



Agenda Item B.1
CONSENT CALENDAR
Meeting Date: November 18, 2008

TO: Mayor and Councilmembers

FROM: Tim Giles, City Attorney

CONTACT: Steve Wagner, Community Services Director

SUBJECT: Reconsideration of Professional Services Agreement to Develop Urban Forest Master Plan

RECOMMENDATION:

- A. Rescind City Council action of August 19, 2008, authorizing the City Manager to execute a Professional Services Agreement with Goleta Valley Beautiful to develop an Urban Forest Master Plan;
- B. Independent of prior consideration, consider anew whether to approve and authorize City Manager to execute a Professional Service Agreement with Goleta Valley Beautiful to develop an Urban Forest Master Plan in an amount not to exceed \$47,000.

BACKGROUND:

On August 19, 2008, the City Council authorized a Professional Service Agreement with Goleta Valley Beautiful (GVB) for the implementation of an Urban Forest Management grant. After Council review staff further considered the fact that a sitting Planning Commissioner, who is a compensated employee of Goleta Valley Beautiful, was involved through interaction with City staff and actual drafting of contract language. Government Code Section 1090 prevents the City from entering into the contract under such circumstances.

The Commissioner has since resigned from his position on the Planning Commission. This removes the Section 1090 conflict which prohibits the City from entering into a contract with GVB. It is appropriate for the Council to rescind its prior approval which was given at a time when the Section 1090 preclusion existed. Now that the Section 1090 issue has been resolved, Council may consider whether to authorize this agreement. Accordingly, staff recommends that Council rescind its action of August 19, 2008, and consider the matter at this time, independent of any perceived influence by a Commissioner.

Although some officials are barred by the Political Reform Act from contracting with a public agency for a period after having served with the agency, the revolving door ban does not apply to Planning Commissioners. (Cal. Gov't Code §87406.3)

DISCUSSION:

The City's General Plan includes specific policy language in the Conservation Element directing the preparation of an Urban Forest Management Plan. In March 2008, the City was awarded an \$80,000 grant from the California Department of Forestry and Fire Protection for development of an Urban Forestry Management Plan. The grant application was developed and submitted in cooperation with GVB. The development of the City's Urban Forest Management Plan pursuant to the grant will involve numerous stakeholders and public meetings over the next two years.

GVB has proposed to assist the City in developing a comprehensive Urban Forest Management Plan for the City of Goleta. A copy of the proposed Professional Services Agreement with GVB is included as Attachment 1 to this report.

GVB staff is qualified to assist the City in the implementation and oversight of this grant and will provide a portion of the grant's required matching funds through the use of GVB's members and volunteers. GVB's ability to provide a local match was instrumental in securing the grant funding for this effort. While other consultants may be qualified to assist the City in the implementation of the grant, it is unlikely that they would be able to provide the required local match. As such, no formal RFP for these services was issued.

Development of the City's Urban Forest Management Plan will include the preparation of a State of the Urban Forest Report. This report will summarize the current condition of the City's urban forest. Another report to be prepared will be the Goleta Urban Forest Guiding Principles report which will include various goals and recommendations relating to Goleta's Urban Forest Management Plan. Both of these draft documents will be developed in coordination with the Urban Forest Management Advisory Committee and will be brought to the Council for approval in 2009.

Following approval of the State of the Urban Forest Report and Guiding Principals Report, the City and GVB staff will begin preparing detailed implementation tools for the Goleta Urban Forest Management Plan, which may include policies, ordinances and operating procedures relating to Urban Forest Management. By the end of 2009, another series of public discussions will culminate in a draft Goleta Urban Forest Management Plan for City Council review in spring of 2010.

GOLETA STRATEGIC PLAN:

Development of an Urban Forestry Master Plan is consistent with the Goal in the Goleta Strategic Plan entitled, "Prioritize Maintenance of City Streets, Parks, and Facilities." Specifically, the preparation of the Urban Forestry Master Plan meets the Objective

“Install Trees – Develop Master Plan” and moves the City closer toward realizing its vision as defined within the City’s Strategic Plan.

ALTERNATIVES:

The City Council may choose to approve and authorize the City Manager to execute a Professional Services Agreement with GVB, or may choose one of the following alternative actions:

1. Postpone development of the Urban Forest Management Plan to focus on other current priority activities such as implementation of the City’s Capital Improvement Program and the Gap Fire Emergency Response Measures.
2. Request proposals from other qualified consulting firms.

However, pursuing alternative 1 or 2 above could jeopardize the Urban Forest Management grant.

FISCAL IMPACTS:

On July 15, 2008, the City Council appropriated \$80,000 in Urban Forest Management Grant funds and an additional \$13,500 of General Fund monies for the City’s local match expenditures as required by the grant.

The grant identifies an additional \$109,854 in local matching funds to be provided by the City and GVB. The City’s share of the matching funds includes \$13,500 in hard costs and over 600 hours in staff time other soft costs totaling \$33,000.

The proposed agreement with GVB in the amount not to exceed \$47,000 will be reimbursed by the available grant funds and is included in the funds previously appropriated. As such, no additional appropriation for this agreement is required.

LEGAL REVIEW:

The attached contract has undergone legal review by Tim Giles, City Attorney.

