



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

**AGENDA REPORT**

**TO:** Honorable Mayor and Members of City Council

**FROM:** Jessica Kahn, Environmental Programs Manager

**MEETING DATE:** February 17, 2016

**SUBJECT:** Approve a service Agreement with Fall Creek Engineering, Inc., to prepare the updated Pacific Grove Area of Special Biological Significance (ASBS) Compliance Plan

**CEQA:** This action does not constitute a “Project” as that term is defined under the California Environmental Quality Act (CEQA) Guidelines Section 15378.

**RECOMMENDATION**

Approve a resolution authorizing the City Manager to enter into an agreement with Fall Creek Engineering, Inc. to prepare the updated Pacific Grove ASBS Compliance Plan, in an amount not to exceed \$80,915, approve an agreement with the City of Monterey for the reimbursement of \$30,915 towards the Plan, and authorize the City Manager to make minor improvements to the agreement as issues arise of which the City was not aware of when the agreement was negotiated.

**BACKGROUND**

In 1972 the State Water Resources Control Board (SWRCB) adopted the Ocean Plan which designated 34 Areas of Special Biological Significance (ASBS) in nearshore waters along the California coast, inclusive of ASBS 19: Pacific Grove. The Pacific Grove ASBS is 3.2 miles of Pacific Grove coastline west from the Monterey Bay Aquarium to Asilomar Boulevard just before Point Pinos. This area contains the Pacific Grove State Marine Conservation Area and Hopkins State Marine Reserve, and lies entirely within the Monterey Bay National Marine Sanctuary. The Pacific Grove ASBS receives runoff from approximately 1,106 acres in Pacific Grove and 103 acres in Monterey.

The Ocean Plan prohibits waste discharges, including stormwater runoff, to the ASBS. This absolute waste discharge prohibition applies unless an “exception” is granted. On March 20, 2012, the State Water Board adopted a General Exception to the Ocean Plan waste discharge prohibition to ASBS. The General Exception (State Water Board Resolution No. 2012-0012, as amended by 2012-0031) governs point and nonpoint source waste discharges to ASBS, including stormwater runoff. It includes Special Protections for Beneficial Uses (Special Protections) of ASBS and requires development of ASBS Compliance Plans by permitted point source dischargers. Twenty-seven applicants, including the Cities of Pacific Grove and Monterey for the Pacific Grove ASBS, were granted coverage under the General Exception authorized under the National Pollutant Discharge Elimination System (NPDES) permit program (WQ Order No. 2013-0001- DWQ, Attachment C).

The Special Protections contain monitoring requirements for identified discharges to ASBS. These mandatory requirements include the Core Discharge Monitoring Program and the Ocean Receiving Water and Reference Area Monitoring Program. In order to meet the monitoring requirements, the City has joined the Central Coast ASBS Regional Monitoring Program (CCRMP). This program involves gathering and analyzing the monitoring data required by the Special Protections for identified discharge outfalls (over 18 inches in diameter) and receiving waters to determine the natural ocean water quality (85th percentile threshold of reference water quality data) and any exceedances of the Ocean Plan in current discharges. This effort was originally to be completed in summer 2015, but due to lack of precipitation will be completed in early 2016. Previous studies have shown elevated concentrations of trace metals and polynuclear aromatic hydrocarbons (PAHs) in the Pacific Grove ASBS.

The Special Protections requires that all discharges into the ASBS consist solely of stormwater that does not alter the natural ocean quality. Any discharges not meeting this standard are required to achieve compliance through structural best management practices (BMPs) to meet target levels in the Ocean Plan or achieve a 90% reduction in baseline pollutant loading. Any structural BMPs required to achieve compliance must be installed and operational by March 20, 2018. If this deadline cannot be met the City must apply for an extension from the SWRCB with a schedule for achieving compliance. After the installation of structural BMPs, if discharges exceed the natural ocean water quality (85th percentile threshold of reference water quality data) actions must be taken to come into compliance, which may include additional BMPs and/or a new or modified implementation schedule.

