



AGENDA REPORT

Meeting Date: June 21, 2016
Item Number: E-11
To: Honorable Mayor & City Council
From: Byron Pope, MMC
City Clerk
Subject: APPROVAL OF AN AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND PARRENT SMITH INVESTIGATIONS FOR INVESTIGATIVE SERVICES REGARDING TREE REMOVAL ON PARCELS 12 AND 13.
Attachments: 1. Agreement

RECOMMENDATION

It is recommended that the City Council approve the agreement with Parrent Smith Investigations for investigative services regarding tree removal on Parcels 12 and 13.

INTRODUCTION

This transmits the formal request to approve the recommendation for Parrent Smith Investigations to render services to the City for Parcels 12 and 13.

DISCUSSION

At the conclusion of the last discussion on this item during the City Council Study Session on June 6, 2016, Mayor John A. Mirisch appointed Vice Mayor Nancy Krasne and Councilmember Lili Bosse as the new Ad Hoc Committee for Parcels 12 and 13. Vice Mayor Krasne and Councilmember Bosse recommended Parrent Smith Investigations to conduct the investigative services during the June 6, 2016 Study Session.

FISCAL IMPACT

Parrent Smith Investigations quoted a price of up to \$50,000, and a six to eight week timeframe to complete the work. Funds for this agreement are available to be appropriated from the General Fund available balance.

Meeting Date: June 21, 2016

Byron Pope
Approved By 

Attachment 1

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
PARRENT SMITH INVESTIGATIONS FOR INVESTIGATIVE
SERVICES REGARDING TREE REMOVAL ON PARCELS 12
AND 13

NAME OF CONSULTANT:	PARRENT SMITH INVESTIGATIONS
RESPONSIBLE PRINCIPAL OF CONSULTANT:	Joanne Parrent and Nic Smith, Partners
CONSULTANT'S ADDRESS:	10158 Hollow Glen Circle Los Angeles, CA 90077 Attention: Joanne Parrent and Nic Smith
CITY'S ADDRESS:	City of Beverly Hills 455 N. Rexford Drive Beverly Hills, CA 90210 Attention: Byron Pope, City Clerk
COMMENCEMENT DATE:	June 21, 2016
TERMINATION DATE:	Satisfactory completion of the services required by the Agreement
CONSIDERATION:	Not to exceed \$51,000 (includes \$1,000 for expenses) and more particularly described in Exhibit B

AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND
PARRENT SMITH INVESTIGATIONS FOR INVESTIGATIVE
SERVICES REGARDING TREE REMOVAL ON PARCELS 12
AND 13

THIS AGREEMENT is made by and between the City of Beverly Hills (hereinafter called "CITY"), and PARRENT SMITH INVESTIGATIONS, (hereinafter called "CONSULTANT").

RECITALS

A. CITY desires to have certain services and/or goods provided as set forth in Exhibit A (the "Scope of Work"), attached hereto and incorporated herein.

B. CONSULTANT represents that it is qualified and able to perform the Scope of Works.

NOW, THEREFORE, the parties agree as follows:

Section 1. CONSULTANT's Scope of Work. CONSULTANT shall perform the Scope of Work described in Exhibit A in a manner satisfactory to CITY and consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. CITY shall have the right to order, in writing, changes in the Scope of Work. Any changes in the Scope of Work by CONSULTANT must be made in writing and approved by both parties. The cost of any change in the Scope of Work must be agreed to by both parties in writing.

Section 2. Time of Performance. CONSULTANT shall commence its services under this Agreement upon the Commencement Date or upon a written receipt of a notice to proceed from CITY. CONSULTANT shall complete the performance of services by the Termination Date set forth above.

Section 3. Compensation.

(a) Compensation

CITY agrees to compensate CONSULTANT for the services and/or goods provides under this Agreement, and CONSULTANT agrees to accept in full satisfaction for such services, a sum not to exceed the Consideration set forth above and more particularly described in Exhibit B, attached hereto and incorporated herein, based on the hourly rates set forth in Exhibit B.

(b) Expenses

CONSULTANT shall be entitled to reimbursement only for those expenses expressly set forth in Exhibit B. Any expenses incurred by CONSULTANT which are not expressly authorized by this Agreement will not be reimbursed by CITY.

