



City of San Leandro

Meeting Date: May 18, 2015

Staff Report

File Number: 15-267

Agenda Section: CONSENT CALENDAR

Agenda Number: 8.H.

TO: City Council

FROM: Chris Zapata
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: Staff Report for a Resolution Approving Amendment No. 1 to
Non-Professional Service Agreement with George Salinas Tree Preservation
for Annual Yarwood Sycamore Tree Trimming

RECOMMENDATION

Staff recommends that the City Council approve a Resolution authorizing an amendment to the existing Non-Professional Service Agreement (NPSA) for annual sycamore tree trimming services provided by contract. Annual renewal is administratively permitted under the existing NPSA. However, City Council approval is required as the contract total exceeds \$50,000.

BACKGROUND

On May 15, 2012, the City entered into a NPSA with George Salinas Tree Preservation after a competitive bidding process to which seven firms responded. George Salinas Tree Preservation was the low-bidder, providing a per-tree cost of \$41 for the 1,192 sycamore trees included in the specifications for project work. As written, the existing NPSA allows for annual renewal and for 2013 and 2014, the NPSA was renewed at the original bid price of \$48,872.

For 2015, the contractor requests an increase in the per-tree price, from \$41/tree to \$46/tree (12%), to accommodate increases to operational costs. This would result in an overall contract price of \$54,832, necessitating City Council approval per the City's Purchasing Guidelines for contracts in excess of \$50,000. From the original 2012 bid results, the second-place bidder had a per-tree price of \$49, and \$58,408 for the total contract. This amendment, if approved by the City Council, would remain the lowest overall bid and does not constitute grounds for a re-bid of the work. Per standard NPSA language, up to four annual renewals are permitted if mutually agreed upon between the City and the contractor, before a project goes out for new bids. This amendment represents the third renewal.

Fiscal Impact

This amended agreement, for \$46/tree and \$54,832 overall represents an increase of 12%, which can be accommodated this fiscal year through realized budget savings.

Budget Authority

There is sufficient funding in the current year's budget to issue the purchase order for the amended NPSA. The funding source is account 010-33-001-5340.

ATTACHMENTS

Attachment to Staff Report

- 2012 NPSA

Attachment to Resolution

Amendment No. 1 to NPSA

PREPARED BY: Debbie Pollart, Public Works Director

**NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
GEORGE SALINAS TREE PRESERVATION**

THIS AGREEMENT for non-professional services is made by and between the City of San Leandro ("City") and George Salinas Tree Preservation ("Contractor") (together referred to as the "Parties") as of May 15, 2012 (the "Effective Date").

Section 1. SERVICES. Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the services described in the Scope of Work attached as Exhibit A, and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on August 9, 2012, the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the industry in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Contractor shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **Reserved**
- 1.6 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Contractor's attention is directed to the City's Municipal Code, Title 1, Article 6, Chapter 6. Contractor must submit completed self-certification form and comply with the LWO, if covered.

Section 2. COMPENSATION. City hereby agrees to pay Contractor a sum not to exceed \$48,872.00, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit A, regarding the amount of compensation, the

Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

2.1 Invoices. Contractor shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- The beginning and ending dates of the billing period;
- A Task Summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Contractor and each employee, agent, and subcontractor of Contractor performing services hereunder;
- The Contractor's signature

2.2 Monthly Payment. City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Contractor.

2.3 Reserved.

2.4 Total Payment. City shall pay for the services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

2.5 Reserved

2.6 Reimbursable Expenses. Reimbursable expenses shall not exceed \$0.00. Expenses not previously approved by the City are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

2.7 Payment of Taxes. Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

2.8 Payment upon Termination. In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Contractor shall maintain adequate logs and timesheets to verify costs incurred to that date.

2.9 Authorization to Perform Services. The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

Section 3. FACILITIES AND EQUIPMENT. Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City may, in its discretion, provide Contractor facilities and equipment that may be necessary, but only after City is satisfied that Contractor and its individual employees are trained to use such facilities or equipment safely and properly.

Section 4. INSURANCE REQUIREMENTS. Before beginning any work under this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

4.1 Workers' Compensation. Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000.00 per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the Contract Administrator. The insurer, if insurance is provided, or the Contractor, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

4.2 Commercial General and Automobile Liability Insurance.

4.2.1 General requirements. Contractor, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000.00 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. If no owned or non-owned automobiles will be used under this Agreement, Contractor shall provide a statement that provides under penalty of perjury that no owned or non-owned automobiles will be used in the performance of this Agreement.