In 2014, the Cities of Pacific Grove and Monterey developed and submitted a draft Pacific Grove ASBS Compliance Plan to the SWRCB; this document was subsequently updated, as required by the SWRCB, by the Cities in 2015. This update was required before the completion of a monitoring program designed to determine needs for compliance. The Cities were granted permission by the SWRCB to submit an updated plan by September 20, 2016. The updated ASBS Compliance Plan will include updated analysis of a complete set of water quality data and development of the final structural and nonstructural water quality protection strategies necessary to meet the regulatory requirements of the Special Protections by March 20, 2018 (or a proposed date for requested extension).

In addition to the finalized monitoring data, the updated plan will take into consideration existing regulatory programs and previous capital improvements projects in the ASBS watershed including the NPDES permit, Local Coastal Program, Sewer System Master Plan, Urban Diversion System, and Low Impact Development (LID) projects. The Monterey-Pacific Grove ASBS Stormwater Management Project (currently at 40% design) will also be reviewed for potential structural BMPs. This project, however, was completed prior to the knowledge of which contaminants are required to be mitigated; therefore, the need to collect all wet weather flows may not be the most cost effective path to compliance.

## **DISCUSSION**

The objective of the project is to develop an updated Pacific Grove ASBS Compliance Plan that will enable both Cities to comply with the Special Protections listed in the General Exception. The plans will be prepared in accordance to the Amended General Exception (Resolution No. 2012-0031).

On November 30, 2015, the City issued a request for proposals to prepare the ASBS Compliance Plan update. The deadline for submittals was December 30, 2015. Staff received two proposals responding to the RFP.

Amec Foster Wheeler Environment and Infrastructure, Inc.	\$258,125
Fall Creek Engineering, Inc.	\$80,915

Pacific Grove and Monterey staff reviewed the proposals that were evaluated based on the following criteria: understanding of project objectives and timeline; proposed project approach and design principles; ability to provide high-quality, cost-effective solutions; and comparable experience and staffing plan. References for both firms were also contacted. Staff recommends the contract be awarded to Fall Creek Engineering, Inc. based on the review criteria and reference checks. While there is a significant delta in cost between the two proposals received, Staff's recommendation of Fall Creek Engineering was not influenced by this.

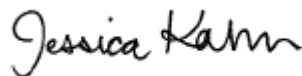
### **FISCAL IMPACT**

The City of Monterey will reimburse the City for \$30,915 for the development of the Compliance Plan. The remaining \$50,000 is available in the Storm Water Fund 44.

### **ATTACHMENT**

1. Resolution
2. Contract and Scope of Work
3. Monterey Reimbursement Agreement

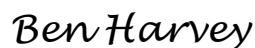
### **RESPECTFULLY SUBMITTED:**



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Jessica Kahn  
Environmental Programs Manager

### **REVIEWED BY:**



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Ben Harvey  
Interim City Manager

**RESOLUTION NO. 16-\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE  
AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH FALL  
CREEK ENGINEERING, INC. TO PREPARE THE PACIFIC GROVE AREA OF  
SPECIAL BIOLOGICAL SIGNIFICANCE COMPLIANCE PLAN UPDATE**

**FINDINGS**

1. The City of Pacific Grove and City of Monterey received coverage under the California Ocean Plan Discharge Prohibition General Exception related to municipal separate storm sewer system (MS4) point-source discharges. The General Exception requires implementation of Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges (Special Protections) for Beneficial Uses of ASBS and requires development of ASBS Compliance Plans.
2. In 2014, the Cities of Pacific Grove and Monterey developed and submitted a draft Pacific Grove ASBS Compliance Plan to the SWRCB; this document was subsequently updated by the Cities in 2015.
3. The Cities require an updated analysis of Pacific Grove ASBS data past and present in order to develop the final structural and nonstructural water quality protection strategies necessary to meet the regulatory requirements of the Special Protections by March 20, 2018, to maintain natural ocean water quality.
4. The SWRCB has granted an extension to submit and updated Compliance Plan by September 20, 2016
5. On November 30, 2015, the City issued a request for proposals to prepare an updated Compliance Plan. The deadline for submittals was December 30, 2015. Two proposals were received.
6. Fall Creek Engineering, Inc. was selected as the winning proposal based on understanding of project objectives and timeline; proposed project approach and design principles; ability to provide high-quality, cost-effective solutions; and comparable experience and staffing plan.
7. This action does not constitute a "Project" as that term is defined under the California Environmental Quality Act (CEQA), CEQA Guideline Section 15378, as approval of the

contract is an administrative activity that will not cause a physical change to the environment.

