

**AGREEMENT TO PROVIDE BUILDING DEPARTMENT SERVICES  
BETWEEN THE CITY OF  
PACIFIC GROVE AND 4LEAF, INC.**

**THIS AGREEMENT** is made and entered into this 1st day of October 2019, by and between the City of Pacific Grove (City), a municipal corporation, and 4Leaf, Inc. (4Leaf), a California corporation (collectively referred to as the Parties).

**FACTS**

- A. Pacific Grove has contracted out its Building Department services since 2009; and
- B. In May 2019, the City issued a Request for Qualifications (RFQ) seeking qualifications from interested firms for the provision of Building Department services for the City. A copy of the RFQ is on file with the City and is incorporated herein by this reference; and
- C. In response to the RFQ, 4Leaf submitted "Qualifications to Provide Building Division Services for the City of Pacific Grove," dated May 31, 2019 to respond to the City's need, which qualifications are on file with the City and is incorporated herein by this reference; and
- D. The Parties desire to enter into an Agreement pursuant to which 4Leaf will provide the Services, as requested by the City; and
- E. It is the desire of the Parties to address, by this Agreement, all matters which are related to the services to be provided to Pacific Grove by 4Leaf.

**NOW, THEREFORE**, for and in consideration of the mutual advantages to be derived therefrom, and in consideration of the mutual covenants herein contained, it is agreed by and between the Parties hereto as follows:

**AGREEMENT**

**ARTICLE I  
PROVISION OF SERVICES**

1.1 **Scope of Services.** 4Leaf shall provide Building Department Services within the jurisdictional area of Pacific Grove. "Building Department Services" shall mean those services identified in **Exhibit A**. In providing such services, 4Leaf shall administer the provisions of the Pacific Grove Building Code and other Pacific Grove rules, regulations, policies and procedures as applicable to this Agreement.

1.2 **Building Official.** 4Leaf's Building Official shall serve as Chief Building Official for Pacific Grove. The Chief Building Official or his/her designee shall be immediately available for response and management as necessary to provide functions within the jurisdictional boundaries of Pacific Grove, including coordination of all services and functions identified in **Exhibit A**.

1.3 **Staffing.**

(a) Unless otherwise agreed upon in writing by the Parties, 4Leaf shall make available a qualified Building Inspector assigned to the Pacific Grove Building Department to provide Building Department Services pursuant to this Agreement, and identified in **Exhibit A**, during regular business hours.

(b) 4Leaf shall provide a qualified Building Technician to be present at Pacific Grove City Hall to perform Building Department services and Counter services 5 days a week unless otherwise established in writing by the City Manager or his/her designee.

**1.4 Additional Provisions/Exhibits.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A:** *Scope of Services/ Staff Functions*

**Exhibit B:** *Payment Provisions*

## **ARTICLE II PAYMENT FOR SERVICES**

**2.1 PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A and Exhibit B**, subject to the limitations set forth in this Agreement. The City and 4Leaf acknowledge that the contract costs may vary due to building activity levels. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of \$544,000, per fiscal year with any increases above that amount subject to the City's Purchasing Ordinance. Annual increases to the Agreement of up to \$35,000 will require the approval of the City Manager; and increases of \$35,000 or more shall require the approval of the City Council.

**2.2 Direct Costs.** Pacific Grove shall compensate 4Leaf for all direct costs of providing the Building Department Services, as set forth in **Exhibit B**. "Direct Costs" shall be the total actual personnel costs incurred by 4Leaf to perform the Building Department Services, at the hourly rates and fees stated in **Exhibit B**. The Direct Costs will be based on the Scope of Services/ Staff Functions listed in **Exhibit A**.

**2.3 Overtime.** Pacific Grove shall compensate 4Leaf for all overtime costs reasonably and necessarily incurred. 4Leaf shall make its best efforts to limit the use of overtime and to avoid abuses of overtime. 4Leaf shall, at the written request of Pacific Grove's City Manager, investigate any overtime hours that appear excessive or unreasonable under the circumstances. Overtime shall only be invoiced as detailed in **Exhibit B**.

**2.4 Reimbursable Costs.** Pacific Grove shall reimburse 4Leaf for actual costs incurred in providing the Building Department Services, provided that Pacific Grove agrees to the costs in advance in writing or as provided herein. Reimbursable Costs shall be divided into four categories:

(a) **Budgeted Costs.** The anticipated costs of providing Building Department Services that Pacific Grove agrees to as part of the annual Building Department Services budget.

