

# Council Agenda Report

To: Mayor Grisanti and the Honorable Members of the City Council

Prepared by: Chris Brossard, Fire Safety Liaison

Approved by: Steve McClary, Interim City Manager

Date prepared: August 24, 2021 Meeting date: September 13, 2021

Subject: Agreement with Newbury Park Tree Services INC. for Hazard Tree Removal

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**RECOMMENDED ACTION:** Authorize the Mayor to execute an agreement with Newbury Park Tree Services INC. for hazard tree removal services.

**FISCAL IMPACT:** The cost for services in this agreement will not exceed \$300,000. This amount is included in the Adopted Budget for Fiscal Year 2021-2022 in Account No. 100-7021-5100-00 (Public Safety – Professional Services) and will be covered in full by a grant received by the City from the Santa Monica Mountains Conservancy (SMMC).

**WORK PLAN:** This task is included as Item 1.j. in the adopted Work Plan for Fiscal Year 2021-2022.

**DISCUSSION:** On May 24, 2021, the City was awarded a grant by SMMC in the amount of \$324,000 for hazard tree removal and hazardous fuel reduction. The intent of this grant is to remove approximately 100 hazard trees on public and private property, as well as hold 12 community chipper and green waste days. This grant is part of a \$536 million wildfire package that Governor Newsom signed in April 2021 to enable the State to take urgent action on projects that support the protection of residents and property from catastrophic wildfires. SMMC was allocated \$12 million of those funds to distribute for immediate fire prevention and fire resiliency projects in the Santa Monica Mountains area.

To complete the grant project, the City issued a Request for Qualifications/Proposals, which closed on August 6, 2021. The City received responses from the following four vendors (dollar amounts are the 8-hour daily rate including personnel and equipment):

- Newbury Park Tree Services – \$3,800
- West Coast Arborists – \$4,600
- Mariposa Tree Management – \$4,000
- Thrifty Tree Services – \$14,200

Staff reviewed and evaluated the responses based on qualifications, project understanding and methodology, experience, knowledge of the scope of work, and hourly cost for personal and equipment. Newbury Park Tree Services INC was selected as the most qualified responder.

The City has contracted services with Newbury Park Tree Services INC. since 2013. The firm is currently contracted for the Citywide Annual Tree Maintenance Program managed by the Public Works Department, which has been very satisfied with their performance. Newbury Park Tree Services INC. also received positive references from the City of Westlake Village and the City of Calabasas.

The proposed Professional Services Agreement with Newbury Park Tree Services INC will extend through June 30, 2021, although the project is expected to conclude earlier.

ATTACHMENTS: Professional Services Agreement with Newbury Park Tree Services INC

## **AGREEMENT FOR PROFESSIONAL SERVICES**

This Agreement is made and entered into as of September 13, 2021 by and between the City of Malibu (hereinafter referred to as the "City"), and Newbury Park Tree Service, INC. (hereinafter referred to as "Consultant").

The City and the Consultant agree as follows:

### **RECITALS**

A. The City does not have the personnel able and/or available to perform the services required under this Agreement.

B. The City desires to contract out for consulting services for certain projects relating to the removal of hazardous trees throughout the City of Malibu

C. The Consultant warrants to the City that it has the qualifications, experience and facilities to perform properly and timely the services under this Agreement.

D. The City desires to contract with the Consultant to perform the services as described in Exhibit A of this Agreement.

NOW, THEREFORE, the City and the Consultant agree as follows:

1.0 SCOPE OF THE CONSULTANT'S SERVICES. The Consultant agrees to provide the services and perform the tasks set forth in the Scope of Work, attached to and made part of this Agreement, except that, to the extent that any provision in Exhibit A conflicts with this Agreement, the provisions of this Agreement govern. The Scope of Work may be amended from time to time by way of a written directive from the City.