**NOW, THEREFORE, BE IT RESOLVED, THAT THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE:**

1. The Council determines that each of the Findings set forth above is true and correct, and by this reference incorporates those Findings as an integral part of this Resolution.
2. The Council authorizes authorizing the City Manager to execute an agreement with Fall Creek Engineering, Inc. to prepare the updated Pacific Grove ASBS Compliance Plan, in an amount not to exceed \$80,915.
3. The Council authorizes authorizing the City Manager to execute an agreement with the City of Monterey for the reimbursement of \$30,915 towards the updated Pacific Grove ASBS Compliance Plan.
4. This Resolution shall take effect immediately following passage and adoption thereof.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE**  
this 17<sup>th</sup> day of February, 2016, by the following vote:

AYES:

NOES:

ABSENT:

APPROVED:

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BILL KAMPE, Mayor

ATTEST:

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SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

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DAVID C. LAREDO, City Attorney

**PUBLIC WORKS AGREEMENT FOR PROFESSIONAL SERVICES WITH FALL CREEK  
ENGINEERING, INC. FOR PREPARATION OF THE PACIFIC GROVE ASBS COMPLIANCE PLAN  
UPDATE**

This Professional Services Agreement (“Agreement”) is made by and between the City of Pacific Grove, a political subdivision of the State of California (hereinafter “City”) and Fall Creek Engineering, Inc. (hereinafter “CONTRACTOR”).

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

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR 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: prepare an update to the Pacific Grove Area of Special Biological Significance (ASBS) Compliance Plan.
2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed \$80,915.
3. **TERM OF AGREEMENT.** The term of this Agreement is from February 3, 2016 through December 31, 2016 unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last.
4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

**Exhibit A- Scope of Services/Payment Provisions**

**5. PERFORMANCE STANDARDS.**

5.01. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.

5.02. CONTRACTOR, its agents, employees, and subcontractors 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.

5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

## 6. PAYMENT CONDITIONS.

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR 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 Contract Administrator 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 City Administrative Services Director for payment. The City Administrative Services Director shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement.

## 7. TERMINATION.

7.01. During the term of this Agreement, the City may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least fourteen (14) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02. The City may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If City terminates this Agreement for good cause, the City may be relieved of the payment of any consideration to CONTRACTOR, and the City may proceed with the work in any manner which City deems proper. The cost to the City shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. **INDEMNIFICATION.** To the fullest extent permitted by law, CONTRACTOR shall indemnify and hold harmless the City, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the City. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

## 9. INSURANCE.

9.01. Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR 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, Contractual Liability, Broadform Property

Damage, Independent Contractors, Products and Completed Operations, 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).

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

☐ 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, the CONTRACTOR 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.

☐ 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 three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the City shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor 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.

*Commercial general liability and automobile liability policies shall provide an endorsement naming the City of Pacific Grove, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'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 CONTRACTOR'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, CONTRACTOR shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the



CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five 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.

CONTRACTOR 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 City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

## **10. RECORDS AND CONFIDENTIALITY.**

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

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

10.03. Maintenance of Records. CONTRACTOR 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. CONTRACTOR shall maintain such records for a period of at least three 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 CONTRACTOR 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 CONTRACTOR and its subcontractors 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 shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, 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. CONTRACTOR shall not publish any such material without the prior written approval of City.

**11. NON-DISCRIMINATION.** During the performance of this Agreement, CONTRACTOR, and its subcontractors, 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 (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which 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, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR 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 CONTRACTOR, at no cost to CONTRACTOR.

**13. INDEPENDENT CONTRACTOR.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor 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 CONTRACTOR shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONTRACTOR's failure to pay such taxes.