Submitted By:

Reviewed By:

Approved By:

Steve Wagner
Community Services
Director

Michelle Greene
Administrative Services
Director

Daniel Singer
City Manager

ATTACHMENTS

1. Agreement for Consultant Services Between the City of Goleta and Goleta Valley Beautiful

ATTACHMENT 1

Agreement for Consultant Services Between the City of Goleta and
Goleta Valley Beautiful

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF GOLETA
AND
GOLETA VALLEY BEAUTIFUL**

TABLE OF CONTENTS

	PAGE
SECTION 1. TERM OF AGREEMENT.....	1
SECTION 2. SCOPE OF SERVICES.....	1
SECTION 3. ADDITIONAL SERVICES.....	1
SECTION 4. COMPENSATION AND METHOD OF PAYMENT.....	1
SECTION 5. INSPECTION AND FINAL ACCEPTANCE	2
SECTION 6. OWNERSHIP OF DOCUMENTS.....	2
SECTION 7. CONSULTANT'S BOOKS AND RECORDS.....	3
SECTION 8. STATUS OF CONSULTANT.....	3
SECTION 9. STANDARD OF PERFORMANCE.....	4
SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.....	4
SECTION 11. NONDISCRIMINATION.....	4
SECTION 12. UNAUTHORIZED ALIENS	5
SECTION 13. CONFLICTS OF INTEREST	5
SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION	5
SECTION 15. INDEMNIFICATION.....	6

SECTION 16.	INSURANCE.	7
SECTION 17.	ASSIGNMENT.....	7
SECTION 18.	CONTINUITY OF PERSONNEL	7
SECTION 19.	TERMINATION OF AGREEMENT.....	7
SECTION 20.	DEFAULT.....	8
SECTION 21.	EXCUSABLE DELAYS.....	8
SECTION 22.	COOPERATION BY CITY	8
SECTION 23.	NOTICES	9
SECTION 24.	AUTHORITY TO EXECUTE.....	9
SECTION 25.	BINDING EFFECT.	9
SECTION 26.	MODIFICATION OF AGREEMENT.....	9
SECTION 27.	WAIVER	10
SECTION 28.	LAW TO GOVERN; VENUE.....	10
SECTION 29.	ATTORNEYS FEES, COSTS AND EXPENSES.....	10
SECTION 30.	ENTIRE AGREEMENT.....	10
SECTION 31.	SEVERABILITY.....	10
EXHIBIT "A"	SCOPE OF SERVICES.....	A-1
EXHIBIT "B"	COMPENSATION	B-1
EXHIBIT "C"	INSURANCE	C-1

**AGREEMENT FOR CONSULTANT SERVICES
BETWEEN
THE CITY OF GOLETA
AND
GOLETA VALLEY BEAUTIFUL**

This AGREEMENT FOR CONSULTANT SERVICES ("AGREEMENT"), is made and entered into this _____ day of November 2008, by and among the City of Goleta, a California municipal corporation ("CITY") and Goleta Valley Beautiful, a California nonprofit community service corporation ("CONSULTANT").

In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

SECTION 1. TERM OF AGREEMENT.

Subject to the provisions of SECTION 19 "TERMINATION OF AGREEMENT" of this AGREEMENT, the term of this AGREEMENT shall be for a period of one (1) year from the date of execution of this AGREEMENT, as first shown above. Such term may be extended upon written agreement of both parties to this AGREEMENT.

SECTION 2. SCOPE OF SERVICES.

CONSULTANT agrees to perform the services set forth in EXHIBIT "A" "SCOPE OF SERVICES" and made a part of this AGREEMENT. It is specifically agreed that Mark Broomfield shall be the individual responsible for providing services throughout the term of this AGREEMENT. CONSULTANT shall be responsible for providing all labor, materials and other resources necessary to complete the scope of work. CONSULTANT shall not rely upon City resources and shall only contact City resources as authorized by the City Project Manager.

SECTION 3. ADDITIONAL SERVICES.

CONSULTANT shall not be compensated for any services rendered in connection with its performance of this AGREEMENT which are in addition to or outside of those set forth in this AGREEMENT or listed in EXHIBIT "A" "SCOPE OF SERVICES", unless such additional services are authorized in advance and in writing by the City Council or City Manager of CITY. CONSULTANT shall be compensated for any such additional services in the amounts and in the manner agreed to by the City Council or City Manager.

SECTION 4. COMPENSATION AND METHOD OF PAYMENT.

(a) Subject to any limitations set forth in this AGREEMENT, CITY agrees to pay CONSULTANT the amounts specified in EXHIBIT "B" "COMPENSATION" and made a part of this AGREEMENT. The total compensation, including reimbursement for actual expenses, shall not exceed forty seven thousand dollars (\$47,000), unless additional compensation is approved in writing by the City Council or City Manager. City shall not compensate Goleta Valley Beautiful for services provided in scope of work which constitute local match requirements for grant funding.

(b) Each month CONSULTANT shall furnish to CITY an **original** invoice for all work performed and expenses incurred during the preceding month. The invoice shall detail charges by the following categories: labor (by sub-category), travel, materials, equipment, supplies, sub-consultant contracts and miscellaneous expenses. CITY shall independently review each invoice submitted by the CONSULTANT to determine whether the work performed and expenses incurred are in compliance with the provisions of this AGREEMENT. In the event that no charges or expenses are disputed, the invoice shall be approved and paid according to the terms set forth in subsection (c). In the event any charges or expenses are disputed by CITY, the original invoice shall be returned by CITY to CONSULTANT for correction and resubmission. Invoices shall be consistent with the contract budget attached as EXHIBIT "B."