(b) **Building Department Plans Review Costs.** All Building Department review of plans submitted for projects within Pacific Grove shall be clearly identified in reimbursement

billing and be in accordance with **Exhibit B**. Pacific Grove may bill the submitter of plans according to Pacific Grove's published fee schedule and will keep all fees collected.

(c) **Special Costs.** The costs that 4Leaf incurs at the special request of Pacific Grove, with Pacific Grove's advanced approval to incur the cost. Special Costs may include, but are not limited to, added costs for projects, additional costs incurred due to anticipated weather events, or additional services that are beyond the scope of Building Department Services.

(d) **Extraordinary Costs.** The costs that 4Leaf incurs unexpectedly as a result of an extraordinary event, such as disaster response or unforeseeable capital costs. 4Leaf shall only obtain Pacific Grove's advanced approval for extraordinary costs where such advanced approval is reasonably feasible under the circumstances. 4Leaf shall provide notice to Pacific Grove of all extraordinary costs as soon as reasonably feasible. Nothing in this Agreement shall prevent 4Leaf from fully and adequately responding to emergency events or mitigating potential costs to Pacific Grove.

**2.5 Annual Projections and Monthly Payments.** Prior to March 15 of each year, 4Leaf shall provide Pacific Grove with a projected budget for Building Department Services for the upcoming fiscal year. The budget shall identify all anticipated costs for each major category of Staff Functions that are identified in **Exhibit A**. 4Leaf will bill the City of Pacific Grove monthly for services on the 15<sup>th</sup> of each month. The monthly payment shall be due within 30 days of receipt.

**2.6 Review of Costs.** Upon written request by Pacific Grove, 4LEAF will provide all available timesheet records for all direct charge hours on this agreement. In the event of an agreed overcharge discovered as part of this process. 4LEAF will return outstanding overages within 180 days of discovery. The City may request both parties meet for review of any invoice on a monthly basis.

**2.7 Dispatch Services.** 4Leaf shall establish dispatch services for the Building Department subject to approval by City of Pacific Grove.

### **ARTICLE III PROPERTY USED FOR BUILDING DEPARTMENT SERVICES**

**3.1 Building Department.** 4Leaf shall fully staff and use the Building Department at City Hall located at 300 Pine Avenue Pacific Grove, California, as its primary location for provision of Building Department Services under this Agreement. Pacific Grove retains fee title to the Building Department. Pacific Grove agrees to maintain City Hall in a safe, habitable, and serviceable condition at all times.

**3.2 Vehicles, Equipment and Apparatus.** Subject to Pacific Grove's approval, 4Leaf shall use its own vehicles, equipment and apparatus to provide Building Department Services to Pacific Grove. Pacific Grove reserves the right to require the use of specific equipment and apparatus's with prior written notice to 4Leaf.

**3.3 Inventory.** 4Leaf shall provide an inventory of vehicles and equipment that will be used to provide Building Services for the City of Pacific Grove. This inventory will be provided to the City prior to the effective date of this Agreement. If at any point during the term of this Agreement, the City

of Pacific Grove issues 4Leaf any City vehicles or equipment, an inventory of those items shall be provided to 4Leaf. The City may request that 4Leaf regularly inventory and review the condition of any vehicles or equipment issued by the City. If 4Leaf is no longer using any City vehicles or equipment, these items shall be returned to the City of Pacific Grove or replaced for their full value within 30 days of notification.

**3.4 Maintenance and Replacement.** Pacific Grove shall bear all costs to maintain, repair and replace all facilities, equipment and apparatus owned by Pacific Grove and designated for use in the Building Department Services. Pacific Grove shall not be required to maintain, repair or replace any item that is no longer needed for the Building Department Services.

#### **ARTICLE IV RELATIONS OF PARTIES**

**4.1 Purpose.** The Parties recognize and acknowledge that 4Leaf's provision of Building Department Services to Pacific Grove provides a mutual benefit to both parties. In an effort to evolve the Building Department Services in a manner that meets both parties' needs and expectations, the intent of this section is to develop mechanisms to ensure positive and thorough communications between the parties, while respecting the management autonomy of 4Leaf over the Building Department Services.