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

<p><b>FOR CITY:</b></p> <p>Ben Harvey, Interim City Manager</p> <p>300 Forest Ave.</p> <p>Pacific Grove, CA 93950</p> <p>(831) 648-3100</p>	<p><b>FOR CONTRACTOR:</b></p> <p>Peter Haase</p> <p>Fall Creek Engineering, Inc.</p> <p>P.O. 7894</p> <p>Santa Cruz, CA 95061</p> <p>(831) 426-9054</p>
<p>Jessica Kahn</p> <p>Environmental Programs Manager</p> <p>300 Forest Ave.</p> <p>Pacific Grove, CA 93950</p> <p>(831) 648-3188</p>	

**15. MISCELLANEOUS PROVISIONS.**

**15.01. Conflict of Interest.** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement which 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 CONTRACTOR.

15.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the City and the CONTRACTOR. 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. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor 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.

15.06. Assignment and Subcontracting. The CONTRACTOR 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, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and CONTRACTOR 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.

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

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

15.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

15.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.12. Non-exclusive Agreement. This Agreement is non-exclusive and both City and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

15.13. Construction of Agreement. The City and CONTRACTOR 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.

15.14. 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.

15.15. Authority. Any individual executing this Agreement on behalf of the City or the CONTRACTOR 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.

15.16. Integration. This Agreement, including the exhibits and any documents incorporated by reference, represent the entire Agreement between the City and the CONTRACTOR 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 CONTRACTOR as of the effective date of this Agreement, which is the date that the City signs the Agreement.

15.17. 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.

15.18 Severability. If any of the provisions contained in the Contract 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 Contract for any cause. If a part of this Contract is valid, all valid parts that are severable from the invalid part remain in effect. If a part of this Contract 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.

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

Agenda No. 13A Attachment 2  
Page 8 of 16

**CITY OF PACIFIC GROVE**

**CONTRACTOR**

Fall Creek Engineering, Inc.  
P.O. Box 7894,  
Santa Cruz, CA 95061

By: \_\_\_\_\_  
Ben Harvey, Purchasing Agent

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Jessica Kahn, Environmental  
Programs Manager

Date: \_\_\_\_\_

Approved as to Form

By: \_\_\_\_\_  
David C. Laredo, City Attorney

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Peter Haase, M.S., P.E.  
Principal Engineer

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signature of Secretary, Asst. Secretary, CFO, or  
Asst. Treasurer)\*

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR 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 CONTRACTOR 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 CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

## **EXHIBIT A**

### **SCOPE OF SERVICE/PAYMENT PROVISIONS**

CONTRACTOR shall prepare an update to the Pacific Grove Area of Special Biological Significance (ASBS) Compliance Plan in accordance with the scope of work and schedule attached herein.

City shall pay CONTRACTOR in accord with the terms of the Section 6.01 of this Agreement for completion of all work specified above, and in no case shall exceed the \$80,915.

## METHODOLOGY AND SCOPE OF WORK

### TASK 1. PROJECT MANAGEMENT, COORDINATION, AND MEETINGS

The continued communication, coordination, and collaboration with staff at the Cities, technical advisors, partners, regulators, and other stakeholders will be critical throughout this effort. FCE will coordinate and lead a project kickoff meeting with the City to ensure all are aligned on the contract scope, schedule, and deliverables. Bi-weekly status meetings will be scheduled at regular days/times with the City and FCE project manager to briefly review progress, next steps, and address any issues or changes. Other partners including other FCE staff, regulators, City of Pacific Grove or City of Monterey staff, etc. will be brought in as necessary. FCE will efficiently manage the compliance plan (Plan) update to ensure the plan meets the City's expectations and regulatory requirements.

#### Task 1.1 Project Schedule

FCE will prepare a detailed project schedule identifying all tasks, meetings, and deliverables. The schedule will be reviewed at the project kickoff meeting and updated based on meeting discussion and input. The schedule will be updated monthly to show completed items and revisions to future milestone dates, if applicable. A draft project schedule is included in Section D of this proposal, and identifies the Cities' intent to resubmit the Plan to the SWRCB by September 2016.

**Deliverables:** Based on input received during the kickoff meeting, FCE will provide an updated project schedule of project milestones and deliverables. The schedule will continue to be reviewed and updated monthly with the Cities.

