

7. APPROVAL OF CONTRACT FOR CONSULTING ARBORIST SERVICES WITH PETER C. HARNISCH, CONSULTING ARBORIST

Recommendation: Staff recommends the City Council approve the contract and authorize the City Manager to execute the agreement. If the City Council concurs with staff's recommendation, an appropriate motion would be:

"I move to approve the contract with Peter Harnisch, Consulting Arborist and authorize the City Manager to execute the agreement."



City of San Marino

Staff Report

*Gretchen Shepherd Romey, Mayor
Tony Chou, Vice Mayor
Hunter Chang, Council Member
John Chou, Council Member
Calvin Lo, Council Member*

TO:	Mayor and City Council
FROM:	Philippe Eskandar, City Manager
BY:	Isidro Figueroa, Community Development Director Alexis Huerta, Management Analyst Lora Hall, Urban Forester
DATE:	February 28, 2025
SUBJECT:	APPROVAL OF CONTRACT FOR CONSULTING ARBORIST SERVICES WITH PETER C. HARNISCH, CONSULTING ARBORIST

STRATEGIC PLAN CRITICAL SUCCESS FACTORS

Beautiful, Preserved, Single-Family Neighborhoods
Efficient, Responsive, and Effective City Services
Safe Community
Fiscally Responsible and Transparent City Government

BACKGROUND

The Community Development Department is seeking to enter into a new agreement with Registered Consulting Arborist (RCA) Peter C. Harnisch, to provide services that include tree inspections, evaluations and appraisals for private trees (Exhibit A). Mr. Harnisch previously provided these services under contract in 2022, prior to the City hiring an Urban Forester.

Currently, the City faces a backlog of pending tree removal applications, further exacerbated by the recent windstorm. Under the direction of the Urban Forester, Mr. Harnisch will conduct inspections and evaluations on an as-needed basis to support and complement the City's tree management efforts.

Mr. Harnisch is also certified in plant and tree appraisal and will determine appropriate fines when high-value trees are damaged or removed without a permit, as outlined in the Tree Protection Ordinance. This will ensure that the City's tree preservation policies are effectively enforced and supported.

DISCUSSION

The agreement with Mr. Harnisch expired on October 31, 2022. During that time, Mr. Harnisch provided essential arborist consulting services to the City, including risk assessments and tree evaluations for private trees. Mr. Harnisch is a highly credentialed professional with extensive expertise in the field of arboriculture. He holds the following qualifications:

- ISA Certified Arborist
- Registered Consulting Arborist
- ISA Tree Risk Assessment Qualified
- ASCA Tree and Plant Appraisal Qualification
- Member of the American Society of Consulting Arborists

The City currently does not have accredited staff to conduct tree appraisals, which are essential for evaluating unauthorized removals and supporting code enforcement cases. Additionally, a substantial backlog of private tree removal applications requires expert evaluation to ensure compliance with City regulations. The severe windstorm in January 2025 caused extensive tree damage throughout the City, underscoring the urgent need for professional arborist services to support recovery efforts and maintain public safety. Renewing the contract with Mr. Harnisch will enable the City to address these immediate needs and be better prepared for future severe weather events. His services will also reinforce the City's commitment to excellent customer service by providing timely responses to private tree removal applications.

Given the City's extensive tree canopy, tree protection policies, and the community's deep appreciation for its trees, Mr. Harnisch's expertise is especially valuable in upholding the City's preservation efforts. His prior experience working with the City makes him uniquely qualified to assist with complex tree appraisals, unauthorized removals, and enforcement cases.

In preparation of the contract renewal, staff took the opportunity to solicit proposals from two other arborist consulting agencies that perform similar services. As a result, staff received proposals from Environmental Science Associates and JTL Consultants. Environmental Science Associates submitted an hourly rate between \$219 and \$243 for consulting arborist services. JTL Consultants offers an hourly of \$175 but requires a four-hour minimum for the same services.

While Mr. Harnisch's \$200 hourly rate is slightly higher than JTL Consultants, his no-minimum hourly policy offers greater flexibility and cost efficiency. His expertise in the City's Municipal Code and tree protection policies, combined with prior experience, ensures high-quality, cost-effective service. Staff

recommends him as the best overall value for the City.