**4.2 Grant Assistance.** 4Leaf may pursue grant opportunities that have the potential to decrease costs and/or increase service capabilities within Pacific Grove. 4Leaf shall notify Pacific Grove when potential opportunities arise, 4Leaf's plan for pursuing such opportunities, and how the opportunities will impact Pacific Grove. 4Leaf may be requested to provide assistance with the application for these grants. All research and application services associated with grants will require prior approval by the Community Development Director. All hours billed will be in accordance with this agreement. Pacific Grove will be responsible for managing funds associated with these grants, including the direct billing to the granting agency; and the collection of any related funds.

**4.3 Building Department Service Updates.**

(a) The Chief Building Official shall provide a weekly update to the Community Development Director of Pacific Grove. The update shall contain information pertaining calls for service and incidents from the past week, use of duty hours in the past week, the training/readiness of personnel, regional activities and building code updates.

(b) 4Leaf shall host a quarterly meeting of all agencies that contract for Building Department services with 4Leaf to discuss issues affecting the services. The parties may mutually agree to suspend or skip a quarterly meeting, provided that the parties meet at least once annually. Pacific Grove acknowledges that attendance by agencies apart from 4Leaf shall be at the discretion of those agencies.

(c) The Chief Building Inspector or designee shall provide notice, as soon as reasonably practicable under the circumstances, to the Pacific Grove City Manager or designee regarding any significant emergency or major project. As reasonably practicable, the Chief Building Inspector or designee shall maintain regular communication with the Pacific Grove City Manager or relevant Pacific Grove Department Heads regarding emergency situations in Pacific Grove.

(d) 4Leaf shall routinely review service calls to look for patterns of over-use or abuse of services. The Chief Building Inspector shall meet with the City Manager on a quarterly basis to review findings, determine appropriate responses, and actively participate in developing and implementing remedies.

#### **4.4 Meet and Discuss Obligations.**

(a) **Hiring of Building Inspector.** Prior to the hiring of a new Building Inspector, 4Leaf shall contact the City Manager of Pacific Grove to discuss the nature of the recruitment effort. To the extent feasible, 4Leaf shall use a hiring panel to perform initial interviews of potential candidates and shall invite the City Manager of Pacific Grove or designee to serve on the hiring panel.

(b) **Assignment of Building Department Personnel.** Prior to assigning any personnel to Pacific Grove, including any interim or temporary Building Inspector, 4Leaf shall first offer to meet and discuss with the City Manager of Pacific Grove regarding the proposed assignment.

(c) **Labor Negotiations.** To the extent allowed by law, 4Leaf shall meet and discuss with the City Manager of Pacific Grove regarding any matter that may impact the cost or nature of service, including 4Leaf's negotiations with relevant labor groups or other personnel.

(d) **Nature of Obligation.** For purposes of this section, "meet and discuss" means that 4Leaf shall provide the City Manager with sufficient information related to a decision and with sufficient lead time to enable Pacific Grove to provide meaningful feedback and input. 4Leaf shall, in good faith, consider Pacific Grove's input on the matter but shall not be obligated to include Pacific Grove in any final decisions or negotiations. Pacific Grove shall maintain the confidentiality of any non-public information provided in the course of any meet and discuss.

(e) **Limitation.** This subsection shall not limit or restrict 4Leaf from taking any action related to an emergency situation or otherwise necessary to prevent immediate risk to health, safety, or welfare of the community.

**4.5 Personnel.** Personnel assigned to provide services in Pacific Grove shall meet the standards of conduct, respect and decorum required of all City of Pacific Grove employees. These standards are aligned with Pacific Grove's expectations of representatives of their City in all interactions with the public and Pacific Grove staff. The Chief Building Inspector shall meet with the City Manager or their designee upon request to provide information and explanation regarding these standards and shall provide appropriate information when relevant regarding 4Leaf's action plan for dealing with any employees that fail to meet these requirements.

**4.6 Use of Duty Hours.** During standard business hours of 8:00 AM to 5:00 PM, 4Leaf employees assigned to Pacific Grove shall present themselves as Building Department personnel and perform duties that benefit Pacific Grove. 4Leaf employees shall wear clothing that identifies them as Building Department personnel for Pacific Grove.

**4.7 City Council Meetings.** The Chief Building Officer or his/her designated command staff shall attend all regularly scheduled Pacific Grove City Council meetings unless excused by the

Pacific Grove City Manager, as well as those Special City Council meetings identified by the City Manager.