(c) Except as to any charges for work performed or expenses incurred by CONSULTANT which are disputed by CITY, CITY will use its best efforts to cause CONSULTANT to be paid within thirty (30) days of receipt of CONSULTANT's invoice.

(d) Payment to CONSULTANT for work performed pursuant to this AGREEMENT shall not be deemed to waive any defects in work performed by CONSULTANT.

SECTION 5. INSPECTION AND FINAL ACCEPTANCE.

CITY may inspect and accept or reject any of CONSULTANT's work under this AGREEMENT, either during performance or when completed. CITY shall reject or finally accept CONSULTANT's work within sixty (60) days after submitted to CITY. CITY shall reject work by a timely written explanation, otherwise CONSULTANT's work shall be deemed to have been accepted. CITY's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any of CONSULTANT's work by CITY shall not constitute a waiver of any of the provisions of this AGREEMENT including, but not limited to, sections 15 and 16, pertaining to indemnification and insurance, respectively.

SECTION 6. OWNERSHIP OF DOCUMENTS.

All original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents prepared, developed or discovered by CONSULTANT in the course of providing any services pursuant to this AGREEMENT shall become the sole property of CITY and may be used, reused or otherwise disposed of by CITY without the permission of the CONSULTANT. Upon completion, expiration or termination of this AGREEMENT, CONSULTANT shall turn over to CITY all such original maps, models, designs, drawings, photographs, studies, surveys, reports, data, notes, computer files, files and other documents.

SECTION 7. CONSULTANT'S BOOKS AND RECORDS.

(a) CONSULTANT shall maintain any and all documents and records demonstrating or relating to CONSULTANT's performance of services pursuant to this AGREEMENT. CONSULTANT shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, or other documents or records evidencing or relating to work, services, expenditures and disbursements charged to CITY pursuant to this AGREEMENT. Any and all such documents or records shall be maintained in accordance with generally accepted accounting principles and shall be sufficiently complete and detailed so as to permit an accurate evaluation of the services provided by CONSULTANT pursuant to this AGREEMENT. Any and all such documents or records shall be maintained for three years from the date of execution of this AGREEMENT and to the extent required by laws relating to audits of public agencies and their expenditures.

(b) Any and all records or documents required to be maintained pursuant to this section shall be made available for inspection, audit and copying, at any time during regular business hours, upon written request by CITY or its designated representative. Copies of such documents or records shall be provided directly to the CITY for inspection, audit and copying when it is practical to do so; otherwise, unless an alternative is mutually agreed upon, such documents and records shall be made available at CONSULTANT's address indicated for receipt of notices in this AGREEMENT.

(c) Where CITY has reason to believe that any of the documents or records required to be maintained pursuant to this section may be lost or discarded due to dissolution or termination of CONSULTANT's business, CITY may, by written request, require that custody of such documents or records be given to the requesting party and that such documents and records be maintained by the requesting party. Access to such documents and records shall be granted to CITY, as well as to its

successors-in-interest and authorized representatives.

SECTION 8. STATUS OF CONSULTANT.

(a) CONSULTANT is and shall at all times remain a wholly independent contractor and not an officer, employee or agent of CITY. CONSULTANT shall have no authority to bind CITY in any manner, nor to incur any obligation, debt or liability of any kind on behalf of or against CITY, whether by contract or otherwise, unless such authority is expressly conferred under this AGREEMENT or is otherwise expressly conferred in writing by CITY. CONSULTANT shall not represent that they are officers, employees or agents of CITY and shall not use City stationary, businesscards or other identification which could convey such representation.

(b) The personnel performing the services under this AGREEMENT on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees or agents, except as set forth in this AGREEMENT. CONSULTANT shall not at any time or in any manner represent that CONSULTANT or any of CONSULTANT's officers, employees or agents are in any manner officials, officers, employees or agents of CITY.

(c) Neither CONSULTANT, nor any of CONSULTANT's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to CITY'S employees. CONSULTANT expressly waives any claim CONSULTANT may have to any such rights.

SECTION 9. STANDARD OF PERFORMANCE.

CONSULTANT represents and warrants that it has the qualifications, experience and facilities necessary to properly perform the services required under this AGREEMENT in a thorough, competent and professional manner. CONSULTANT shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. In meeting its obligations under this AGREEMENT, CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing services similar to those required of CONSULTANT under this AGREEMENT.

SECTION 10. COMPLIANCE WITH APPLICABLE LAWS; PERMITS AND LICENSES.

CONSULTANT shall keep itself informed of and comply with all applicable

federal, state and local laws, statutes, codes, ordinances, regulations and rules in effect during the term of this AGREEMENT. CONSULTANT shall obtain any and all licenses, permits and authorizations necessary to perform the services set forth in this AGREEMENT. Neither CITY, nor any elected or appointed boards, officers, officials, employees or agents of CITY, shall be liable, at law or in equity, as a result of any failure of CONSULTANT to comply with this section.

SECTION 11. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of race, color, religious creed, national origin, ancestry, sex, age, physical handicap, medical condition or marital status in connection with or related to the performance of this AGREEMENT.