Staff was highly satisfied with the quality and reliability of services provided by Peter Harnisch during his time as the City's Consulting Arborist. Given his strong qualifications, extensive experience with the City, and cost-efficient pricing structure, staff recommends approving a new three-year agreement with a total contract amount not to exceed \$50,000 to continue providing essential arborist consulting services in support of the City's tree preservation efforts. His expertise will provide critical support to the Urban Forester, Code Enforcement, and the community as a whole, particularly in addressing the backlog of tree removals and appraisals.

FISCAL IMPACT & PROCUREMENT REVIEW

A budget amendment to the FY 2024-25 operating budget is not required as the City Council approved an appropriation of \$50,000 in Community Development Department Other Contract Services account 101-14-4150-0000.

The Finance Director has reviewed this report and concluded that this agreement is in the best interest of the City.

LEGAL REVIEW

The City Attorney's office has reviewed and approved as to form.

RECOMMENDATION

Staff recommends the City Council approve the contract and authorize the City Manager to execute the agreement. If the City Council concurs with staff's recommendation, an appropriate motion would be:

"I move to approve the contract with Peter Harnisch, Consulting Arborist and authorize the City Manager to execute the agreement."

ATTACHMENTS

1. Professional Services Agreement with Peter C. Harnisch, Consulting Arborist

PROFESSIONAL SERVICES AGREEMENT

between

The City of San Marino
2200 Huntington Drive
San Marino, CA 91108



&

PETER C. HARNISCH,
CONSULTING ARBORIST
1022 SANTA ANA ST.
LAGUNA BEACH, CA 92651

This Professional Service Agreement (“the Agreement”) is made as of **February 28, 2025** (the “Effective Date”), by and between **Peter C. Harnisch, Consulting Arborist** (“Consultant”), and the City of San Marino (“City”), a California municipal corporation, (collectively, “the Parties”).

RECITALS

A. City desires certain professional services as specified in this Agreement.

B. Consultant represents that it is qualified and able to provide City with such services.

NOW THEREFORE, in consideration of the Parties' performance of the promises, covenants, and conditions stated herein, the Parties hereto agree as follows:

AGREEMENT

1.0 Scope of Services

1.1. Consultant shall provide those services ("Services") set forth in the attached Exhibit A.

1.2. Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

1.3. In performing this Agreement, Consultant shall comply with all applicable provisions of federal, state, and local laws, ordinances, codes, and regulations.

1.4. Consultant shall not be compensated for any work performed unless it is specified in Exhibit A or City authorizes such work in advance and in writing. Any work so authorized by City shall become part of the Services for purposes of this Agreement.

2.0 Term

The term of this Agreement shall commence as of the Effective Date and shall continue through **February 28, 2028** unless sooner terminated as provided in Section 5.0 of this Agreement.

3.0 Consultant's Compensation

City will pay Consultant in accordance with the fee schedule set forth in Exhibit B but in no event will the City pay more than **\$50,000**. Any additional work authorized by the City pursuant to Section 1.4 will be compensated in accordance with the fee schedule set forth in Exhibit B, unless otherwise approved by City in writing. Pursuant to Section 02.06.05 of the San Marino City Code, this Agreement shall not be effective unless previously approved by the City Council if it is for professional services of greater than thirty-thousand dollars (\$30,000).

4.0 Method of Payment

4.1. Consultant shall submit to City monthly invoices for all services rendered pursuant to this Agreement. Such invoices shall be submitted within 15 days of the end

of the month during which the services were rendered and shall describe in detail the services rendered during the period, the days worked, number of hours worked, the hourly rates charged, and the services performed for each day in the period. City will pay Consultant all undisputed charges within 30 days of receiving Consultant's invoice. City will not withhold any applicable federal or state payroll and other required taxes, or other required or authorized deductions from payments made to Consultant.

4.2. Upon 24-hour notice from City, Consultant shall allow City or City's agents or representatives to inspect at Consultant's offices during reasonable business hours all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement. City's rights under this Section 4.2 shall survive for two years following the expiration or earlier termination of this Agreement.

5.0 Termination

5.1. City may terminate this Agreement at any time, at will, for any reason or no reason, after giving written notice to Consultant at least thirty (30) calendar days before the termination is to be effective.

5.2. Consultant may terminate this Agreement for cause in the event City fails to cure a default under this Agreement within thirty (30) days after Consultant has given City notice of such default.

5.3. Upon termination of this Agreement, Consultant shall cease all work under this Agreement and deliver to City all materials, reports, documents, notes or other written materials compiled through the last working day this Agreement is in effect. City shall pay Consultant for all services satisfactorily rendered through the last working day this Agreement is in effect; provided that in no event, including but not limited to termination, shall Consultant be entitled to receive more than the maximum compensation set forth in Section 3. Neither party shall have any other claim against the other party by reason of termination pursuant to this Section 5.0.