**4.8 Community Participation.** 4Leaf and Pacific Grove recognize and acknowledge that the Building Department is an important component of the Pacific Grove community. In addition to community programs required in the scope of services, 4Leaf shall participate as reasonably practicable in community events and other outreach and educational opportunities occurring in Pacific Grove.

**4.9 Annual Review.** Pacific Grove shall perform an informal review of 4Leaf's services each year. The informal review shall address, generally, whether the services are meeting or failing to meet the expectations of Pacific Grove. If failing to meet expectations, the informal review shall address potential corrective measures.

**4.10 Fair and Equitable Adjustment.** 4Leaf shall inform the City of Pacific Grove when contract changes in other jurisdictions appear to require a fair and equitable adjustment. 4Leaf is obligated to present and discuss contract agreements with other jurisdictions.

**4.11 Reservation of Rights.** 4Leaf reserves the right as an independent contractor to control the management of the services. Nothing herein shall be construed as waiving any rights of an independent contractor or creating any relationship other than an independent contractor relationship.

## **ARTICLE V TERM OF AGREEMENT**

**5.1 Initial Term.** The initial term of this Agreement shall be from October 1, 2019 through September 30, 2022.

**5.2 Automatic Renewal of Agreement for Three (3) Year Terms.**

(a) Upon the conclusion of the initial Term and of each Term thereafter, this Agreement shall be automatically extended for additional three (3) year Terms unless either Party gives the other Party written notice of its intent to allow this Agreement to lapse.

(b) If either Party does not wish for this Agreement to be automatically extended for an additional Term pursuant to this section, that Party shall give the other Party written notice of its intent to allow the Agreement to lapse no later than the March 1 immediately preceding the end of that Term of the Agreement. Written notification of intent to allow the Agreement to lapse shall be in the form of a Resolution of the respective City Council and shall be provided to the City Manager of the affected city with duplicate notification to the Chief Building Official.

**5.3 Termination.** Notwithstanding Section 5.1 or Section 5.2 of this Agreement, either party may terminate this Agreement by providing six (6) months' written notification to the other party, and the term of this Agreement or any extension thereof shall be shortened accordingly. Written notification of termination shall be in the form of a Resolution of the respective City Council and shall be provided to the City Manager of the affected city with duplicate notification to the Chief Building Official. Upon termination of this Agreement, 4Leaf will deliver to Pacific Grove any City vehicles or equipment described in Article III herein, reasonable wear and tear excepted.

## **ARTICLE VI INDEMNIFICATION AND INSURANCE**

### **6.1 Indemnification.**

(a) **Indemnification for Professional Liability.** Where the law establishes a professional standard of care for 4Leaf's services, to the fullest extent permitted by law, 4Leaf shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of 4Leaf, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

(b) **Indemnification for Other than Professional Liability.** Other than in the performance of professional services and to the full extent permitted by law, 4Leaf shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorneys' fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by 4Leaf or by any individual or entity for which 4Leaf is legally liable, including but not limited to officers, agents, employees or sub-contractors of 4Leaf.

The provisions of this section do not apply to claims occurring as a result of City's sole negligence or willful misconduct. The provisions of this section shall not release City from liability arising from the sole negligence or willful acts or omissions of City or any and all its officials, employees and agents.

(c) 4Leaf shall be responsible for all first and third-party liability, including first and third party property damage, caused by the negligence or wrongful acts of 4Leaf officers, officials, and employees resulting from 4Leaf's operation of Pacific Grove vehicles and equipment, or resulting from maintenance performed by 4Leaf.

(d) Except for any duties either Party owes to the other pursuant to the provisions of this Agreement, nothing in this Agreement shall be construed to waive any legal protections or immunities available to the Parties under state or federal law.

**6.2 Mutual Indemnification Obligations Survive Termination.** As to activities occurring or being carried out in performance of this Agreement and during the term of this Agreement, the obligations created by Section 6.1 shall survive termination of this Agreement.

**6.3 Immunity Preservation.** Nothing in this Agreement shall be read as waiving or limiting any defense to claims of liability otherwise available to public employees, such as the defense of qualified immunity. Nothing in this Agreement shall be read as intending to create or creating a higher duty of care on the part of either Pacific Grove or 4Leaf, or their officers, than would otherwise exist under existing law and the involved Party's own policies, practices, and procedures.

#### 6.4 Insurance.

(a) Insurance Coverage Requirements: Without limiting 4Leaf's duty to indemnify, 4Leaf 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, no less broad than Insurance Services Office (ISO) CG 00 01, 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/Completed Operations, with minimum limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If 4Leaf maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by 4Leaf.