#### Task 1.2 Periodic Meetings

As the initial task, FCE will participate in a project kickoff meeting to confirm any adjustments or changes to the project scope and schedule. The kickoff meeting will provide FCE the opportunity to review data needs, receive data from the Cities, and schedule site surveys as necessary.

FCE will schedule and prepare meeting agendas and minutes for meetings with the Cities and other stakeholders, at a minimum, on a monthly basis.

**Deliverables:** For all project meetings FCE will prepare meeting agendas and minutes summarizing the points of discussion, data acquisition needs, and the parties responsible to provide this information.

### TASK 2. ASBS COMPLIANCE PLAN UPDATE

In 2012, the State Water Resources Control Board adopted Special Protections for Areas of Special Biological Significance (ASBS), Governing Point Source Discharges of Stormwater and Nonpoint Source Waste Discharges (Special Protections)<sup>1</sup>. The Special Protections identify requirements dischargers must meet to qualify for an exception (General Exception) to the prohibition of discharges into ASBS. The goal of the General Exception is to protect natural water quality to support sensitive native biological communities in the ASBS.

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<sup>1</sup> SWRCB Resolution 2012-0012

The updated ASBS Compliance Plan (Plan) will describe the Cities' strategy to implement non-structural and structural best management practices (BMPs) to comply with the General Exception requirement to protect natural water quality during wet and dry weather conditions. **Non-structural BMPs** involve operational, maintenance, regulatory (e.g. ordinance), studies, or educational activities designed to reduce or eliminate increased flow and pollutant related impacts to the ASBS. **Structural BMPs** involve the implementation of engineering solutions to provide physical treatment or infiltration of runoff to the ASBS.

### Task 2.1 Compliance Plan Map Updates

FCE will review existing documentation and prepare maps for the updated Plan to adequately and clearly illustrate drainage areas that discharge to the ASBS through existing outfalls and those that discharge to the ASBS via sheet flow. FCE will also prepare maps identifying the location of stormwater conveyance infrastructure relative to other applicable features, including service areas, sewage conveyances and treatment facilities, landslides, areas prone to erosion, and waste and hazardous material storage areas.

The drainage area delineations will consider both topographic surface characteristics and the location of existing stormwater conveyance infrastructure. FCE will review the existing watershed delineations for accuracy and propose adjustments where necessary. The existing subwatershed delineations were completed by a CSUMB advanced watershed management class under the direction of Assistant Professor Fred Watson during the Fall Semester 2011.<sup>2</sup> If necessary, FCE will complete an independent subwatershed delineation using available LIDAR<sup>3</sup> data and conduct field visits to confirm the subwatershed limits.

**Deliverables:** Updated and produced maps will be compatible with ArcGIS ArcMap software and will be provided to the Cities as map documents (\*.mxd), pdfs, and image documents (\*.jpg). FCE will provide the Cities with a geodatabase with will all relevant GIS shapefiles used in the production of the Plan maps.

### Task 2.2 Compliance Plan Mapping Update Procedures

FCE will develop and document a procedure the Cities can use to update all the maps prepared in Task 2.1 as changes are made to stormwater conveyance facilities or other features identified in the Plan maps. The procedure will outline the protocol for how the geodatabase information can be updated by both Cities individually and periodically reintegrated.

Through previous work efforts, FCE has been in contact with the GIS liaisons for both Cities and will coordinate with each City's GIS contact to collaboratively develop a procedure that can successfully operate within each City's system.

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<sup>2</sup> CSUMB Class ENV5 660: Pugh K, Arenas R, Cubanski P, Lancot M, Purdy A, Bassett R, Smith J, Hession S, Stoner K, Ashbach R, Alberola G, Jacuzzi N, Watson F. 2011. Stormwater outfall watershed delineation, land cover characteristics, and recommended priorities for monitoring and mitigation in the City of Pacific Grove, California. The Watershed Institute, California State Monterey Bay, Publication No. WI-2011-02, 74 pages.