6.0 Reports, Information, and Work Product

6.1. Consultant shall deliver to City: (1) any reports on the status of the Services upon City's request and in such time and in such form as City may require; and (2) all material furnished to Consultant by City upon City's request and/or upon the expiration or termination of this Agreement.

6.2. Unless the Parties agree in writing, all draft and final reports, documents, and other written material, and any and all images, ideas, concepts, designs including without limitation any website designs, source code, object code, electronic data and files, and/or other media whatsoever created or developed by Consultant in the performance of this Agreement (collectively, "Work Product") shall be considered to be "works made for hire" for the benefit of City. All Work Product and any and all intellectual property rights arising from their creation, including, but not limited to, all copyrights and other proprietary rights, shall be and remain the property of City without restriction or limitation upon their use, duplication or dissemination by City upon final payment being made.

Consultant shall not obtain or attempt to obtain copyright protection as to any of the Work Product. Consultant hereby assigns to City all rights of ownership to the Work Product, including but not limited to any and all related intellectual property and proprietary rights that are not otherwise vested in the City pursuant to this paragraph.

6.3. Consultant warrants and represents that it has secured all necessary licenses, consents or approvals necessary to the production of the Work Product, and that upon final payment, City shall have full legal title to the Work Product, and full legal authority and the right to use and reproduce the Work Product for any purpose. Consultant shall defend, indemnify, and hold City, and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of city officials, harmless from any loss, claim, or liability in any way related to a claim that any use by the City of any of the Work Product violates federal, state, or local laws, or any contractual provisions, or any rights or laws relating to trade names, licenses, franchises, copyrights, patents, or other means of protecting intellectual property rights, and/or interests in products, ideas, or inventions. Consultant shall bear all costs arising from the use of patented, copyrighted, trade secret, or trademarked documents, materials, equipment, devices, or processes in connection with its provision of the Work Product produced under this Agreement. If any use by city of any of the Work Product or other deliverables is held to constitute an infringement and the use of any of the same is enjoined, Consultant, at its expense, shall: (a) secure for City the right to continue using such Work Product and/or other deliverables by suspension of any injunction, or by procuring a license or licenses for City; or (b) modify the Work Product and other deliverables so that they become non-infringing while remaining in compliance with the requirements of this Agreement.

6.4. Consultant's obligations under this Section 6.0 shall survive the expiration or termination of this Agreement.

7.0 Party Representatives

7.1. City's representative for purposes of this Agreement is the City Manager or the person designated in writing by the City Manager. The City Manager's designee may exercise the authority of the City Manager provided in this Agreement excepting approval of any expenditure that would exceed a total compensation allowed under the Agreement.

7.2. **Peter C. Harnisch** is Consultant's representative for purposes of this Agreement.

8.0 Notices

8.1. All notices permitted or required under this Agreement shall be deemed made when personally delivered or when mailed 48 hours after deposit in the United States Mail, first class postage prepaid and addressed to the party at the following addresses:

To City: City of San Marino
 2200 Huntington Drive

San Marino, California 91108
Attn: City Manager

To Consultant: Peter C. Harnisch, Consulting Arborist
1022 Santa Ana Ave.
Laguna Beach, CA 92651
Attn: Peter C. Harnisch, Consulting Arborist

8.2. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

9.0 Independent Consultant

9.1. Consultant is an independent contractor and not an employee of City. All services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the services. Any additional personnel performing services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

9.2. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. All duties of Consultant under this Section 9.2 shall survive termination of this Agreement.

9.3. In the event that Consultant provides any of the Services by or through any employee or any person whose work under this Agreement becomes cause for any payment or contribution required by law, including but not limited to the California Public Employees' Pension Reform Act (PEPRA), to the Public Employee Retirement System, Consultant shall be solely responsible for all such payments or contributions. Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs, and expenses of any nature to the extent arising from Consultant's failure to make any such payment or contribution. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section. All duties of Consultant under this Section 9.3 shall survive

termination of this Agreement.

10.0 Subcontractors

Unless otherwise specified in Exhibit A, no portion of this Agreement shall be subcontracted without the prior written approval of the City Manager. Consultant is fully responsible to City for the performance of any and all subcontractors, if any.