☐ 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 4Leaf 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 retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this Agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.

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

(b) 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 4Leaf completes its performance of services under this Agreement.

4Leaf shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, 4Leaf shall forthwith obtain and submit proof of substitute insurance. Should 4Leaf fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at 4Leaf's sole cost and expense.

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 4Leaf'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 4Leaf's insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

4Leaf shall provide to City an endorsement that the insurer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, 4Leaf shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the 4Leaf has in effect the insurance required by this Agreement. The 4Leaf 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.

4Leaf 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 4Leaf and 4Leaf shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by 4Leaf to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

## **ARTICLE VII MISCELLANEOUS**

**7.1 Amendments to Agreement.** This Agreement may be amended or modified only by an instrument in writing signed by the City and 4Leaf.

**7.2 Assignment.** The rights and obligations of the Parties under this Agreement are not assignable and shall not be delegated without the prior written approval of the City and 4Leaf.

**7.3 Dispute Resolution.** The Parties recognize that this Agreement cannot represent a complete expression of all issues which may arise during the performance of the Agreement. Accordingly, 4Leaf and Pacific Grove agree to meet and confer in good faith over any issue not expressly described herein to the end that Pacific Grove will obtain the best Building Department Services possible under the most favorable economic terms and that 4Leaf will be fairly and adequately compensated for the services it provides hereunder.

(a) It is the Parties' intention to avoid the cost of litigation and to resolve any issues that may arise amicably if possible. To that end, the Parties agree to meet within ten (10) business days of a request made by the other party in writing to discuss the issues and attempt to resolve the dispute. If the dispute is not resolved after that meeting, the Parties agree to mediate the dispute within 30 calendar days of the meeting or as soon thereafter as possible. The mediator will be chosen by mutual agreement of the Parties. The costs of mediation will be borne by the Parties equally. No party may initiate litigation prior to the conclusion of mediation. In any action brought under this Agreement, the prevailing Party shall be entitled to recover its actual costs and attorney fees pursuant to California Civil Code section 1717.

**7.4 Confidentiality.** 4Leaf 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. 4Leaf 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 4Leaf to disclose such records or information. 4Leaf shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. 4Leaf shall not use any confidential information gained by 4Leaf in the performance of this Agreement except for the sole purpose of carrying out 4Leaf's obligations under this Agreement.

**7.5 City Records.** When this Agreement expires or terminates, 4Leaf shall return to City any City records which 4Leaf used or received from City to perform services under this Agreement.

**7.6 Maintenance of Records.** 4Leaf 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. 4Leaf 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 4Leaf shall retain said records until such action is resolved.

**7.7 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 4Leaf 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. Within 90 days of any discrepancies identified as part of an audit, 4Leaf shall return any outstanding overages.

**7.8 Royalties and Inventions.** City shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. 4Leaf shall not publish any such material without the prior written approval of City.

**7.9 Non-Discrimination.** During the performance of this Agreement, 4Leaf, 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 4Leaf's employment practices or in the furnishing of services to recipients. 4Leaf 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. 4Leaf 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.

**7.10 Compliance with Terms of Federal or State 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, 4Leaf will comply with all the provisions of said contract, to the extent applicable to 4Leaf as a sub-grantee 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 4Leaf, at no cost to 4Leaf.

**7.11 Independent Contractor.** In the performance of work, duties, and obligations under this Agreement, 4Leaf 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 4Leaf 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. 4Leaf 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 4Leaf's performance of this Agreement. In connection therewith, 4Leaf shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of 4Leaf's failure to pay such taxes.

**7.12 Notices.** All notices required or permitted hereunder shall be deemed sufficiently given if delivered by hand, electronic mail, or by United States mail, postage prepaid, addressed to the Parties at the addresses set forth below or to such other address as may, from time to time, be designated in writing.

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**To Pacific Grove:**

City Manager  
Pacific Grove City Hall  
300 Forest Avenue  
Pacific Grove, CA 93950

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**To 4Leaf:**

Kevin J. Duggan, President  
4Leaf, Inc.  
2126 Rheem Drive  
Pleasanton, CA 94588

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

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

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

7.16 **Non-Exclusive Agreement.** This Agreement is non-exclusive and both the City and 4Leaf expressly reserve the right to contract with other entities for the same or similar services

7.17 **Construction of Agreement.** The City and 4Leaf 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.