2.0 TERM OF AGREEMENT. This Agreement will become effective on September 13, 2021, and will remain in effect until June 30, 2022. Unless otherwise expressly extended and agreed to by both parties or terminated by either party as provided herein.

3.0 CITY AGENT. The City Manager, or his or her designee, for the purposes of this Agreement, is the agent for the City; whenever approval or authorization is required, Consultant understands that the City Manager, or his or her designee, has the authority to provide that approval or authorization.

4.0 COMPENSATION FOR SERVICES. The City shall pay the Consultant for its professional services rendered and costs incurred pursuant to this Agreement in accordance with the Scope of Work's fee and cost schedule (Exhibit B). The cost of services shall be for a total amount not to exceed \$300,000. No additional compensation shall be paid for any other expenses incurred, unless first approved by the City Manager, or his or her designee.

4.1 The Consultant shall submit to the City, by no later than the 10<sup>th</sup> day of each month, its bill for services itemizing the fees and costs incurred during the previous month. The City shall pay the Consultant all uncontested amounts set forth in the Consultant's bill within 30 days after it is received.

**5.0 CONFLICT OF INTEREST.** The Consultant represents that it presently has no interest and shall not acquire any interest, direct or indirect, in any real property located in the City which may be affected by the services to be performed by the Consultant under this Agreement. The Consultant further represents that in performance of this Agreement, no person having any such interest shall be employed by it.

5.1 The Consultant represents that no City employee or official has a material financial interest in the Consultant's business. During the term of this Agreement and/or as a result of being awarded this contract, the Consultant shall not offer, encourage or accept any financial interest in the Consultant's business by any City employee or official.

5.2 If a portion of the Consultant's services called for under this Agreement shall ultimately be paid for by reimbursement from and through an agreement with a developer of any land within the City or with a City franchisee, the Consultant warrants that it has not performed any work for such developer/franchisee within the last 12 months, and shall not negotiate, offer or accept any contract or request to perform services for that identified developer/franchisee during the term of this Agreement.

## **6.0 GENERAL TERMS AND CONDITIONS.**

**6.1 Termination.** Either the City Manager or the Consultant may terminate this Agreement, without cause, by giving the other party ten (10) days written notice of such termination and the effective date thereof.

6.1.1 In the event of such termination, all finished or unfinished documents, reports, photographs, films, charts, data, studies, surveys, drawings, models, maps, or other documentation prepared by or in the possession of the Consultant under this Agreement shall be returned to the City. If the City terminates this Agreement without cause, the Consultant shall prepare and shall be entitled to receive compensation pursuant to a close-out bill for services rendered and fees incurred pursuant to this Agreement through the notice of termination. If the Consultant terminates this Agreement without cause, the Consultant shall be paid only for those services completed in a manner satisfactory to the City.

6.1.2 If the Consultant or the City fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Consultant or the City violate any of the covenants, agreements, or stipulations of this Agreement, the Consultant or the City shall have the right to terminate this Agreement by giving written notice to the other party of such termination and specifying the effective date of such termination. The Consultant shall be entitled to receive compensation in accordance with the terms of this Agreement for any work satisfactorily completed hereunder. Notwithstanding the foregoing, the Consultants shall not be relieved of liability for damage sustained by virtue of any breach of this Agreement and any payments due under this Agreement may be withheld to off-set anticipated damages.

**6.2 Non-Assignability and No Use of Subcontractors.** The Consultant shall not assign or transfer any interest in this Agreement without the express prior written consent of the City. Further, Consultants agrees not to use any subcontractors for the work contemplated by this Agreement unless express written consent of the City is obtained.

**6.3 Non-Discrimination.** The Consultant shall not discriminate as to race, creed, gender, color, national origin or sexual orientation in the performance of its services and duties pursuant to this Agreement, and will comply with all applicable laws, ordinances and codes of the Federal, State, County and City governments.

**6.4 Insurance.** The Consultant shall submit to the City certificates indicating compliance with the following minimum insurance requirements no less than one (1) day prior to beginning of performance under this Agreement:

(a) Workers Compensation Insurance as required by law.

