



CITY OF PACIFIC GROVE
300 Forest Avenue, Pacific Grove, California 93950

AGENDA REPORT

TO: Honorable Mayor and Members of City Council
FROM: Daniel Gho, Golf Course Superintendent
MEETING DATE: September 1, 2010
SUBJECT: Approve Agreement between the Heritage Society and City of Pacific Grove to Restore the Point Pinos Lighthouse
CEQA: This does not constitute a “Project” under California Environmental Quality Act (CEQA) Guidelines

RECOMMENDATION

Approve the agreement between the City of Pacific Grove and the Heritage Society to guide and facilitate restoration efforts for the Point Pinos Lighthouse.

DISCUSSION

The Point Pinos Lighthouse is an irreplaceable treasure. The City acquired ownership of the Lighthouse from the Coast Guard in the mid-1960s, as part of the acquisition of the entire Lighthouse Reservation, in order to preserve and protect the area from development or degradation. The Lighthouse continues to be a major visitor attraction in the City, even in its current state of disrepair. Unfortunately, with each passing year, the Lighthouse deteriorates further.

At the Council’s April 7, 2010 meeting, Dennis Tarmina, Chair of the Lighthouse Preservation Committee, a committee created by the Board of the Heritage Society of Pacific Grove, presented the Preservation Plan developed by Lighthouse Preservationist, LLC in August 2009 and refined by the committee over the last 10 months. The Council directed staff to prepare an agreement with the Heritage Society so the Lighthouse Preservation Committee can take the lead role in implementing the Preservation Plan (attached).

The Lighthouse is the property of the City. The improvements to the structure and site as a result of the repairs and restoration funded by all grants, donations, and other sources are also, by necessity, ultimately the property of the City. In many cases, however, the Society will be able to better secure these funds and use them more cost effectively (as a result of volunteer assistance, low overhead, etc.) than could the City. Thus (not unlike the collaborative approach having been developed between the City and the Museum Foundation to secure the future of the Natural History Museum) the Lighthouse partnership needs to provide the Society with the flexibility to conduct its efforts without being overly burdened by requirements under which the City is required to operate. As a result, the agreement proposes that the City and Society work in partnership to take advantage of each other’s relative strengths.

The Lighthouse Preservation Committee will take the lead in all preservation efforts, coordinating with the City. Daniel Gho, the Golf Course Superintendent, will serve as City's chief point of contact and the City's program manager. Tony McFarland, the City's Senior Accountant, will set up the financial controls, with review by the auditors. The Society will control the sales of goods from the Lighthouse and use the funds generated towards the restoration. (The Museum Association once controlled the sale of merchandise, but due to the recent dissolving of the Museum Association, this responsibility needs to be transferred.) All funds received will be deposited in the City's Lighthouse Fund (Fund 27) and drawn down, as needed, upon request by the Society and approval of the City.

FISCAL IMPACT

None.

ATTACHMENTS

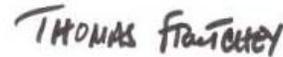
Agreement for Services

RESPECTFULLY SUBMITTED:



Daniel Gho
Golf Course Superintendent

REVIEWED BY:



Thomas Frutchey
City Manager

CITY OF PACIFIC GROVE AGREEMENT FOR SERVICES

This Services Agreement (“Agreement”) is made by and between the City of Pacific Grove, a political subdivision of the State of California (hereinafter “City”), and The Heritage Society of Pacific Grove (hereinafter “Society”).

In consideration of the mutual covenants and conditions set forth in this Agreement, City and Society (collectively, the “Parties”) agree as follows:

1. **SERVICES TO BE PROVIDED.** The City hereby engages Society to perform, and Society hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: **Provide overall leadership and coordination, and contribute to the repair, restoration, and preservation of the Point Pinos Lighthouse (“Project”).**
2. **PAYMENTS BY CITY.** City shall pay Society in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement.
3. **TERM OF AGREEMENT.** The term of this Agreement is from the date first executed until June 30, 2015, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both Society and City and with City signing last. The Society may not commence work before City signs this Agreement.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached Exhibit A is incorporated herein by reference and constitutes a part of this Agreement:

Exhibit A. Scope of Work and Payment Provisions

5. **PERFORMANCE STANDARDS**

5.01. The term “Society” as used in this agreement includes Society’s officers, agents, and volunteers acting on Society’s behalf in the performance of this Agreement.

