of the defense of claims, damages, losses, liability, costs, and expenses as set forth above, and in such event, CONTRACTOR shall indemnify and hold harmless the District from the costs and expenses, including attorney's fees, of such defense.

## 9. INSURANCE.

9.01. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR 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 and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

9.02. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the City shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional

Prior to the execution of this Agreement by the City, CONTRACTOR shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

## 10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

10.02. City Records. When this Agreement expires or terminates, CONTRACTOR shall return to City any City records which CONTRACTOR used or received from City to perform services under this Agreement.

10.03. Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The City shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

11. **NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40),

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

**12. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT.** If this Agreement has been or will be funded with monies received by the City pursuant to a contract with the state or federal government in which the City is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, City will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

**14. APPRENTICES.** CONTRACTOR agrees to comply with all provisions of the law regarding the employment of apprentices. (Labor Code §§ 1773.3, 1777.5, 1777.6 and 3077 et seq.) These Labor Code sections require that CONTRACTOR and subcontractors employ apprentices in apprenticeship occupations in a ratio of not less than one (1) apprentice for each five (5) journeyman hours, unless an exemption is granted, and that contractors and subcontractors shall not discriminate among otherwise qualified employees as indentured apprentices on any public work solely on the grounds of race, religious creed, color, national origin, ancestry, sex, or age. Only apprentices who are in training under written apprenticeship agreements shall be employed on public works contracts in apprenticeship occupations. The responsibility for compliance with these provisions for all apprenticeship occupations rests with CONTRACTOR.

**15. PAYROLL RECORDS.** Pursuant to Labor Code section 1776, CONTRACTOR and each subcontractor shall keep accurate records, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by it in connection with the work. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following: 1) The information contained in the payroll record is true and correct; 2) The employer has complied with the requirements of Labor Code sections 1771, 1811, and 1815 for any work performed by its employees on the Project. Payroll records enumerated shall be certified and shall be available for inspection at all reasonable hours at the principal office of the CONTRACTOR.

**16. INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes.

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

<b>FOR CITY:</b> Michael Zimmer Director Public Works/Community Development	<b>FOR CONTRACTOR:</b> Albert Weisfuss Certified Arborist
1200 Sunset Drive Pacific Grove, CA 93950 (831) 648-5722	P.O. Box 2263 Monterey, CA 93942 (831) 896-2767

**18. UNFAIR BUSINESS PRACTICES CLAIM**

In accord with California Public Contracts Code § 7103.5, CONTRACTOR agrees to assign to the CITY all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the Agreement. This assignment shall be made and become effective at the time the CITY tenders final payment to the CONTRACTOR, without further acknowledgment by the Parties.

**19. MISCELLANEOUS PROVISIONS.**

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

19.02. Amendments and Change Orders. This Agreement may be amended or modified as necessary only by an instrument in writing or authorized changed order executed by the Pacific Grove City Manager and the CONTRACTOR.

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

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

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

19.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

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

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

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

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

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

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

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

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

19.15. Authority. Any individual executing this Agreement on behalf of the City or the CONTRACTOR 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.

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

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

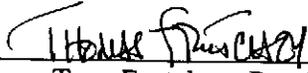
19.18. Severability. If any of the provisions contained in the Contract are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of

liability and indemnities shall survive termination of the Contract for any cause. <sup>Agenda No. 12D Attachment 3</sup> <sup>Page 8 of 9</sup> If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF, City and CONTRACTOR have executed this Agreement as of the day and year written below.

**CITY OF PACIFIC GROVE**

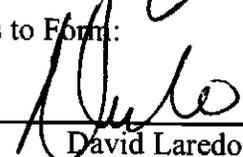
**CONTRACTOR**

By:   
Tom Frutchey, Purchase Agent

Date: 1-3-13

By:   
Michael Zimmer, Director

Date: 12/28/12

Approved as to Form:  
By:   
David Laredo, City Attorney  
Date: 1/02/2013

Albert Weisfuss, Certified Arborist

Date: 12-28-12

By:   
(Signature Authorized Representative)\*

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

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

<sup>1</sup>Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.

## SCOPE OF SERVICES/PAYMENT PROVISIONS

### **I. City of Pacific Grove Arborist Services:**

- Updating and enforcing the City's Tree Ordinance and enforcing the City's Hazard Tree Risk Management Policy,
- Recommending and assisting in the implementation of forestry program goals and objectives;
- Consulting with all constituents on tree-related matters
- Conducting public outreach and education programs;
- Establishing schedules and methods for providing forestry services; identifying resource needs, and reviewing needs with appropriate management staff;
- Overseeing the preparation and application of herbicides, pesticides and fungicides;
- Surveying tree populations and conducting a variety of environmental impact studies and investigations;
- Administering tree permit processes, maintaining all related records, and producing reports when requested.
- Provide presentations and written reports to the City Manager, City staff, Natural Resources Commission and City Council.
- Responding to tree-related emergencies.

Based on experience, the City expects that the work could require approximately 20 hours per week, on average. The contractor will be expected to set daily work hours based on workload requirements. Hours authorized under contract will be subject to negotiation and actual workload.

### **III. Hourly Rates:**

Rates for Arborist services shall be \$75 per hour.

City shall pay CONTRACTOR the amount not to exceed \$48,000 per fiscal year, and shall be renewable by mutual written agreement for additional fiscal yearly increments, not to exceed five years, from date of this contract in accordance with the terms of the Section 6.01 of this Agreement for completion of all work specified above.