(1) In accordance with California Labor Code Sections 1860 and 3700, Consultant will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Consultant, by signing this contract, certifies as follows: "I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

(b) Comprehensive general and automobile liability insurance protecting the Consultant in amounts not less than \$1,000,000 for personal injury to any one person, \$1,000,000 for injuries arising out of one occurrence, and \$500,000 for property damages or a combined single limit of \$1,000,000. Each such policy of insurance shall:

1) Be issued by a financially responsible insurance company or companies admitted and authorized to do business in the State of California or which is approved in writing by City.

2) Name and list as additional insured the City, its officers and employees.

3) Specify its acts as primary insurance.

4) Contain a clause substantially in the following words: "It is hereby understood and agreed that this policy shall not be canceled nor materially changed except upon thirty (30) days prior written notice to the City of such cancellation or material change."

5) Cover the operations of the Consultant pursuant to the terms of this Agreement.

**6.5 Prevailing Wage.**



(a) Pursuant to Labor Code Section 1720 and 1771, and as specified in Title 8, California Code of Regulations, Section 16000 et seq., Consultant must pay its workers prevailing wages. It is Consultant's responsibility to interpret and implement any prevailing wage requirements and Consultant agrees to pay any penalty or civil damages resulting from a violation of the prevailing wage laws.

(b) In accordance with Labor Code Section 1773.2, copies of the prevailing rate of per diem wages are available upon request from CITY's Engineering Division or the website for State of California Prevailing wage determination at <http://www.dir.ca.gov/DLSR/PWD>. Consultant must post a copy of the prevailing rate of per diem wages at the job site.

(c) CITY directs Consultant's attention to Labor Code Sections 1777.5, 1777.6 and 3098 concerning the employment of apprentices by Consultant.

(d) Labor Code Section 1777.5 requires Consultant employing tradesmen in any apprenticeship occupation to apply to the joint apprenticeship committee nearest the site of the public works project and which administers the apprenticeship program in that trade for a certificate of approval. The certificate must also fix the ratio of apprentices to journeymen that will be used in the performance of the contract. The ratio of apprentices to journeymen in such cases will not be less than one to five except:

- (1) When employment in the area of coverage by the joint apprenticeship committee has exceeded an average of 15 percent in the 90 days before the request for certificate, or
- (2) When the number of apprentices in training in the area exceeds a ratio of one to five, or
- (3) When the trade can show that it is replacing at least 1/30 of its membership through apprenticeship training on an annual basis state-wide or locally, or
- (4) When Consultant provides evidence that Consultant employs registered apprentices on all of his contracts on an annual average of not less than one apprentice to eight journeymen.
- (5) Consultant is required to make contributions to funds established for the administration of apprenticeship programs if Consultant employs registered apprentices or journeymen in any apprenticeable trade on such contracts and if other contractors on the public works site are making such contributions.
- (6) Consultant must comply with Labor Code Sections 1777.5 and 1777.6 in the employment of apprentices.

(7) Information relative to apprenticeship standards, wage schedules and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

(e) Consultant must keep an accurate certified payroll records showing the name, occupation, and the actual per diem wages paid to each worker employed in connection with this Agreement. The record will be kept open at all reasonable hours to the inspection of the body awarding the contract and to the Division of Labor Law Enforcement. If requested by CITY, Consultant must provide copies of the records at its cost.

(f) Consultant must comply with Labor Code Sections 1725.5 and 1777.1, including the requirement that registration with the DIR be maintained through the term of the Project. The City may, from time to time, request evidence of current registration.