Section 5. Independent Contractor. CONSULTANT is and shall at all times remain, as to CITY, a wholly independent contractor. Neither CITY nor any of its agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's employees, except as herein set forth. CONSULTANT shall not, at any time, or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

Section 6. Assignment. This Agreement shall not be assigned in whole or in part, by either party without the prior written approval of the other party. Any attempt by either party to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

Section 7. Responsible Principal(s)

(a) CONSULTANT's Responsible Principal set forth above shall be principally responsible for CONSULTANT's obligations under this Agreement and shall serve as principal liaison between CITY and CONSULTANT. Designation of another Responsible by CONSULTANT shall not be made without prior written consent of CITY.

(b) CITY's Responsible Principal shall be the City Clerk or his designee set forth above who shall administer the terms of the Agreement on behalf of CITY.

Section 8. Personnel. CONSULTANT represents that it has, or shall secure at its own expense, all personnel required to perform CONSULTANT's Scope of Work under this Agreement. All personnel engaged in the work shall be qualified to perform such Scope of Work.

Section 9. Permits and Licenses. CONSULTANT shall obtain and maintain during the Agreement term all necessary licenses, permits and certificates required by law for the provision of services under this Agreement, including a business license.

Section 10. Interests of CONSULTANT. CONSULTANT affirms that it presently has no interest and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of the Scope of Work contemplated by this Agreement. No person having any such interest shall be employed by or be associated with CONSULTANT.

Section 11. Insurance.

(a) CONSULTANT shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

(1) A policy or policies of Comprehensive General Liability Insurance, with minimum limits of One Million Dollars (\$1,000,000) for each occurrence, combined single limit, against any personal injury, death, loss or damage resulting from the wrongful or negligent acts by CONSULTANT.

(2) A policy or policies of Professional Liability Insurance with minimum limits of One Million Dollars (\$1,000,000).

(3) Workers' compensation insurance as required by the State of California.

(b) CONSULTANT shall require each of its sub-consultants to maintain insurance coverage which meets all of the requirements of this Agreement.

(c) The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least a B+;VII in the latest edition of Best's Insurance Guide.

(d) CONSULTANT agrees that if it does not keep the aforesaid insurance in full force and effect CITY may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, CITY may take out the necessary insurance and pay, at CONSULTANT's expense, the premium thereon.

(e) At all times during the term of this Agreement, CONSULTANT shall maintain on file with the City Clerk a certificate or certificates of insurance on the form set forth in Exhibit C, attached hereto and incorporated herein, showing that the aforesaid policies are in effect in the required amounts. CONSULTANT shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance shall contain an endorsement naming the CITY as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty (30) days prior written notice to CITY, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

(f) The insurance provided by CONSULTANT shall be primary to any coverage available to CITY. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

(g) Any deductibles or self-insured retentions must be declared to and approved by CITY. At the option of CITY, CONSULTANT shall either reduce or eliminate the deductibles or self-insured retentions with respect to CITY, or CONSULTANT shall procure a bond guaranteeing payment of losses and expenses.

Section 12. Indemnification.

CONSULTANT agrees to indemnify, hold harmless and defend CITY, City Council and each member thereof, and every officer, employee and agent of CITY, from any claim, liability or financial loss (including, without limitation, attorneys fees and costs) arising from any intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of CONSULTANT or any person employed by CONSULTANT in the performance of this Agreement.

Section 13. Termination.

(a) CITY shall have the right to terminate this Agreement for any reason or for no reason upon five calendar days' written notice to CONSULTANT. CONSULTANT agrees to cease all work under this Agreement on or before the effective date of such notice.

(b) In the event of termination or cancellation of this Agreement by CITY, due to no fault or failure of performance by CONSULTANT, CONSULTANT shall be paid based on

the work satisfactorily performed at the time of termination. In no event shall CONSULTANT be entitled to receive more than the amount that would be paid to CONSULTANT for the full performance of the services required by this Agreement. CONSULTANT shall have no other claim against CITY by reason of such termination, including any claim for compensation.