11.0 Assignment

Consultant shall not assign or transfer any interest in this Agreement whether by assignment or novation, without the prior written consent of City Manager. Any purported assignment without such consent shall be void and without effect.

12.0 Insurance

Without limiting Consultant's indemnification of City, and prior to commencement of Work, Consultant shall obtain, provide, and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

12.1. Consultant shall not commence work under this Agreement until it has provided evidence satisfactory to City that Consultant has secured all insurance required under this Section. Consultant shall furnish City with original certificates of insurance and endorsements, including but not limited to additional insured endorsements, effecting coverage required by this Agreement on forms satisfactory to City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by City, if requested. All certificates and endorsements shall be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

12.2. **General liability insurance.** Consultant shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

12.3 **Automobile liability insurance.** Consultant shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned, or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

12.4 **Professional liability (errors & omissions) insurance.** Consultant shall maintain professional liability insurance that covers the Services to be performed in

connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this agreement and Consultant agrees to maintain continuous coverage through a period no less than three years after completion of the services required by this agreement.

12.5 Workers' compensation insurance. Consultant shall maintain Workers' Compensation Insurance (statutory limits) and Employer's Liability insurance (with limits of at least \$1,000,000).

Consultant shall submit to City, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of City, its officers, agents, employees, and volunteers.

Other provisions or requirements

12.6. Proof of insurance. Consultant shall provide certificates of insurance and required endorsements to City as evidence of the insurance coverage required herein. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City for the contract period and any additional length of time required thereafter. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

12.7 Duration of coverage. Consultant shall procure and maintain for the contract period, and any additional length of time required thereafter, insurance against claims for injuries to persons or damages to property, or financial loss which may arise from or in connection with the performance of the Work hereunder by Consultant, their agents, representatives, employees, or sub-consultants.

12.8 Primary/noncontributing. Coverage provided by Consultant shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self- insurance shall be called upon to protect it as a named insured.

12.9 City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary, and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments. In the alternative, City may cancel this Agreement.

12.10 Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

12.11 Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against City, its elected or appointed officers, agents, officials, employees, and volunteers or shall specifically allow Consultant or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. Consultant hereby waives its own right of recovery against City and shall require similar written express waivers and insurance clauses from each of its subconsultants.

12.12 Enforcement of contract provisions (non estoppel). Consultant acknowledges and agrees that any actual or alleged failure on the part of the City to inform Consultant of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

12.13 Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

12.14 Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide the City with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage. If any of the Consultant's insurers are unwilling to provide such notice, then Consultant shall have the responsibility of notifying the City immediately in the event of Consultant's failure to renew any of the required insurance coverages, or insurer's cancellation or non-renewal.

12.15 Additional insured status. General liability, automobile liability, and umbrella/excess liability insurance policies shall provide or be endorsed to provide that City and its officers, officials, employees, agents, and volunteers shall be additional insureds under such policies.

12.16 Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include

any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

12.17 Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

12.18 Pass through clause. Consultant agrees to ensure that its sub-consultants, subcontractors, and any other party who is brought onto or involved in the project/service by Consultant (hereinafter collectively "Subcontractor"), provide the same minimum insurance coverage and endorsements required of Consultant under this Agreement. Consultant agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. However, in the event Consultant's Subcontractor cannot comply with this requirement, which proof must be submitted to the City, Consultant may still be able to utilize the Subcontractor provided Consultant shall be required to ensure that its Subcontractor provide and maintain insurance coverage and endorsements sufficient to the specific risk of exposure involved with Subcontractor's scope of work and services, with limits less than required of the Consultant, but in all other terms consistent with the Consultant's requirements under this Agreement. This provision does not relieve the Consultant of its contractual obligations under the Agreement and/or limit its liability to the amount of insurance coverage provided by its subcontractors. This provision is intended solely to provide Consultant with the ability to utilize a Subcontractor who may be otherwise qualified to perform the work or services but may not carry the same insurance limits as required of the Consultant under this Agreement given the limited scope of work or services provided by the subcontractor. Consultant agrees that upon request, all agreements with Subcontractors, and others engaged in the project and/or services, will be submitted to City for review.

12.19 City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Consultant, the City and Consultant may renegotiate Consultant's compensation.

12.20 Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible, or require proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention through confirmation from the underwriter.