**6.6 Indemnification.** Consultant shall indemnify, defend with counsel approved by City, and hold harmless City, its officers, officials, employees and volunteers from and against all liability, loss, damage, expense, cost (including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with Consultant's performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, regardless of City's passive negligence, but excepting such loss or damage which is caused by the sole active negligence or willful misconduct of the City. Should City in its sole discretion find Consultant's legal counsel unacceptable, then Consultant shall reimburse the City its costs of defense, including without limitation reasonable attorneys fees, expert fees and all other costs and fees of litigation. The Consultant shall promptly pay any final judgment rendered against the City (and its officers, officials, employees and volunteers) covered by this indemnity obligation. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

**6.7 Compliance with Applicable Law.** The Consultant and the City shall comply with all applicable laws, ordinances and codes of the federal, state, county and city governments, including, without limitation, Malibu Municipal Code Chapter 5.36 Minimum Wage.

**6.8 Independent Contractor.** This Agreement is by and between the City and the Consultant and is not intended, and shall not be construed, to create the relationship of agency, servant, employee, partnership, joint venture or association, as between the City and the Consultant.

6.7.1. The Consultant shall be an independent contractor, and shall have no power to incur any debt or obligation for or on behalf of the City. Neither the City nor any of its officers or employees shall have any control over the conduct of the Consultant, or any of the Consultant's employees, except as herein set forth, and the Consultant expressly warrants not to, at any time or in any manner, represent that it, or any of its agents, servants or employees are in

any manner employees of the City, it being distinctly understood that the Consultant is and shall at all times remain to the City a wholly independent ok and the Consultant's obligations to the City are solely such as are prescribed by this Agreement.

**6.9 Copyright.** No reports, maps or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Consultant.

**6.10 Legal Construction.**

(a) This Agreement is made and entered into in the State of California and shall in all respects be interpreted, enforced and governed under the laws of the State of California.

(b) This Agreement shall be construed without regard to the identity of the persons who drafted its various provisions. Each and every provision of this Agreement shall be construed as though each of the parties participated equally in the drafting of same, and any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.

(c) The article and section, captions and headings herein have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(d) Whenever in this Agreement the context may so require, the masculine gender shall be deemed to refer to and include the feminine and neuter, and the singular shall refer to and include the plural.

**6.11 Counterparts.** This Agreement may be executed in counterparts and as so executed shall constitute an agreement which shall be binding upon all parties hereto.

**6.12 Final Payment Acceptance Constitutes Release.** The acceptance by the Consultant of the final payment made under this Agreement shall operate as and be a release of the City from all claims and liabilities for compensation to the Consultant for anything done, furnished or relating to the Consultant's work or services. Acceptance of payment shall be any negotiation of the City's check or the failure to make a written extra compensation claim within ten (10) calendar days of the receipt of that check. However, approval or payment by the City shall not constitute, nor be deemed, a release of the responsibility and liability of the Consultant, its employees, sub-consultants and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by the City for any defect or error in the work prepared by the Consultant, its employees, sub-consultants and agents.

**6.13 Corrections.** In addition to the above indemnification obligations, the Consultant shall correct, at its expense, all errors in the work which may be disclosed during the City's review of the Consultant's report or plans. Should the Consultant fail to make such correction in a reasonably timely manner, such correction shall be made by the City, and the cost



thereof shall be charged to the Consultant.

**6.14 Files.** All files of the Consultant pertaining to the City shall be and remain the property of the City. The Consultant will control the physical location of such files during the term of this Agreement and shall be entitled to retain copies of such files upon termination of this Agreement.

**6.15 Waiver; Remedies Cumulative.** Failure by a party to insist upon the performance of any of the provisions of this Agreement by the other party, irrespective of the length of time for which such failure continues, shall not constitute a waiver of such party's right to demand compliance by such other party in the future. No waiver by a party of a default or breach of the other party shall be effective or binding upon such party unless made in writing by such party, and no such waiver shall be implied from any omissions by a party to take any action with respect to such default or breach. No express written waiver of a specified default or breach shall affect any other default or breach, or cover any other period of time, other than any default or breach and/or period of time specified. All of the remedies permitted or available to a party under this Agreement, or at law or in equity, shall be cumulative and alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right of remedy.