Section 14. CITY's Responsibility. CITY shall provide CONSULTANT with all pertinent data, documents, and other requested information as is available for the proper performance of CONSULTANT's Scope of Work.

Section 15. Information and Documents. All data, information, documents and drawings prepared for CITY and required to be furnished to CITY in connection with this Agreement shall become the property of CITY, and CITY may use all or any portion of the work submitted by CONSULTANT and compensated by CITY pursuant to this Agreement as CITY deems appropriate.

Section 16. Records and Inspections. CONSULTANT shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years. CITY shall have access, without charge, during normal business hours to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities.

Section 17. Notice. Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party's regular business hours or by facsimile before or during the receiving party's regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid to the addresses set forth above, or to such other addresses as the parties may, from time to time, designate in writing pursuant to this section.

Section 18. Attorney's Fees. In the event that either party commences any legal action or proceeding to enforce or interpret the provisions of this Agreement, the prevailing party in such action shall be entitled to reasonable attorney's fees, costs and necessary disbursements, in addition to such other relief as may be sought and awarded

Section 19. Entire Agreement. This Agreement represents the entire integrated agreement between CITY and CONSULTANT, and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by a written instrument signed by both CITY and CONSULTANT.

Section 20. Exhibits; Precedence. All documents referenced as exhibits in this Agreement are hereby incorporated in this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail.

Section 21. Governing Law. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California.

Section 22. CITY Not Obligated to Third Parties. CITY shall not be obligated or liable under this Agreement to any party other than CONSULTANT.

Section 23. Severability. Invalidation of any provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

EXECUTED the ____ day of _____ 20____, at Beverly Hills, California.

CITY OF BEVERLY HILLS
A Municipal Corporation

JOHN A. MIRISCH
Mayor of the City of Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

CONSULTANT: PARRENT SMITH
INVESTIGATIONS



JOANNE PARRENT
Partner

NIC SMITH
Partner

[Signatures Continue]

APPROVED AS TO CONTENT:



BYRON POPE
City Clerk



KARL KIRKMAN
Risk Manager

EXHIBIT A
SCOPE OF WORK

CONSULTANT shall perform an investigation in connection with the events which led to the cutting of trees on Parcels 12 and 13 in CITY. All of the investigative work required under this Agreement will be performed by Joanne Parrent and Nic Smith, who are both experienced licensed California private investigators. The questions CONSULTANT will address shall include, but are not limited to, the following:

1. Were there breaches in due diligence? In issuing public notices? If so, by whom, when and why?
2. Were mistakes made by CITY staff? If so, by whom and what was done as a result?
3. What was the role of the California Department of Toxic Substances Control ("DTSC")? What contact(s) was made with the DTSC and was there adequate follow up?
4. Is there any evidence that the Beverly Hills Land Company("BHLC"), owners of parcels 12 and 13 or its principals, unduly influenced CITY staff or CITY officials in this matter?
5. What was the role of West Coast Arborists ("WCA")? Were mistakes made by that company?
6. Did the cutting of trees pose a threat to the health of the residents and guests of the CITY? In what way? If so, why weren't precautions taken or appropriate procedures followed?

There are also legal questions that may be addressed by a law firm retained by CONSULTANT if requested by CITY in writing such as the following:

1. Did the actions of anyone involved, including CITY staff, BHLC or WCA in connection with the facts surrounding the cutting of the Parcels 12 and 13 trees violate municipal ordinances or state law?
2. Should any CITY codes be revised? Should new policies or procedures be written?

CONSULTANT understands that there are between 4,000-20,000 pages of documents to review and analyze and that there are 20-40 people who should be interviewed. The investigation will therefore consist of:

- Document review and preparation for interviews
- Interviews with individuals with knowledge of the situation(s)
- After initial interviews, some individuals may need to be re-interviewed
- Review of interview transcripts, analysis of the information obtained, and
- Writing a timeline and report.

NOTE ON METHODS:

DOCUMENT REVIEW: CONSULTANT's investigators will review all the relevant documents, not computer programs.

INTERVIEWS: CONSULTANT's investigators will interview witnesses.