SECTION 12. UNAUTHORIZED ALIENS.

CONSULTANT hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should CONSULTANT so employ such unauthorized aliens for the performance of work and/or services covered by this AGREEMENT, and should the any liability or sanctions be imposed against CITY for such use of unauthorized aliens, CONSULTANT hereby agrees to and shall reimburse CITY for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by CITY.

SECTION 13. CONFLICTS OF INTEREST.

(a) CONSULTANT covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of CITY or which would in any way hinder CONSULTANT's performance of services under this AGREEMENT. CONSULTANT further covenants that in the performance of this AGREEMENT, no person having any such interest shall be employed by it as an officer, employee, agent or subcontractor without the express written consent of the City Manager. CONSULTANT agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of CITY in the performance of this AGREEMENT.

(b) CITY understands and acknowledges that CONSULTANT is, as of the date of execution of this AGREEMENT, independently involved in the performance of non-related services for other governmental agencies and private parties. CONSULTANT is unaware of any stated position of CITY relative to such projects. Any

future position of CITY on such projects shall not be considered a conflict of interest for purposes of this section.

SECTION 14. CONFIDENTIAL INFORMATION; RELEASE OF INFORMATION.

(a) All information gained or work product produced by CONSULTANT in performance of this AGREEMENT shall be considered confidential, unless such information is in the public domain or already known to CONSULTANT. CONSULTANT shall not release or disclose any such information or work product to persons or entities other than CITY without prior written authorization from the City Manager, except as may be required by law.

(b) CONSULTANT, its officers, employees, agents or subcontractors, shall not, without prior written authorization from the City Manager or unless requested by the City Attorney of CITY, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this AGREEMENT. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives CITY notice of such court order or subpoena.

(c) If CONSULTANT, or any officer, employee, agent or subcontractor of CONSULTANT, provides any information or work product in violation of this AGREEMENT, then CITY shall have the right to reimbursement and indemnity from CONSULTANT for any damages, costs and fees, including attorneys fees, caused by or incurred as a result of CONSULTANT's conduct.

(d) CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this AGREEMENT and the work performed thereunder. CITY retains the right, but has no obligation, to represent CONSULTANT or be present at any deposition, hearing or similar proceeding. CONSULTANT agrees to cooperate fully with CITY and to provide CITY with the opportunity to review any response to discovery requests provided by CONSULTANT. However, this right to review any such response does not imply or mean the right by CITY to control, direct, or rewrite said response.

SECTION 15. INDEMNIFICATION.

(a) CITY and its respective elected and appointed boards, officials, officers, agents, employees and volunteers (individually and collectively, "INDEMNITEES") shall have no liability to CONSULTANT or any other person for, and CONSULTANT shall

indemnify, defend, protect and hold harmless INDEMNITEES from and against, any and all liabilities, claims, actions, causes of action, proceedings, suits, damages, judgments, liens, levies, costs and expenses of whatever nature, including reasonable attorneys' fees and disbursements (collectively "CLAIMS"), which INDEMNITEES may suffer or incur or to which INDEMNITEES may become subject by reason of or arising out of any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise occurring as a result of or allegedly caused by the CONSULTANT's performance of or failure to perform any services under this AGREEMENT or by the negligent or willful acts or omissions of CONSULTANT, its agents, officers, directors, subcontractors or employees, committed in performing any of the services under this AGREEMENT.

(b) If any action or proceeding is brought against INDEMNITEES by reason of any of the matters against which CONSULTANT has agreed to indemnify INDEMNITEES as provided above, CONSULTANT, upon notice from CITY, shall defend INDEMNITEES at CONSULTANT's expense by counsel acceptable to CITY, such acceptance not to be unreasonably withheld. INDEMNITEES need not have first paid for any of the matters to which INDEMNITEES are entitled to indemnification in order to be so indemnified. The insurance required to be maintained by CONSULTANT under Section 16 shall ensure CONSULTANT's obligations under this section, but the limits of such insurance shall not limit the liability of CONSULTANT hereunder. The provisions of this section shall survive the expiration or earlier termination of this AGREEMENT.

(c) The provisions of this section do not apply to CLAIMS occurring as a result of the CITY's sole negligence or willful acts or omissions.

SECTION 16. INSURANCE.

CONSULTANT agrees to obtain and maintain in full force and effect during the term of this AGREEMENT the insurance policies set forth in EXHIBIT "C" "INSURANCE" and made a part of this AGREEMENT. All insurance policies shall be subject to approval by CITY as to form and content. These requirements are subject to amendment or waiver if so approved in writing by the City Manager. CONSULTANT agrees to provide CITY with copies of required policies upon request.

SECTION 17. ASSIGNMENT.

The expertise and experience of CONSULTANT are material considerations for this AGREEMENT. CITY has an interest in the qualifications of and capability of the persons and entities who will fulfill the duties and obligations imposed upon CONSULTANT under this AGREEMENT. In recognition of that interest, CONSULTANT

shall not assign or transfer this Agreement or any portion of this AGREEMENT or the performance of any of CONSULTANT's duties or obligations under this AGREEMENT without the prior written consent of the City Council. Any attempted assignment shall be ineffective, null and void, and shall constitute a material breach of this AGREEMENT entitling CITY to any and all remedies at law or in equity, including summary termination of this AGREEMENT. CITY acknowledges, however, that CONSULTANT, in the performance of its duties pursuant to this AGREEMENT, may utilize subcontractors.