**6.16 Mitigation of Damages.** In all such situations arising out of this Agreement, the parties shall attempt to avoid and minimize the damages resulting from the conduct of the other party.

**6.17 Partial Invalidity.** If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

**6.18 Attorneys' Fees.** The parties hereto acknowledge and agree that each will bear his/her or its own costs, expenses and attorneys' fees arising out of and/or connected with the negotiation, drafting and execution of the Agreement, and all matters arising out of or connected therewith except that, in the event any action is brought by any party hereto to enforce this Agreement, the prevailing party in such action shall be entitled to reasonable attorneys' fees and costs in addition to all other relief to which that party or those parties may be entitled.

**6.19 Entire Agreement.** This Agreement constitutes the whole agreement between the City and the Consultant, and neither party has made any representations to the other except as expressly contained herein. Neither party, in executing or performing this Agreement, is relying upon any statement or information not contained in this Agreement. Any changes or modifications to this Agreement must be made in writing appropriately executed by both the City and the Consultant.

**6.20 Notices.** Any notice required to be given hereunder shall be deemed to have been given by depositing said notice in the United States mail, postage prepaid, and addressed as follows:

**CITY:** Steve McClary  
Interim City Manager  
City of Malibu  
23825 Stuart Ranch Road  
Malibu, CA 90265-4861  
TEL (310) 456-2489 x 224  
FAX (310) 456-2760

**CONSULTANT:** Dean Lappinga  
Owner & President  
Newbury Park Tree Service, Inc  
3595 Old Conejo Road  
Newbury Park, Ca 91320  
TEL (805) 489-7841  
FAX (805) 832-6449

**6.21 Warranty of Authorized Signatories and Acceptance of Facsimile or Electronic Signatures.** Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign. The Parties agree that this Contract, agreements ancillary to this Contract, and related documents to be entered into in connection with this Contract will be considered signed when the signature of a party is delivered physically or by facsimile transmission or scanned and delivered via electronic mail. Such facsimile or electronic mail copies will be treated in all respects as having the same effect as an original signature.

**7.0 GENERAL TERMS AND CONDITIONS. (City and Consultant initials required at EITHER 7.1 or 7.2)**

**7.1 Disclosure Required.** By their respective initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is a “consultant” for the purposes of the California Political Reform Act because Consultant’s duties would require him or her to make one or more of the governmental decisions set forth in Fair Political Practices Commission Regulation 18700.3(a) or otherwise serves in a staff capacity for which disclosure would otherwise be required were Consultant employed by the City. Consultant hereby acknowledges his or her assuming-office, annual, and leaving-office financial reporting obligations under the California Political Reform Act and the City’s Conflict of Interest Code and agrees to comply with those obligations at his or her expense. Prior to consultant commencing services hereunder, the City’s Manager shall prepare and deliver to consultant a memorandum detailing the extent of Consultant’s disclosure obligations in accordance with the City’s Conflict of Interest Code.

City Initials \_\_\_\_\_  
Consultant Initials DL

**7.2 Disclosure not Required.** By their initials next to this paragraph, City and Consultant hereby acknowledge that Consultant is not a “consultant” for the purpose of the California Political Reform Act because Consultant’s duties and responsibilities are not within the scope of the definition of consultant in Fair Political Practice Commission Regulation 18700.3(a) and is otherwise not serving in staff capacity in accordance with the City’s Conflict of Interest Code.

City Initials  
Consultant Initials DL

This Agreement is executed on \_\_\_\_\_, at Malibu, California, and effective as of September 13, 2021.