5.02. Society includes volunteer workers engaged to perform the services described in Exhibit A.

5.03. The Society agents and volunteer workers shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

5.04. Society will make best efforts to furnish sufficient volunteers necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. Society shall not use City premises, property (including equipment, instruments, or supplies) for any purpose other than in the performance of its obligations under this Agreement without the express approval of the Project Supervisor.

5.05. Society shall not hire any subcontractor(s) for services in connection with this Project, without prior approval of City.

6. PAYMENT CONDITIONS.

6.01. Society shall submit to the Project Manager an invoice on a form acceptable to City. If not otherwise specified, the Society may submit such invoice periodically or at the completion of services, but in any event, not later than thirty (30) days after completion of services. The invoice shall set forth the amounts claimed by Society for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Project Manager or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the Project Manager for payment. The City Administrative Services Director shall pay the amount certified within thirty (30) days of receiving the certified invoice.

6.02. Society volunteers shall not receive reimbursement for travel expenses unless prior written authorization is obtained from the Project Manager. If Society volunteers are to receive reimbursement for travel expenses and use a private automobile, an insurance endorsement shall be provided to City prior to the travel.

7. **TERMINATION.** During the term of this Agreement, either party may terminate the Agreement by giving written notice of termination to the other party at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination.

8. **INDEMNIFICATION.** Society shall indemnify, defend and hold harmless the City, its officers and employees from any and all claims, liabilities and losses (including damages to property and injuries to or death of persons, court costs and reasonable attorney's fees) occurring or resulting to any persons, only to the extent that these events occurred as a result of malfeasance, gross negligence or willful misconduct by the Society volunteers in performance of this Agreement, unless such claims, liabilities or losses arise out of the negligence or willful misconduct of the City. The maximum amount of the Society's liability shall be limited by the amount of liability insurance as set out in the Society's Liability Insurance Policy (approved by the City) and in no case shall the Society be held liable or responsible of any amount exceeding that coverage.

9. INSURANCE.

9.01. Insurance Coverage Requirements: Without limiting Society's duty to indemnify, Society shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the

California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, Society shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement. The Society shall not be held responsible for the enforcement or compliance with this section.

Exemption/Modification (Justification attached; subject to approval).

9.02. Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the City and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of one year following the date of termination of this Agreement.

Each liability policy shall provide that the City shall be given notice in writing at least thirty (30) days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. The Society shall guarantee that each policy shall provide coverage for Society and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Society’s liability policies shall provide an endorsement naming the City, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the Society’s work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Society’s insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the City, Society shall file certificates of insurance with the City Manager or his/her designee, showing that the Society has in effect the insurance required by this Agreement. The Society shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

Society shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to the City Manager or his/her designee. If the certificate is not received by the expiration date, City shall notify Society and Society shall have five (5) calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by Society to maintain such insurance is a default of this Agreement that entitles City, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. Society and its officers, volunteers, and agents shall comply with any and all federal, state, and local laws that provide for the confidentiality of records and other information. Society shall not disclose any records designated and identified by the City as confidential and received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits Society to disclose such records or information. Society shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. Society shall not use any confidential information gained by Society in the performance of this Agreement except for the sole purpose of carrying out Society's duties under this Agreement.

10.02. City Records. When this Agreement expires or terminates, Society shall return to City any City records which Society used or received from City to perform services under this Agreement.

10.03. Maintenance of Records. Society shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and City rules and regulations related to services performed under this Agreement. Society shall maintain such records for a period of at least three (3) years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then Society shall retain said records until such action is resolved.

10.04. Access to and Audit of Records. The City shall have the right to examine, monitor, and audit all records, documents, conditions, and activities of the Society related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the City or as part of any audit of the City, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

10.05. Royalties and Inventions. City and Society shall share the right to reproduce, publish, and use all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. Neither party shall have the right to publish any such material without the prior written approval of the other party.

11. NON-DISCRIMINATION. During the performance of this Agreement the Society, and any subcontractor, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age, or sexual orientation. Society and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations that prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12. COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANT. If this Agreement has been or will be funded with monies received by the City pursuant to a contract with the state or federal government in which the City is the grantee, Society will comply with all the provisions of said contract, to the extent applicable to Society as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, City will deliver a copy of said contract to Society, at no cost to Society.