12.21 Timely notice of claims. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

12.22 **Additional insurance.** Consultant shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

Indemnification, Hold Harmless, and Duty to Defend

12.23 **Indemnity and defense.** To the fullest extent permitted by law, Consultant shall indemnify 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, caused in whole or in part by the negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or subconsultants (or any City or individual that Consultant shall bear the legal liability thereof) in the performance of services under this agreement. Consultant’s duty to indemnify and hold harmless City shall not extend to the City’s sole or active negligence.

12.24 **Duty to defend.** In the event the City, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the services encompassed by this agreement, and upon demand by City, Consultant shall defend the City at Consultant’s cost or at City’s option, to reimburse City for its costs of defense, including reasonable attorney’s fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by Consultant’s negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this provision. In the event of any dispute between Consultant and City, as to whether liability arises from the sole or active negligence of the City or its officers, employees, or agents, Consultant will be obligated to pay for City’s defense until such time as a final judgment has been entered adjudicating the City as solely or actively negligent. Consultant will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney’s fees, expert fees, and costs of litigation.

12.25 Consultant must obtain executed indemnity agreements with provisions identical to those in Section 0 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of the Services. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless, and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged, or threatened, arising or claimed to arise out of, pertaining to, or relating to the acts or omissions of Consultant’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors, or their respective officers, agents, servants or employees (or any entity or individual that Consultant’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by final arbitration or court decision or by the agreement of the Parties.

13.0 Equal Opportunity

Consultant shall not discriminate against any subcontractor, employee, or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex, sexual orientation, or age. Such non-discrimination includes, but is not limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, or termination.

14.0 Labor Certification

14.1. By its signature hereunder, Consultant certifies it is aware of the provisions of Section 3700 of the California Labor Code that require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code. Consultant shall provide evidence of such coverage before commencing the performance of the Services.

14.2. Consultant certifies that in the performance of the Services, Consultant shall not, in any manner, employ any person or contract with any person so that any Services so performed by such person would be subject to the workers' compensation laws of the State of California unless and until Consultant gives City a certificate of consent to self-insure or a certificate of Workers' Compensation Insurance Coverage.

14.3. In the event Consultant hires a subcontractor who has employees to perform the Services or any part thereof, then Consultant shall either require the subcontractor to obtain Workers' Compensation Insurance Coverage, or must obtain Workers' Compensation Insurance Coverage for the subcontractor's employees.

14.4. Any Workers' Compensation Insurance Coverage required by or for this Agreement shall be endorsed with a waiver of subrogation in favor of City for all work performed by Consultant, its employees, its agents, and its subcontractors.

15.0 Entire Agreement

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by both parties.

16.0 Severability

The invalidity in whole or in part of any provisions of this Agreement shall not void or affect the validity of the other provisions of this Agreement.

17.0 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California.

18.0 No Third Party Rights

No third party shall be deemed to have any rights hereunder against either party as a result of this Agreement.

19.0 Waiver

No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a party shall give the other party any contractual rights by custom, estoppel, or otherwise.

20.0 Headings

Headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.

21.0 Force Majeure

Consultant shall not be liable for any failure to perform any obligation under this Agreement if Consultant presents that City in its sole judgment deems acceptable that such failure was due to strikes, lockouts, labor disputes, embargoes, acts of God, governmental restrictions, governmental regulations, governmental controls, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond Consultant's reasonable control and not due to any act by Consultant.

22.0 Final Payment Acceptance Constitutes Release

Consultant's acceptance of City's final payment under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for the Services or anything done or furnished relating thereto. Neither City's payment to Consultant nor approval of payment constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, sub-contractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such or payment or approval be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

23.0 Prohibited Interests; Conflict of Interest

23.1. Consultant covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which may be affected by the Services, or which would conflict in any manner with the performance of the Services. Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by it. Furthermore, Consultant shall avoid the appearance of having any interest, which would conflict in any manner with the performance of the Services. Consultant shall not accept any employment or representation during the term of this

Agreement which is or may likely make Consultant “financially interested” (as provided in California Government Code §§1090 and 87100) in any decision made by City on any matter in connection with which Consultant has been retained.

23.2. Consultant further warrants and maintains that it has not employed or retained any person or entity, other than a bona fide employee working exclusively for Consultant, to solicit or obtain this Agreement. Nor has Consultant paid or agreed to pay any person or entity, other than a bona fide employee working exclusively for Consultant, any fee, commission, gift, percentage, or any other consideration contingent upon the execution of this Agreement. Upon any breach or violation of this warranty, City shall have the right, at its sole and absolute discretion, to terminate this Agreement without further liability, or to deduct from any sums payable to Consultant hereunder the full amount or value of any such fee, commission, percentage or gift.