SECTION 18. CONTINUITY OF PERSONNEL.

CONSULTANT shall make every reasonable effort to maintain the stability and continuity of CONSULTANT's staff assigned to perform the services required under this AGREEMENT. CONSULTANT shall notify CITY of any changes in CONSULTANT's staff assigned to perform the services required under this AGREEMENT, prior to any such performance.

SECTION 19. TERMINATION OF AGREEMENT.

(a) CITY may terminate this AGREEMENT, with or without cause, at any time by giving thirty (30) days written notice of termination to CONSULTANT. In the event such notice is given, CONSULTANT shall cease immediately all work in progress.

(b) CONSULTANT may terminate this AGREEMENT at any time upon thirty (30) days written notice of termination to CITY.

(c) If either CONSULTANT or CITY fail to perform any material obligation under this AGREEMENT, then, in addition to any other remedies, either CONSULTANT, or CITY may terminate this AGREEMENT immediately upon written notice.

(d) Upon termination of this AGREEMENT by either CONSULTANT or CITY, all property belonging exclusively to CITY which is in CONSULTANT's possession shall be returned to CITY. CONSULTANT shall furnish to CITY a final invoice for work performed and expenses incurred by CONSULTANT, prepared as set forth in SECTION 4 of this AGREEMENT. This final invoice shall be reviewed and paid in the same manner as set forth in SECTION 4 of this AGREEMENT.

SECTION 20. DEFAULT.

In the event that CONSULTANT is in default under the terms of this AGREEMENT, the CITY shall not have any obligation or duty to continue compensating CONSULTANT for any work performed after the date of default and may terminate this AGREEMENT immediately by written notice to the CONSULTANT.

SECTION 21. EXCUSABLE DELAYS.

CONSULTANT shall not be liable for damages, including liquidated damages, if any, caused by delay in performance or failure to perform due to causes beyond the control of CONSULTANT. Such causes include, but are not limited to, acts of God, acts of the public enemy, acts of federal, state or local governments, acts of CITY, court orders, fires, floods, epidemics, strikes, embargoes, and unusually severe weather. The term and price of this AGREEMENT shall be equitably adjusted for any delays due to such causes.

SECTION 22. COOPERATION BY CITY.

All public information, data, reports, records, and maps as are existing and available to CITY as public records, and which are necessary for carrying out the work as outlined in the EXHIBIT "A" "SCOPE OF SERVICES", shall be furnished to CONSULTANT in every reasonable way to facilitate, without undue delay, the work to be performed under this AGREEMENT.

SECTION 23. NOTICES.

All notices required or permitted to be given under this AGREEMENT shall be in writing and shall be personally delivered, or sent by telecopier or certified mail, postage prepaid and return receipt requested, addressed as follows:

To CITY: Daniel Singer, City Manager
City of Goleta
130 Cremona Drive, Suite B
Goleta, California 93117

To CONSULTANT: Goleta Valley Beautiful
Attention Mark Broomfield
PO Box 6756
Goleta CA 93160-6756
(805) 685-7910

Notice shall be deemed effective on the date personally delivered or transmitted by facsimile or, if mailed, three (3) days after deposit of the same in the custody of the United States Postal Service.

SECTION 24. AUTHORITY TO EXECUTE.

The person or persons executing this AGREEMENT on behalf of CONSULTANT represents and warrants that he/she/they has/have the authority to so execute this AGREEMENT and to bind CONSULTANT to the performance of its obligations hereunder.

SECTION 25. BINDING EFFECT.

This AGREEMENT shall be binding upon the heirs, executors, administrators, successors and assigns of the parties.

SECTION 26. MODIFICATION OF AGREEMENT.

No amendment to or modification of this AGREEMENT shall be valid unless made in writing and approved by the CONSULTANT and by the City Council. The parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

SECTION 27. WAIVER.

Waiver by any party to this AGREEMENT of any term, condition, or covenant of this AGREEMENT shall not constitute a waiver of any other term, condition, or covenant. Waiver by any party of any breach of the provisions of this AGREEMENT shall not constitute a waiver of any other provision, nor a waiver of any subsequent breach or violation of any provision of this AGREEMENT. Acceptance by CITY of any work or services by CONSULTANT shall not constitute a waiver of any of the provisions of this AGREEMENT.

SECTION 28. LAW TO GOVERN; VENUE.

This AGREEMENT shall be interpreted, construed and governed according to the laws of the State of California. In the event of litigation between the parties, venue in state trial courts shall lie exclusively in the County of Los Angeles. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Los Angeles.

SECTION 29. ATTORNEYS FEES, COSTS AND EXPENSES.

In the event litigation or other proceeding is required to enforce or interpret any provision of this AGREEMENT, the prevailing party in such litigation or other proceeding shall be entitled to an award of reasonable attorney's fees, costs and

expenses, in addition to any other relief to which it may be entitled.

SECTION 30. ENTIRE AGREEMENT.

This AGREEMENT, including the attached EXHIBITS "A" through "C", is the entire, complete, final and exclusive expression of the parties with respect to the matters addressed therein and supersedes all other agreements or understandings, whether oral or written, or entered into between CONSULTANT and CITY prior to the execution of this AGREEMENT. No statements, representations or other agreements, whether oral or written, made by any party which are not embodied herein shall be valid and binding. No amendment to this AGREEMENT shall be valid and binding unless in writing duly executed by the parties or their authorized representatives.