13. SOCIETY. In the performance of work, duties, and obligations under this Agreement, Society is at all times acting and performing independently and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended

in any manner, and Society volunteers shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits

14. **NOTICES.** Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the City's and Society's Contract Administrators at the addresses listed below:

FOR CITY:	FOR SOCIETY:
Daniel Gho Golf Course Superintendent Name and Title	Dennis Tarmina Project Leader Name and Title
300 Forest Avenue Pacific Grove, CA 93950 Address	P.O. Box 1007 Pacific Grove, CA 93950 Address
831 648-5781 Phone	643-1943 / 402-1063 Phone

15. **MISCELLANEOUS PROVISIONS.**

15.01. Conflict of Interest. Society represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement that would directly or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

15.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the City and the Society.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the City and the Society. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

15.04. Disputes. Society and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

15.05. Assignment and Subcontracting. The Society shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the City. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the City. Notwithstanding any such subcontract, Society shall continue to be liable for the performance of all requirements of this Agreement.

15.06. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and Society under this Agreement, to the extent assignable or delegable, shall be binding

upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.07. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.08. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.09. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California. Venue shall be in Monterey, California.

15.10. Exclusive Agreement. This Agreement is exclusive and both City and Society expressly waive the right to contract with other entities for the same or similar services while this Agreement is in effect.

15.11. Construction of Agreement. The City and Society agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

15.12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

15.13. Authority. Any individual executing this Agreement on behalf of the City or the Society represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

15.14. Integration. This Agreement, including the exhibits and any documents incorporated by reference, represent the entire Agreement between the City and the Society with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the City and the Society as of the effective date of this Agreement, which is the date that the City signs the Agreement.

15.15. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

15.16. Severability. If any of the provisions contained in the Agreement are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. Limitations of liability and indemnities shall survive termination of the Agreement for any cause. If a part of this Agreement is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Agreement is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

IN WITNESS WHEREOF, City and CONTRACTOR have executed this Agreement as of the day and year written below.

CITY OF PACIFIC GROVE

SOCIETY

By: _____
City Manager

By: _____
(Signature of Chair, President, or
Vice-President)

Date: _____

By: _____
Project Manager

By: _____
Name and Title

Date: _____

Date: _____

Approved as to Form: _____

By: _____
City Attorney

By: _____

Date: _____

(Signature of Secretary, Asst.
Secretary, CFO, or Asst.
Treasurer)*

*INSTRUCTIONS: If Society is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If Society is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If Society is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

CITY OF PACIFIC GROVE AND HERITAGE SOCIETY
AGREEMENT FOR SERVICES

**For the Provision of Overall Leadership, Coordination, and Related Services for the
Repair, Restoration, and Preservation of the Point Pinos Lighthouse**

Exhibit A. Scope of Work and Payment Provisions

SCOPE OF WORK

Society will seek/obtain funding to restore the Lighthouse.

Society will engage in and supervise repair and restoration.

Restoration to adhere to standards and details provided within the City-approved Lighthouse Preservation Plan.

Society will obtain City approval for each phase in the restoration process and have full authority to proceed with restoration in conformance with City-approved plans. City approval to not be unreasonably withheld.

Inspections of such work shall occur by appropriate City Staff, on an as-needed basis, including at the completion of each phase.

All work is to be conducted by volunteers approved by the Heritage Society, or subcontractors that have received prior approval from the City.

The Lighthouse Preservation Committee will operate and manage all day-to-day operations of Point Pinos Lighthouse gift shop. This includes, but is not limited to ordering merchandise, accounting, and selling of goods. All proceeds will be used toward the restoration plan of the Point Pinos Lighthouse.

PAYMENT PROVISIONS

City will participate in grants, as needed.

Grants may be funneled through either Society or City, whichever is more appropriate.

City may pay for services and improvements to grounds or buildings that are not within the Preservation Plan if such services or improvements are deemed necessary for safety and liability reasons.

Donations to the Heritage Society for use of the Lighthouse will go into a separate account, to be set up and maintained by the Heritage Society. Funds will be used at the discretion of the Lighthouse Preservation Committee.