4.2.2 Minimum scope of coverage. Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 Additional requirements. Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an occurrence basis, and not on a claims-made basis.

- b. City, its officers, officials, employees, and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor
- c. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

4.3 Reserved

4.4 All Policies Requirements.

4.4.1 Acceptability of insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all policies delivered to Contractor by the insurer, including complete copies of all endorsements attached to those policies. All copies of policies and endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.

4.4.3 Deductibles and Self-Insured Retentions. Contractor shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

4.4.4 Reserved

4.4.5 Waiver of Subrogation. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

4.4.6 Subcontractors. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

4.5 Remedies. In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until

disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

Section 6. STATUS OF CONTRACTOR.

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

Section 7. LEGAL REQUIREMENTS.

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Contractor and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

7.5 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

Section 8. TERMINATION AND MODIFICATION.

8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon 30 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Contractor delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Contractor or prepared by or for Contractor or the City in connection with this Agreement.

8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no

obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.

8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

8.4 **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.

8.6 **Options upon Breach by Contractor.** If Contractor materially breaches any of the terms of this Agreement, City's remedies shall included, but not be limited to, the following:

8.6.1 Immediately terminate the Agreement;

8.6.2 Reserved;

8.6.3 Retain a different Contractor to complete the work described in Exhibit A not finished by Contractor; or

8.6.4 Charge Contractor the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Contractor pursuant to Section 2 if Contractor had completed the work.

Section 9. KEEPING AND STATUS OF RECORDS.

9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until

final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

- 9.2 Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

Section 10 MISCELLANEOUS PROVISIONS.

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Reserved.**

- 10.7 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

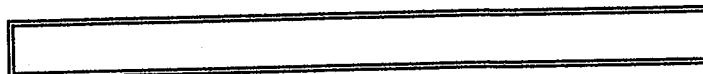
Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous twelve months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

- 10.8 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.9 **Contract Administration.** This Agreement shall be administered by Ron May and Don Brockman ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.
- 10.10 **Notices.** Any written notice to Contractor shall be sent to:

George Salinas
George Salinas Tree Preservation
3514 Merienda Lane
Yorba Linda, CA 92886

Any written notice to City shall be sent to:
Tim Orr, Street Supervisor
City of San Leandro
14200 Chapman Road
San Leandro, CA 94578

- 10.11 **Reserved**



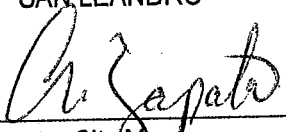
10.12 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibit A represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A Scope of Services

10.13 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

The Parties have executed this Agreement as of the Effective Date.


CITY OF SAN LEANDRO


Chris Zapata, City Manager

CONTRACTOR


George Salinas

Approved as to Form:

 for:
Jayne W. Williams, City Attorney

1234123.1

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT A: SCOPE OF SERVICES
BOULEVARD YARWOOD SYCAMORE TREE TRIMMING
Bid No. 11-12.015

1. **SUMMARY:** The work includes all services, labor, materials, transportation and equipment necessary to perform the work described in these specifications.
2. **SCOPE:** Furnish all labor, tools, equipment, materials, transportation, and perform all operations necessary and incidental to proper execution and completion of all tree trimming in accordance with the specifications.

Work consists of trimming a stand of Yarwood Sycamore trees on major boulevards and adjacent side streets as outlined below and as directed by the Tree Supervisor.

3. **QUANTITIES:** Approximate quantities and locations are the following:

LOCATION	APPROX # OF TREES
East 14 th Street from North City Limits to South City Limits	600
MacArthur Boulevard from North City Limits to Estudillo Avenue	107
Bancroft Avenue from North City Limits to Estudillo Avenue	74
Marina Boulevard from I-880 to San Leandro Boulevard	37
Alvarado Boulevard from Estabrook Street to Marina Boulevard	4
Davis Street from I-880 to East 14 th Street	127
Parrott Street from East 14 th Street to Washington Avenue	31
Wicks Boulevard across from Stenzel Park	24
15301 Wicks Boulevard – Marina Community Center	21
Doolittle Drive South of Davis Street	12
Lewelling Boulevard East of Wicks Boulevard (900 Block)	8
City Hall Parking Lots – Toler and Lafayette	22
Bancroft Avenue at Callan Avenue (IFO Bancroft Middle School)	8
300 Block of Preda Street	22
San Leandro Boulevard Between Parrott Street and Lille Street	31
In front of 1371-B E. 14 th Street (1 Conferta, 2 Podocarpus, 1 Sycamore)	4
Joaquin Avenue – east of E. 14 th Street	11
Garcia Avenue at E. 14 th Street	2
Victoria Circle	9
Dowling Boulevard at Bancroft Avenue	5
Dutton Avenue at E. 14 th Street and Bancroft Avenue	19
Lewis Avenue at Macarthur Boulevard	6
Maud Avenue and Thornton Street at E. 14 th Street	8
APPROXIMATE TOTAL	1192