FUND	DIVISION	ACCOUNT	ACCOUNT TITLE	DATE	T/C	PERIOD	PO	REFERENCE	VENDOR	BUDGET	EXPENDITURES	ALLOCATION	DESCRIPTION	PERIOD	ALLOCATION	REFERENCE
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/04/14	17	1	15000322-	6216 ALBERT WEISFUSS		0	0	3902.89	ARBORIST			Page 1
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/06/14	17	1	15000350-	6216 ALBERT WEISFUSS		0	0	4540.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/06/14	21	2	15000322- 75996	6216 ALBERT WEISFUSS		0	3902.89	-3902.89	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/06/14	21	2	15000350- 75996	6216 ALBERT WEISFUSS		0	4540.39	-4540.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/25/14	17	2	15000499-	6216 ALBERT WEISFUSS		0	0	2965.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	08/25/14	21	2	15000499- 76158	6216 ALBERT WEISFUSS		0	2965.39	-2965.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	09/12/14	17	3	15000638-	6216 ALBERT WEISFUSS		0	0	4465.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	09/12/14	21	3	15000638- 76339	6216 ALBERT WEISFUSS		0	4465.39	-4465.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	09/25/14	17	3	15000758-	6216 ALBERT WEISFUSS		0	0	3640.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	09/26/14	21	3	15000758- 76449	6216 ALBERT WEISFUSS		0	3640.39	-3640.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/07/14	17	4	15000844-	6216 ALBERT WEISFUSS		0	0	2665.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/10/14	21	4	15000844- 76600	6216 ALBERT WEISFUSS		0	2665.39	-2665.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/31/14	21	4	15001030- 76773	6216 ALBERT WEISFUSS		0	3790.39	-3790.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/31/14	17	4	15001030-	6216 ALBERT WEISFUSS		0	0	3790.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/31/14	17	4	15001030-	6216 ALBERT WEISFUSS		0	0	2215.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	10/31/14	21	4	15001030- 76773	6216 ALBERT WEISFUSS		0	2215.39	-2215.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	11/25/14	21	5	15001259- 77071	6216 ALBERT WEISFUSS		0	2815.39	-2815.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	11/25/14	17	5	15001259-	6216 ALBERT WEISFUSS		0	0	2815.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/13/15	17	7	15001457-	6216 ALBERT WEISFUSS		0	0	4915.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/16/15	21	7	15001457- 77530	6216 ALBERT WEISFUSS		0	4915.39	-4915.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/29/15	17	7	15001676-	6216 ALBERT WEISFUSS		0	0	1465.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/29/15	17	7	15001676-	6216 ALBERT WEISFUSS		0	0	2890.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/31/15	21	7	15001676- 77777	6216 ALBERT WEISFUSS		0	1465.39	-1465.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	01/31/15	21	7	15001676- 77777	6216 ALBERT WEISFUSS		0	2890.39	-2890.39	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	02/13/15	21	8	15001833- 77898	6216 ALBERT WEISFUSS		0	2777.89	-2777.89	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	02/13/15	17	8	15001833-	6216 ALBERT WEISFUSS		0	0	2777.89	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/12/15	17	9	15001989-	6216 ALBERT WEISFUSS		0	0	2475	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/12/15	17	9	15001989-	6216 ALBERT WEISFUSS		0	0	2512.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/13/15	21	9	15001989- 78190	6216 ALBERT WEISFUSS		0	2475	-2475	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/13/15	21	9	15001989- 78190	6216 ALBERT WEISFUSS		0	2512.5	-2512.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/26/15	17	9	15002128-	6216 ALBERT WEISFUSS		0	0	3000	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	03/27/15	21	9	15002128- 78302	6216 ALBERT WEISFUSS		0	3000	-3000	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	04/16/15	17	10	15002330-	6216 ALBERT WEISFUSS		0	0	2587.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	04/16/15	21	10	15002330- 78578	6216 ALBERT WEISFUSS		0	2587.5	-2587.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	04/16/15	21	10	15002330- 78578	6216 ALBERT WEISFUSS		0	3712.5	-3712.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	04/16/15	17	10	15002330-	6216 ALBERT WEISFUSS		0	0	3712.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	05/14/15	17	11	15002531-	6216 ALBERT WEISFUSS		0	0	1875	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	05/18/15	21	11	15002531- 78837	6216 ALBERT WEISFUSS		0	1875	-1875	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	05/22/15	17	11	15002656-	6216 ALBERT WEISFUSS		0	0	2925	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	05/28/15	21	11	15002656- 78929	6216 ALBERT WEISFUSS		0	2925	-2925	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	06/17/15	17	12	15002762-	6216 ALBERT WEISFUSS		0	0	3337.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	06/22/15	21	12	15002762- 79117	6216 ALBERT WEISFUSS		0	3337.5	-3337.5	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	07/15/15	17	13	16000035-	6216 ALBERT WEISFUSS		0	0	2700	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	07/15/15	17	13	16000035-	6216 ALBERT WEISFUSS		0	0	2475	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	07/17/15	21	13	16000035- 79353	6216 ALBERT WEISFUSS		0	2700	-2700	ARBORIST		0	
01 - GENERAL FUND	01-50-513-513 - FORESTRY	5201	CONTRACT SERVICES	07/17/15	21	13	16000035- 79353	6216 ALBERT WEISFUSS		0	2475	-2475	ARBORIST		0	