23.3. Consultant warrants and maintains that it has no knowledge that any officer or employee of City has any interest, whether contractual, noncontractual, financial, proprietary, or otherwise, in this transaction or in the business of Consultant, and that if any such interest comes to the knowledge of Consultant at any time during the term of this Agreement, Consultant shall immediately make a complete, written disclosure of such interest to City, even if such interest would not be deemed a prohibited “conflict of interest” under applicable laws as described in this subsection.

24.0 Attorneys’ Fees

If either party commences any legal, administrative, or other action against the other party arising out of or in connection with this Agreement, the prevailing party in such action shall be entitled to have and recover from the losing party all of its attorneys’ fees and other costs incurred in connection therewith.

25.0 Exhibits

Each exhibit referenced in this Agreement is hereby incorporated into the Agreement as if set forth in full herein. In the event of any material discrepancy between the terms of any exhibit so incorporated and the terms of this Agreement, the terms of this Agreement shall control.

26.0 Corporate Authority

26.1. Each person executing this Agreement on behalf of Consultant warrants that he or she is duly authorized to execute this Agreement on behalf of Consultant and that by his or her execution, Consultant is formally bound to the provisions of this Agreement.

26.2. Consultant certifies it is aware of the requirements of Sections 313 of the California Corporations Code. If Consultant is a corporate entity, it shall either: (a) provide City written proof that each person executing this Agreement on Consultant’s behalf is duly authorized to bind Consultant; or (b) provide two signatories to this Agreement, of whom the first must be Consultant’s chairman of the board, president, or a vice president

and the second must be Consultant's secretary, an assistant secretary, its chief financial officer, or an assistant treasurer.

IN WITNESS WHEREOF, the Parties hereto, through their respective authorized representatives have executed this Agreement as of the Effective Date.

CITY OF SAN MARINO

CONSULTANT

By: _____
Philippe Eskandar
City Manager

By: _____
(Sign)

Attest:

Name: Peter Harnisch
(Print)

By: _____
City Clerk

Title: Vice President
(Print)

Approved as to Form:

By: _____
(Sign)

By: _____
Joseph Montes
City Attorney

Name: _____
(Print)

Title: _____
(Print)

Exhibit A

Scope of Services

Peter C. Harnisch Consulting Arborist
 (626) 945 3176
 peter@harnischtreecare.com
 1022 Santa Ana St.
 Laguna Beach, CA 92651



ISA Certified Arborist WE-0773A
 Registered Consulting Arborist #595
 ISA Tree Risk Assessment Qualified
 ASCA Tree and Plant Appraisal Qualification
 Member American Society of Consulting Arborists

Scope of Services/Fee Schedule

Service Offered	Description	Cost
Sonic Tomography	Performed on one tree at 2 levels of its trunk where accessible. Includes graphic images of results and summary letter describing findings	\$1800 per tree
Pull Testing	Test for stability of root plate or trunk of one tree where possible. Includes graphic image and resulting safety factor rating. Includes summary letter describing findings	\$1800 per tree
Ground Penetrating Radar	Perform root mapping using radar technology. Includes up to 4 arc or linear scans at a single site. Includes graphic images of results and summary letter describing findings	\$2500 per site
Resistograph Drilling	Perform resistance drilling on tree trunks, branches, or limbs on up to 6 drill sites on a single tree. Includes graphic images of results, and a summary letter describing findings.	\$1200 per tree
Climbing Inspection	Perform climbing inspection on a single tree. Includes summary letter of findings	\$800 per tree
Tree Appraisal	Provide a letter style report of an opinion of value for a single tree using the 10th edition of the Guide for Tree and Plant Appraisal	\$800 per tree
Level I and Level II Risk Assessments	Provide Level I and Level II tree risk Assessments. Includes a letter style report of findings	\$200 per hour, portal to portal
Tree Evaluations	Provide site visits and tree evaluation reports (other than advanced assessments listed above)	\$200 per hour, portal to portal
Arborist Services	Verbal consultations, reports, or other services not listed above	\$200 per hour, portal to portal (if travel required)

Exhibit B

Fee Schedule

Peter C. Harnisch Consulting Arborist
 (626) 945 3176
 peter@harnischtreecare.com
 1022 Santa Ana St.
 Laguna Beach, CA 92651



ISA Certified Arborist WE-0773A
 Registered Consulting Arborist #595
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