Exact quantities and locations shall be as authorized by the Tree Supervisor of the City of San Leandro or his designated representative. No payment shall be made for any work performed which is not authorized. The City may elect to change quantities of trees for trimming by up to 25% without change in bid amount per tree.

4. **STANDARDS:** All tree trimming is to be done in accordance with the *International Society of Arboriculture, Western Chapter Pruning Standards (1988)*, the *National Arborist Association Pruning Standards for Shade Trees (revised 1988)*, and in compliance with ANSI Z133.1 (1988 Safety Standards). Specifically the quality of work shall be consistent with the National Arborist Association definition of Fine Pruning (Class 1). Contractor is required to have a thorough knowledge of these standards and is to have copies of these standards on all sites where work is being performed.

In addition, in order to minimize damage to the trees, no pruning is allowed with circular saws and no climbing with spikes is allowed.

Trees are to be raised from the sidewalk and street, thinned, shaped, trimmed back from buildings, wires, street lights and signs cleared as much as possible, long heavy limbs lightened, and as is consistent with the growth stage of the tree, have all basal and inside sucker growth removed as is consistent with the above standards. On large mature trees, no scaffold limbs or major limbs shall be removed, as is consistent with ISA pruning standards, unless authorized by city representative. Smaller trees limb removal may be required to establish scaffold limbs, or improve weight distribution.

Contractor will not be paid for any trees not trimmed consistent with these specifications. If at any time, Contractor shows an inability to trim consistent with these specifications, the Tree Supervisor, or said representative, will have the authority to order Contractor to cease all trimming and to have the purchase order cancelled.

Successful Bidder must possess current California Contractors License D-49 Tree Trimming for duration of contract

5. **MOBILIZATION:** Contractor selected shall have five (5) week days from notice by City to provide proof of insurance, proof of Contractor's license, proof of business license and such other documentation as required.
6. **WORKDAYS:** All trimming is to be completed within sixty (60) workdays from award of contract.
7. **HOURS OF OPERATION:** All trimming is to be done between the hours of 7:00 a.m. and 5:00 p.m., Monday through Friday, unless prior approval is granted by the City Tree Supervisor or his designated representative.
8. **PAYMENT:** Payment shall be on a per tree basis. Only trees approved for trimming by the City Tree Supervisor will be paid for. No payment will be made for any tree which is not trimmed as per these specifications. If the Contractor's activities damage a tree to the extent where it will not recover with good form in the sole judgment of the City's Tree Supervisor, Contractor shall remove and replace the damaged tree with a replacement tree approved by the city. All such removal/replacement costs will be borne by the Contractor with no payment from the City. If Contractor does not replace a damaged tree, \$500 per damaged tree will be withheld from any payment due Contractor.

Invoices shall be prepared by the listing of street names, side of street (North, East, West, South), what block to what block, and total number of trees trimmed on that side of the specified street in between each block.

9. **WEEKLY MEETINGS:** Contractor shall be required to meet weekly with the Tree Supervisor or his representative to confirm the work completed, discuss any issues that may have occurred, and to review the contractor's proposed work schedule.
10. **CLEANUP:** All branches, brush, leaves, chips, and sawdust are to be removed from the site and properly disposed of by the Contractor as part of the bid price. The intent is that all areas are to be left in as clean a condition or better than before the Contractor's operations. Cleanup is to be done continuously as each tree is finished. No brush is to be left at any of the tree sites.
11. **TRAFFIC CONTROL AND ACCESS:** Contractor shall not completely obstruct public pedestrian pathways or deny access to private property at any time. No streets shall be closed at any time. The Contractor may establish "No Parking" zones, contiguous to the work area by posting signs. The City will enforce parking restrictions only when the Contractor has posted the proper signs and has notified the City Police Department a minimum of 48 hours in advance of the required restriction period.