7.18 **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.

7.19 **Authority.** Any individual executing this Agreement on behalf of the City or 4Leaf 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.

7.20 **Integration.** This Agreement, including the exhibits any documents incorporated by reference, represent the entire Agreement between the City and 4Leaf 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 4Leaf as of the effective date of this Agreement, which is the date that the City signs the Agreement.

7.21 **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.

7.22 **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. 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.

This space is left blank, intentionally.

IN WITNESS WHEREOF, City and 4Leaf have executed this Agreement as of the day and year written below.

**CITY OF PACIFIC GROVE**

By: Ben Harvey  
Benjamin Harvey, City Manager

Date: 10/8/2019

By: Anastasia Aziz  
Anastasia Aziz, CDD Director

Date: 9/10/2019

Approved as to Form

By: David Laredo  
David C. Laredo, City Attorney

Date: 9/30/2019

Approved as to Liability Provisions

By: Tori Hannah  
Tori A. Hannah, Administrative Services Director

Date: 9/30/2019

**4LEAF, Inc.**

By: Kevin J. Duggan  
(Signature of Chair, President, or Vice-President)

Kevin J. Duggan, President

Date: 9/9/2019

By: (Signature of Secretary, Asst. Secretary, CFO, or Asst. Treasurer)

Name and Title

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

## EXHIBIT A

### SCOPE OF SERVICES AND STAFF FUNCTIONS

4Leaf shall provide the following Building Department staff functions:

- Building Official
- Plans Examiners
- Building Inspectors
- Public Works Inspectors
- Technical counter assistance
- Administrative assistance
- On-call civil engineering

4Leaf shall provide the following services:

#### **1. Building Official:**

- An ICC certified Building Official shall be available during all hours of operation, except for normal absences. There will be office hours in Pacific Grove for the Building Official.
- Staff meetings with the Pacific Grove staff to coordinate all inter-department interactions as needed.

#### **2. Building Counter Services:**

- Weekday counter hours 5 mornings and 2 afternoons. There shall be ICC certified Building Inspectors/Counter Technicians available at City Hall trained to issue building permits. Staff shall be available by phone to answer questions during all hours of operation.
- Plan check applications received during hours specified.
- Plans routed to all appropriate departments.
- Money collected for building related activity.
- Permits issued during hours specified.
- Respond to public inquiries on the phone and in person.

#### **3. Plan Review Services:**

- Plan review services under the direction of ICC certified plan reviewers. This also includes coordination with all applicable Monterey County outside agencies (water, health, air pollution, sewer, source, etc.).
- Provide plan review for conformance to regulations contained in Pacific Grove's adopted codes.
- Provide applicant or designee with a list of plan check correction comments to achieve conformance with Pacific Grove's adopted codes.
- Expedited plan reviews available with prior approval.
- Provide all necessary liaisons with applicant or designee regarding plan check comments.
- Perform review of revisions to plans that have been previously approved for permit issuance.
- Plan check turnaround times to be specified.

**4. Building Inspection Services:**

- Manage all aspects of Building inspection services such as scheduling with 24-hour lead time.
- Local inspectors are preferred
- All inspectors shall be ICC certified.
- Ensure compliance with approved plans and applicable codes.
- Emergency response 24/7. All responders will be ICC certified inspectors. A list of inspectors will be provided to dispatch for afterhours response.
- After hours, weekends and holiday emergency inspections available with 72-hour minimum notice and prior approval.
- Respond and report as required to Building Code violations or any other code enforcement matter upon request.
- Conduct 8-12 inspections per day at an average of 45 minutes per inspection.

**5. Public Works Inspection Services:**

- In coordination with Public Works provide inspection services with 24-hour lead time for:
  - Street opening permits;
  - Driveway and sidewalk permits;
  - Temporary encroachment permits;
  - Permanent underground and permanent aboveground encroachment permits; and
  - Storm water field inspections as part of issued permits.

**6. Public Works and Planning Permit Review:**

- Permit plan review by a P.E. for:
  - Grading;
  - Public right of way improvements;
  - Post-construction storm-water controls in compliance with the City's NPDES permit;
  - Subdivision; and
  - On-call surveyor.