SECTION 31. SEVERABILITY.

If any term, condition or covenant of this AGREEMENT is declared or determined by any court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this AGREEMENT shall not be affected thereby and the AGREEMENT shall be read and construed without the invalid, void or unenforceable provision(s).

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the day and year first above written.

CITY OF GOLETA

By _____
Daniel Singer, City Manager

APPROVED AS TO FORM:

Tim W. Giles, City Attorney

CONSULTANT:

By _____
Mark Broomfield

By _____
(Authorized Officer)

EXHIBIT "A"
SCOPE OF SERVICES

Goleta Valley Beautiful (GVB) shall provide the following services to the City, including completing all tasks, supplying all resources, personnel, equipment and supplies necessary to perform such services:

- **Objectives to be achieved by the proposed project and how objectives will be achieved**

Objective 1 - Establish the City's Vision of its future urban forest.

Objective 2 - Develop a comprehensive set of urban forest management policies that are consistent with the direction of the City's General Plan and that will provide flexible and effective direction in implementing regulations to carry out the Plan.

- **Methods and Expected Results**

GVB shall develop the following elements of an Urban Forest Management Plan over a 3 year period:

Year 1

- Task 2a - GVB shall conduct an urban forest value assessment
 - GVB shall investigate availability of satellite or aerial digital imagery that would allow identification of tree cover by private versus public property type, percent canopy cover by the smallest management boundary achievable ex. Census tract, block, parcel) and to create GIS maps of all trees from existing data. GVB shall request assistance from students at the UCSB Wren School of Environmental Science and cartographers from the UCSB Department of Geography.
- Task 2b - GVB shall calculate the benefits and costs to the City of the existing urban forest.
- Task 1a - GVB shall calculate the benefits and costs to the City of the proposed addition of trees to the City. This will include investigate the results of a pending NUCFAC study "Managing urban trees as capital assets- The Capital Clone Program" for use in projecting tree management program costs and benefits.
- Task 2c - GVB shall define why the City's urban forest is needed, including heat island impacts, canopy loss and biological impacts.

This will include an analysis of the latest research to identify projected impacts to the local urban forest
- Task 2d - GVB shall develop a draft State of the Forest Report that will be used as part of public outreach efforts to explain the science behind cost benefit analysis, help focus discussions and garner community support.

- Task 1b - GVB shall develop urban forest stakeholder working group to guide Management Plan process. A cross collaboration of public and private individuals, public agencies, school districts, green building industry, nonprofits and others with an objective of developing a shared vision to guide the management of the City's urban forest..
- Task 1c - GVB shall establish the guiding principles upon which the Management Plan is based, including canopy cover targets, and diversity of ages, species and tree types

Year 2

- Task 1 d - GVB shall develop a public information and public outreach program
- Task 2 e - GVB shall identify available planting spaces and procedures for maximizing their availability
- Task 1 e - GVB shall develop public, private, and nonprofit partnerships to provide support for widespread volunteer care for public and private trees.
- Task 2 f - Beginning in year two with completion by year 3 – GVB shall begin the process to revise/rewrite existing street and park tree protection ordinances, policies and enforcement procedures to implement the management program. This includes street, median and parking lot planting and design guidelines, shade cover objectives of various land uses, tree replacement and mitigation policies, healthy tree protection and preservation ordinance compliance program, urban heat island mitigation policy, green infrastructure principles, smart growth and green planning policies, mature tree care program, young tree care program, tree purchasing and planting specifications, 5 year planting plans for the next 20 years, tree hazard program, pest and disease management program

Year 3

- Task 2g - GVB shall improve the current tree inventory. GVB would train and employ volunteers in the use of I-Tree Inventory software to prepare a digital record of tree attributes, location, maintenance needs, and potential future planting sites.
- Task 2h - GVB shall develop a financing program and resources for sustaining an ongoing urban forestry program. The primary proposed methodology is to collaborate with storm water management, planning, air quality, energy conservation, and other agencies to enable cost-sharing and joint implementation strategies.

- **Statement of community needs and benefits**
GVB shall develop a statement of community needs and benefits
- **Community involvement details-important**
GVB shall assure active community participation will occur through community outreach achieved through Goleta Valley Beautiful.
- **A mechanism for doing periodic review of management plan**
Task 2i - GVB shall provisions are in place such that the Plan may be reviewed during the annual budget process, and during the City's annual review of applying for a Tree City USA Award.
- **Project Description including:**
 - **Project locations,**
This project will cover the entire area within the boundary of the City.
 - **Number and job nature of all people involved**
City staff will be represented by Community Services Director Steve Wagner, and Parks and Open Space Manager Bill Millar. The City representatives may designate additional City staff as appropriate to assist in administrative and clerical tasks necessary to initiate, implement, document and follow-up on meetings and community outreach. Any communication or interaction between GVB and City staff shall be pursuant to express authority of Steve Wagner or Bill Millar. GVB shall not contact any City staff or request any assistance from City staff in the performance of these services without advance authorization from Steve Wagner or Bill Millar.
Goleta Valley Beautiful will be represented by its President Merlyn Cummings or his successor. Staff assistance as Plan Manager will be provided under contract by Goleta Valley Beautiful Executive Director Ken Knight and current Greenhouse Manager Mark Bloomfield.