Construction signs, lights, barricades, etc., shall conform to the latest revision of the *Manual of Warning Signs, Lights and Devices for Use in Performance of Work Upon Highways*, by California Department of Transportation.

12. **CORRECTION OF HAZARDOUS CONDITIONS:** If, in the determination of the city Supervisor, any work done or omitted by the Contractor or any act of vandalism or theft has created a condition hazardous to the public, the city Supervisor will notify the Contractor's office by telephone. The Contractor shall commence correction of such condition by placement of barricades or as otherwise directed by the city within one (1) hour of receipt of such notice at his office, and shall complete correction thereof on the same calendar day, regardless of the size of the working force required or the number of hours of work required.

If the contractor cannot be reached by telephone, or fails to respond to the hazardous condition within the specified one (1) hour limit, the city shall have the authority to cause said hazardous condition to be corrected and deduct the cost thereof from any amounts due or to become due the Contractor. Such costs shall include any minimum or base costs for labor, materials or equipment as required by contracts, agreements or supplier but in no case shall such cost be less than \$250 per hazardous condition per location.



City of San Leandro

Meeting Date: May 18, 2015

Resolution - Council

File Number: 15-268 **Agenda Section:** CONSENT CALENDAR

Agenda Number:

TO: City Council

FROM: Chris Zapata
City Manager

BY: Debbie Pollart
Public Works Director

FINANCE REVIEW: David Baum
Finance Director

TITLE: RESOLUTION Approving Amendment No.1 to Non-Professional Services Agreement with George Salinas Tree Preservation for Annual Yarwood Sycamore Tree Trimming in the Amount of \$54,832

WHEREAS, an agreement dated May 15, 2012, exists between the City of San Leandro ("City") and George Salinas Tree Preservation ("Contractor"), for annual tree trimming/maintenance of City-owned Yarwood Sycamores on major boulevards and adjacent side streets; and

WHEREAS, Contractor successfully fulfilled the contract for the past two years without an increase in unit cost; and

WHEREAS, City and Contractor desire to amend the agreement to account for Contractor's increased unit cost (per tree), with a resulting total that exceeds \$50,000 (but is still substantially lower in cost than the apparent second low bidder); and

WHEREAS, Amendment No. 1 to the agreement, a copy of which is attached, has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said amendment to the agreement.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said amendment is hereby approved and execution by the City Manager is hereby authorized.

AMENDMENT NO. 1 TO NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF SAN LEANDRO AND
GEORGE SALINAS TREE PRESERVATION

This Amendment No. 1 ("Amendment") is made by and between the City of San Leandro ("City") and George Salinas Tree Preservation ("Contractor") (together sometimes referred to as the "Parties") as of March 23, 2015, and amends that certain Non-Professional Services Agreement ("Agreement") dated May 15, 2012, between the Parties.

WHEREAS, City and Contractor have executed the Agreement, pursuant to which Consultant has provided certain contract services to City with regard to annual tree trimming/maintenance of Yarwood Sycamores on major boulevards and adjacent side streets; and

WHEREAS, Contractor has successfully fulfilled contractual agreement for the past two years without an increase in unit costs; and

WHEREAS, the Parties desire to amend the Agreement to account for contractor's increased unit cost (per tree), with a resulting total that exceeds \$50,000 (but is still substantially lower in cost than the second-place bidder);

NOW THEREFORE, for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree to amend the Agreement as follows:

1. Section 1.1 of the Agreement entitled "Term of Services" is hereby amended to extend the term from August 9, 2012, to August 23, 2015; and
2. Section 2 of the Agreement entitled "Compensation" is hereby amended to pay Consultant a sum not to exceed fifty-four thousand, eight hundred and thirty-two dollars (\$54,832 for 1,192 trees, at \$46/tree); and
3. All other terms shall remain in full force and effect.

This Amendment may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

SIGNATURES ON FOLLOWING PAGE

The Parties have executed this Amendment as of the date first written above. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

CONTRACTOR

Chris Zapata, City Manager

George Salinas Tree Preservation

Attest:

Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

David Baum, Finance Director

010-33-001-5340
Account Number

Approved as to Form:

Richard D. Pio Roda, City Attorney