TIME TO COMPLETE THE INVESTIGATION: CONSULTANT anticipates spending approximately 20-40 investigator hours per week on the case. CONSULTANT expects that the investigation will be completed in approximately 8-12 weeks from the time it begins.

CITY CONTACT BYRON POPE: All written reports shall be submitted to Byron Pope, City Clerk. Any questions from CONSULTANT should be addressed to Mr. Pope who will assist CONSULTANT in connection with conducting interviews, and accessing documents.

EXHIBIT B

SCHEDULE OF PAYMENT AND RATES

COMPENSATION

CITY shall compensate CONSULTANT in an amount not to exceed FiftyOneThousand Dollars (\$51,000) at the hourly rate of \$200 for the services of Joanne Parrent and Nic Smith.

CONSULTANT estimates that the following minimum time will be spent on the tasks described in Exhibit A:

- 200 hours for document review and interview preparation
- 30 hours for interviews of 20 people
- 10 hours for review of interview transcripts and analysis
- 10 hours for timeline and report writing.

, CONSULTANT believes the investigation will take 250 hours. At \$200 an hour, the cost for investigative time would be \$50,000, plus expenses for printing, transcriptions and other expenses reasonably incurred in the performance of the Agreement, not to exceed \$1000. The total compensation under the Agreement paid to CONSULTANT shall not exceed Fifty One Thousand Dollars (\$51,000), including expenses.

Any request for an increase in the compensation in excess of \$51,000, is subject to approval of both parties by written amendment to the Agreement.

METHOD AND SCHEDULE OF PAYMENT

Upon execution of the Agreement, CITY shall pay CONSULTANT the amount of \$25,000 as a retainer. CONSULTANT shall submit detailed statements to CITY as described below.

CONSULTANT shall submit to CITY a detailed invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period, the balance of the retainer and the amount due. Within 30 days of receipt of each invoice, CITY shall pay all undisputed amounts due on the invoice.



EXHIBIT C

CERTIFICATE OF INSURANCE

This is to certify that the following endorsement is part of the policy(ies) described below:

NAMED INSURED

COMPANIES AFFORDING COVERAGE

A.

B.

C.

ADDRESS

COMPANY (A. B. C.)	COVERAGE	POLICY NUMBER	EXPIRATION DATE	B. I.	LIMITS P. D.	AGGREGATE
	<input type="checkbox"/> AUTOMOBILE LIABILITY <input type="checkbox"/> GENERAL LIABILITY <input type="checkbox"/> PRODUCTS/COMPLETED OPERATIONS <input type="checkbox"/> BLANKET CONTRACTUAL <input type="checkbox"/> CONSULTANT'S PROTECTIVE <input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> EXCESS LIABILITY <input type="checkbox"/> WORKERS' COMPENSATION <input type="checkbox"/>					

It is hereby understood and agreed that the City of Beverly Hills, its City Council and each member thereof and every officer and employee of the City shall be named as joint and several assureds with respect to claims arising out of the following project or agreement:

It is further agreed that the following indemnity agreement between the City of Beverly Hills and the named insured is covered under the policy: CONSULTANT agrees to indemnify, hold harmless and defend City, its City Council and each member thereof and every officer and employee of City from any and all liability or financial loss resulting from any suits, claims, losses or actions brought against and from all costs and expenses of litigation brought against City, its City Council and each member thereof and any officer or employee of City which results directly or indirectly from the wrongful or negligent actions of CONSULTANT's officers, employees, agents or others employed by CONSULTANT while engaged by CONSULTANT in the (performance of this agreement) construction of this project.

It is further agreed that the inclusion of more than one assured shall not operate to increase the limit of the company's liability and that insurer waives any right of contribution with insurance which may be available to the City of Beverly Hills.

In the event of cancellation or material change in the above coverage, the company will give 30 days written notice of cancellation or material change to the certificate holder.

Except to certify that the policy(ies) described above have the above endorsement attached, this certificate or verification of insurance is not an insurance policy and does not amend, extend or alter the coverage afforded by the policies listed herein. Notwithstanding any requirement, term, or condition of any contract or other document with respect to which this certificate or verification of insurance may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies.

DATE: _____

BY: _____
Authorized Insurance Representative

AGENCY: _____

TITLE: _____

ADDRESS: _____