Goleta Valley Beautiful Project Deliverables

GVB shall provide the following documents to City on or before the dates identified:

Fiscal Year 2008-09

1. D-1 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – First Draft for Staff Review August 29, 2008
2. D-2 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Second Draft for Advisory Committee Review by September 30, 2008
3. D-3 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Third Draft for Advisory Committee Review by October 30, 2008

4. D-4 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Fourth Draft for Advisory Committee Review by November 30, 2008
5. D-5 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Fifth Draft for formal City review ready December 31, 2008
6. D-6 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles –Sixth Draft for formal City review ready January 30, 2009
7. D-7 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Seventh Draft for formal City review ready February 28, 2009
8. D-8 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Eighth Draft for formal City review ready February 28, 2009
9. D-9 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Ninth Draft for formal City review ready March 28, 2009
10. D-10 State of the City of Goleta Urban Forest Report and Goleta Urban Forest Guiding Principles – Tenth Draft with final City comments ready April 30, 2009
11. D-11 Urban Forest Management Plan First Draft for Staff Review –May 31, 2009. Specific work elements depend upon direction provided by Council

Fiscal Year 2009-10

12. D-12 Urban Forest Management Plan Second Draft for Staff Review – June 30,2009
13. D-13 Urban Forest Management Plan Third Draft for Staff Review –July 31, 2009.
14. D-14 Urban Forest Management Plan Fourth Draft for Staff Review – August 30, 2009
15. D-15 Urban Forest Management Plan Financing tools – First draft for staff review by September 30, 2009.
16. D-16 Urban Forest Management Plan Financing tools –Second draft for staff review by October 30, 2009.
17. D-17 Urban Forest Management Plan – Fifth Draft for formal City Review by November 30, 2009
18. D-18 Urban Forest Management Plan – Assist in formal City Review and revisions through December 30, 2009
19. D-19 Urban Forest Management Plan – Assist in formal City Review and revisions through January 30, 2010
20. D-20 Urban Forest Management Plan – Assist in formal City Review and revisions through February, 2010
21. D-21 Urban Forest Management Plan – Ready for Council action March 1, 2010

Contract timeline

GVB shall perform the foregoing services pursuant to the following schedule:

- A. 7/1/08 – 12/31/08 Stakeholder Working Group
 - 1. 7/08 Identify potential members and operating guidelines
 - 2. 8/08 Secure agreements to participate
 - 3. 9/08 Initial convening
 - 4. 10/08 Review State of the Forest Report
 - 5. 11/08 Review Guiding Principles
 - 6. 12/08 Refine Guiding Principles, adopt report

- B. 1/1/09 – 3/31/09 Public Outreach – Planning Commission, Design Review Board and City Council
 - 1. Review and refine State of the Urban Forest Report and Guiding Principles
 - 2. Review priorities for elements to include in Urban Forest Management Plan

- C. 4/1/09 – 9/30/09 Prioritized urban forest work products based on outcome of public outreach and available staff time (Partial list)
 - 1. Revised public tree protection ordinance
 - 2. Street parkway, median, park, and parking lot planting guidelines
 - 3. Canopy cover objectives of individual land uses
 - 4. Tree replacement and mitigation policies
 - 5. Healthy tree protection and preservation ordinance compliance program
 - 6. Urban heat island mitigation policy
 - 7. Green infrastructure principles
 - 8. Smart Growth and Green Planning policies
 - 9. Mature Tree Care Program
 - 10. Young Tree Care Program
 - 11. 5 year planting plans for next twenty years
 - 12. Tree hazard program
 - 13. Pest and disease management program
 - 14. Coordinating trees with solar energy production and conservation programs
 - 15. Trees and views policy
 - 16. Tree City USA Award/Growth Award
 - 17. Society of Municipal Arborist Accreditation
 - 18. Integration with Stormwater Management Plan

19. Compliance with AB 32-CA. Global Warming Solutions Act of 2006
20. Integration with Sustainable Forests Provisions of CA Air Resources Board AB 32 Scoping Plan
21. Integration with Fire Safe Plans
22. Consistency with Goleta Water District 12/20/05 Urban Water Management Plan

D. 10/1/09 – 11/31/09 Financing Program

1. Potential partnerships for implementing recommended programs in the plan
2. Financing recommendations for implementing first five years of plan

EXHIBIT "B"
COMPENSATION

Exhibit B- Compensation and Budget

GVB RATE AND COMPENSATION BUDGET												
7/1/08-6/30/09 Fiscal year	GVB Hrs	GVB Rate	GVB Comp.	Notes								
	438.0	\$ 60	\$ 26,280	Contract Plan Mgr								
	900.0	\$ 4	\$ 3,750	15 interns @ \$250/term								
subtotal	1338.0		\$ 30,030									
7/1/09-3/1/10 Fiscal year	GVB Hrs	GVB Rate	GVB Comp.	Notes								
	212.0	\$ 60	\$ 12,720	Contract Plan Mgr								
	540.0	\$ 4	\$ 2,250	9 interns @ \$250/term								
			\$ 2,000	Supplies								
subtotal	752.0		\$ 16,970									
total	2090.0		\$ 47,000									