**7. Miscellaneous Services Performed by Consultant:**

- Assist with address change processes and clerical support related to Building Department activity.
- Staff available to attend Pacific Grove City Council and site review meetings, code enforcement hearing or any other board or commission meeting as needed.
- Firm to set up and provide fax or electronic permits for all approved over-the-counter type permits.
- Prepare and submit monthly building activity reports to the City and other appropriate agencies.
- Provide records retention and other document filing services.
- Train City staff on building service matters as needed.
- Any other building service requested by the City Manager.

## EXHIBIT B: FEE SCHEDULE & BASIS OF CHARGES



**4LEAF, INC.**

ENGINEERING • CONSTRUCTION MANAGEMENT  
BUILDING INSPECTION • PLAN CHECK

**For the City of Pacific Grove**  
**All Rates are Subject to Basis of Charges**

NATURE OF BUILDING SERVICES	COST STRUCTURE
Plan Review & CASp Services	<p>Plan Review Percentage Cost: 70%</p> <p>* Fee includes initial review and two (2) rechecks.</p> <p>Plan Review Hourly Cost: \$105 Non-Structural Review \$130 Structural Review</p> <p>CASp Inspection and/or Review: \$155/hour</p> <p>* Fee includes shipping and courier service.</p>

### Fee Structure for Personnel

Interim Chief Building Official .....	\$135/hour
Senior Combination Building Inspector (Building Inspector III) .....	\$110/hour
Commercial Building Inspector (Building Inspector II) .....	\$105/hour
Residential Building Inspector (Building Inspector I) .....	\$90/hour
Training Building Inspector.....	\$75/hour
Code Enforcement.....	\$95/hour
Administrative Support .....	\$60/hour
Permit Technician.....	\$68/hour
Senior Permit Technician .....	\$75/hour
On-Site Structural Plan Review Engineer .....	\$130/hour
On-Site Non-Structural Plans Examiner .....	\$105/hour
Fire Review .....	\$155/hour
Public Works Inspector.....	\$155/hour
CASp Inspection.....	\$155/hour
Project Inspector/Inspector of Record.....	\$130/hour
Off-Site Project Manager.....	\$160/hour
Principal-in-Charge .....	\$185/hour
Hourly overtime charge per inspector .....	1.5 x hourly rate
Mileage (for inspections performed within the City).....	IRS Rate + 20%

Rates will be communicated with the City Management at time of request. Rates will vary based on the qualifications and experience of the personnel. The rates listed in this fee schedule are valid for one (1) year from the effective date of contract.

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BUILDING INSPECTION • PLAN CHECK

## **BASIS OF CHARGES**

Rates are inclusive of “tools of the trade” such as forms, telephones, and consumables.

- All invoicing will be submitted monthly.
- Staff Augmentation work (excluding plan review) is subject to 4-hour minimum charges unless stated otherwise. Services billed in 4-hour increments.
- Most plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.
- Expedited reviews will be billed:
  - *Scenario #1 (Applicant requested):* at 1.5x the plan review fee listed in the Rate Schedule.
  - *Scenario #2 (City requested):* at no additional cost to the City
- Plan review of deferred submittals & revisions will be billed at the hourly rates listed the Rate Schedule.
- All plan review services will be subject to a \$250.00 minimum fee if percentage-based fee or two (2) hour minimum charge if hourly rates apply.
- 4LEAF assumes that these rates reflect the 2019-2022 contract period. 3% escalation for 2023 and 2024 is negotiable per market conditions.
- Overtime and Premium time will be charged as follows:
 

- <i>Nighttime (work begun after 4PM or before 5AM)</i>	<i>1.125x hourly rate</i>
- <i>Overtime (over 8-hour M-F or Saturdays)</i>	<i>1.5x hourly rate</i>
- <i>Overtime (over 8 hours Sat or 1<sup>st</sup> 8-hour Sun)</i>	<i>2x hourly rate</i>
- <i>Overtime (over 8 hours Sun or Holidays)</i>	<i>3x hourly rate</i>
- Overtime will only be billed with prior authorization of the Chief Building Official, Public Works Director, or other responsible designated City personnel.
- All work with less than 8 hours of rest between shifts will be charged the appropriate overtime rate.
- Mileage driven during Inspections will be charged at cost plus 20%.
- Payment due on receipt. All payments over 30 days will be assessed a 1.5% interest charge.
- Client shall pay attorneys' fees, or other costs incurred in collecting delinquent amounts.
- Client agrees that 4LEAF's liability will be limited to the value of services provided.