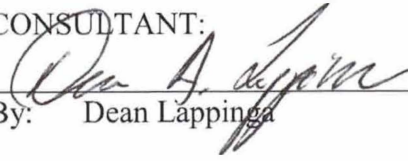
CITY OF MALIBU:

\_\_\_\_\_  
PAUL GRISANTI, Mayor

ATTEST:

\_\_\_\_\_  
KELSEY PETTIJOHN, Acting City Clerk  
(seal)

CONSULTANT:

  
By: Dean Lappinga

APPROVED AS TO FORM:

THIS DOCUMENT HAS BEEN REVIEWED  
BY THE CITY ATTORNEY'S OFFICE

\_\_\_\_\_  
JOHN COTTI, Interim City Attorney

## **Exhibit “A”**

### Scope of Work

1. The Consultant shall provide all professional services described herein below. The City is seeking a Certified Arborist and Tree removal Company to evaluate and remove approximately 100 dead and/or damaged trees throughout the City. Approximately 7,000 homes exist within the City and are all immediately adjacent to or within the Wildland Urban Interface. The scope of work includes the removal of dead or damaged trees on both private and public property that pose a hazard to people, personal property, other structures and/or critical infrastructure. Removal includes cutting a tree to its base and disposing of the tree material but does not include stump grinding. All work will take place within 100 feet or 1 ½ times the height of a hazard tree in relation to a structure, road, trail, or common area.
2. Evaluation The Fire Safety Liaison will identify the trees for the selected Arborist to and determine if the tree is dead, dying and poses a hazard. They will evaluate determine if the removal of the tree would have any impacts on the environment or wildlife.
3. Schedule of Work and Hours of Operation The Consultant will be required to commence work within ten (10) calendar days of award of contract. Consultant shall work with the Fire Safety Liaison on establishing a schedule for all types of work. Consultant shall submit and gain approval of a daily work schedule indicating the order and location of work. The general hours of operations shall be 8:00 AM to 5:00 PM. The days of operations shall be Monday through Fridays with all major holidays observed. No work shall be performed outside of the general hours of operation or on Saturday/Sunday without prior authorization by the City.
4. Safety Requirements. Consultant will be responsible for high visibility vests for employees when working within 25 feet of roadways. Safety cones shall be used around equipment and roadway. The Consultant shall take all due precautions to avoid damaging any property. Any damage to private property or to the infrastructure by the Consultant during the terms of this contract shall be repaired at the sole expense of the Consultant within ten (10) days of the damage. All damages must be reported to the Fire Safety Liaison.
5. Removal. The selected Consultant would fell the identified trees. Remove and haul away all debris from the site. Flush cut the stump as low as possible under no circumstances shall debris be left on the parkway or street over weekends or holidays. In addition, keeping debris off the street and parkway areas and out of the gutters prevents the debris from entering and plugging the sewer system. Environmentally accepted practices of debris disposal are also an important part of this work.
6. Site Restoration. The Consultant shall ensure that all wood chips and debris generated by the felling process are raked and removed from the stump location. Site Cleanup shall be completed immediately after Tree removal has been completed. More specifically, all wood chips, wood



dust or any other materials generated during the job shall be removed from the work area before completion. The work area includes the street & curb, parkway, sidewalk, private lawns, driveways and any area affected by the work. If site cleanup is to be delayed for any particular reason, barricades, cones and/or caution tape must be used until the site is clean as determined by the Fire Safety Liaison. Upon completion of the entire operation the site should be returned to the same condition that existed in prior to work being done.

7. Disposal of Material. The Consultant shall legally dispose of all waste material generated on and from the removal of trees at a dump site compliant with the State and Federal regulations. Consultant shall provide a monthly report of the amount in cubic yards of material disposed and where the material was disposed.

**Exhibit “B”**  
Compensation Schedule  
Hourly labor and equipment rates

The Consultant shall be compensated for work performed in accordance with hourly rates provided below and based on actual hours of work completed.

Description	Hourly Rate
Forman	\$100.00
Tree Worker <i>81</i>	\$85.00
Chipper Truck	\$40.00
Chipper	\$35.00
Aerial Tower	\$45.00

The total compensation for the scope of work described in Exhibit A shall not exceed \$300,000.