GVB CONTRACT BUDGET													
Task Items	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	1a,b,c,d,e 2a,b,c,d,e	2f D-10	2f D-11	
Deliverable Items	D-1	D-2	D-3	D-4	D-5	D-6	D-7	D-8	D-9	D-10	D-11		
	Aug, 08	Sept 08	Oct 08	Nov 08	Dec 08	Jan 09	Feb 09	Mar 09	Apr 09	May 09	June 09	Total to date	
Contract Plan Mgr	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,280.00	\$ 26,280.00	
15 interns @ \$250/term	\$ 750.00				\$ 1,000.00					\$ 1,000.00	\$ 1,000.00	\$ 3,750.00	
Total	\$ 3,150.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 3,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 2,400.00	\$ 3,400.00	\$ 2,400.00	\$ 3,280.00	\$ 30,030.00
Task Items	2f,g	2f	2f	2h	2h	2	2	2	2	2			
Deliverable Items	D-12 Jul 09	D-13 Aug, 09	D-14 Sept 09	D-15 Oct 09	D-16 Nov 09	D-17 Dec 09	D-18 Jan 10	D-19 Feb 10	D-20,21 Mar 10	Total to date	Total Grant		
Contract Plan Mgr	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 1,413.33	\$ 12,720.00	\$ 39,000.00	
15 interns @ \$250/term	\$ 750.00				\$ 750.00					\$ 750.00	\$ 2,250.00	\$ 6,000.00	
Supplies	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 222.22	\$ 2,000.00	\$ 2,000.00	
Total	\$ 2,385.56	\$ 1,635.56	\$ 1,635.56	\$ 1,635.56	\$ 2,385.56	\$ 1,635.56	\$ 1,635.56	\$ 1,635.56	\$ 1,635.56	\$ 2,385.56	\$ 16,970.00	\$ 47,000.00	

EXHIBIT "C"
INSURANCE

A. Insurance Requirements. CONSULTANT shall provide and maintain insurance, acceptable to the City Manager or City Counsel, in full force and effect throughout the term of this AGREEMENT, against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONSULTANT, its agents, representatives or employees. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII. CONSULTANT shall provide the following scope and limits of insurance:

1. Minimum Scope of Insurance. Coverage shall be at least as broad as:

(1) Insurance Services Office form Commercial General Liability coverage (Occurrence Form CG 0001).

(2) Insurance Services Office form number CA 0001 (Ed. 1/87) covering Automobile Liability, including code 1 "any auto" and endorsement CA 0025, or equivalent forms subject to the written approval of the City.

(3) Workers' Compensation insurance as required by the Labor Code of State of California and Employer's Liability insurance and covering all persons providing services on behalf of the CONSULTANT and all risks to such persons under this AGREEMENT.

(4) Errors and omissions liability insurance appropriate to the CONSULTANT's profession.

2. Minimum Limits of Insurance. CONSULTANT shall maintain limits of insurance no less than:

(1) General Liability: \$1,000,000 general aggregate for bodily injury, personal injury and property damage.

(2) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation and Employer's Liability: Workers' Compensation as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

(4) Errors and Omissions Liability: \$1,000,000 per occurrence.

B. Other Provisions. Insurance policies required by this AGREEMENT shall contain the following provisions:

1. All Policies. Each insurance policy required by this paragraph 15 shall be endorsed and state the coverage shall not be suspended, voided, cancelled by the insurer or either party to this AGREEMENT, reduced in coverage or in limits except after 30 days' prior written notice by Certified mail, return receipt requested, has been given to _____.

2. General Liability and Automobile Liability Coverages.

(1) CITY, and its respective elected and appointed officers, officials, and employees and volunteers are to be covered as additional insureds as respects: liability arising out of activities CONSULTANT performs; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT; or automobiles owned, leased, hired or borrowed by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, and their respective elected and appointed officers, officials, or employees.

(2) CONSULTANT's insurance coverage shall be primary insurance with respect to CITY, and its respective elected and appointed, its officers, officials, employees and volunteers. Any insurance or self insurance maintained by CITY, and its respective elected and appointed officers, officials, employees or volunteers, shall apply in excess of, and not contribute with, CONSULTANT's insurance.

(3) CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(4) Any failure to comply with the reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to CITY, and its respective elected and appointed officers, officials, employees or volunteers.

3. Workers' Compensation and Employer's Liability Coverage.

Unless the City Manager otherwise agrees in writing, the insurer shall agree to waive all rights of subrogation against CITY, and its respective elected and appointed officers, officials, employees and agents for losses arising from work performed by CONSULTANT.

C. Other Requirements. CONSULTANT agrees to deposit with CITY, at or before the effective date of this contract, certificates of insurance necessary to satisfy CITY that the insurance provisions of this contract have been complied with. The City Attorney may require that CONSULTANT furnish CITY with copies of original endorsements effecting coverage required by this Section. The certificates and endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. CITY reserves the right to inspect complete, certified copies of all required

insurance policies, at any time.

1. CONSULTANT shall furnish certificates and endorsements from each subcontractor identical to those CONSULTANT provides.

2. Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects CITY or its respective elected or appointed officers, officials, employees and volunteers or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims.

3. The procuring of such required policy or policies of insurance shall not be construed to limit CONSULTANT's liability hereunder nor to fulfill the indemnification provisions and requirements of this AGREEMENT.