[http://ccows.csUMB.edu/pubs/reports/CSUMB\\_ENV5660\\_ClassReport\\_PGStormwater\\_120306.pdf](http://ccows.csUMB.edu/pubs/reports/CSUMB_ENV5660_ClassReport_PGStormwater_120306.pdf)

<sup>3</sup> The LIDAR data proposed for the basis of the analysis was acquired in 2010 in the Central Coast Region of California including areas of Monterey, San Benito, and Santa Cruz County through an Association of Monterey Bay Area Governments (AMBAG) project.



**Deliverables:** FCE will coordinate with the Cities' GIS liaisons and provide a procedure the Cities can use to update the Plan maps and associated geodatabase.

### **Task 2.3 Compliance with the Special Protections Dry Weather Requirements**

#### Task 2.3.1 Collection and Review of Existing Information

FCE will gather information about existing and currently proposed structural and non-structural BMPs proposed to manage dry weather flows to the ASBS, including MS4 Permit Program reports and information provided by the Cities. To evaluate **non-structural BMPs**, FCE will contact relevant City divisions and departments regarding on-going and proposed programs such as:

- **Inspection Programs** for construction sites, industrial facilities, commercial facilities, and stormwater outfall drains equal to or greater than 18 inches in diameter (see Task 2.4);
- **Microbial Source Tracking** to provide information about the primary sources of fecal contamination within the ASBS watershed;
- **Public Outreach and Education** about stormwater, bacterial impairments, non-chemical pest control options, and LID techniques such as permeable pavements, rain gardens, swales, and rain barrels;
- **Non-stormwater Discharge Elimination** techniques related to car washing, swimming pools/hot tubs, landscape irrigation; and
- **Development Review** to ensure appropriate source control, site design, and stormwater treatment measures are incorporated into new and redevelopment projects.

For each program, and where applicable, FCE will collect available data regarding the operational approach, frequency, and measured effectiveness.

To evaluate **structural BMPs** FCE will collect relevant information about the existing and proposed expansion of the Dry Weather Diversion system to connect portions of the PG ASBS storm drainage system to the regional sanitary sewer collection system during dry months. FCE will collect information about the system's maintenance schedule and monitoring approach.

#### Task 2.3.2 Summary and Proposed Enhancements to Comply with Dry Weather Requirements

Based on information collected about existing structural and non-structural programs in place to comply with the Special Protections Dry Weather Requirements, FCE will propose enhancements to the existing programs. The recommendations will describe any non-structural controls that should be implemented by the Cities in the future to meet the requirements of the Special Protections.

FCE will prepare a summary of the existing and proposed measures by which all non-authorized non-stormwater runoff from the ASBS storm drain ocean outfalls will be eliminated. The detailed summary will include how the measures will be (1) maintained over time, (2) monitored for performance, and (3) the effectiveness documented.

**Deliverables:** FCE will prepare a technical letter for the Cities summarizing the existing, proposed, and recommended structural and non-structural measures for implementation to eliminate non-authorized non-stormwater ocean discharges to the ASBS.

### **Task 2.4 Inspection Policies Assessment**

As part of the evaluation of the Cities' existing non-structural BMP programs, FCE will review existing Inspection Programs for construction sites, industrial facilities, commercial facilities, and stormwater outfall drains equal to or greater than 18 inches in diameter. Per the General

Exception, the Cities are required to inspect facilities and/or sites in the ASBS at the following frequencies:

- Construction Sites: Weekly during the rainy season;
- Industrial Facilities: Monthly during the rainy season;
- Commercial Facilities: Twice during the rainy season; and
- Outfalls greater than or equal to 18 inches in diameter: Once prior to the beginning of the rainy season (October 1) and once during the rainy season.

FCE will compare the existing inspection programs with the minimum inspection requirements detailed in the Special Protections. If the policies meet the requirements, FCE will prepare a written summary that describes the policies and how they meet the requirements. If the policies do not meet the requirements, FCE will develop and recommend new policies for the Cities to implement.

**Deliverables:** FCE proposes to incorporate the findings and recommendations of Task 2.4 into the summary technical letter FCE will provide to the Cities for the Task 2.3 deliverable. The letter will include a summary of existing policies and, if necessary, the recommended new policies and language necessary to satisfy the Special Protections.

### **Task 2.5 Assessment of Pollutant Load Reduction Targets**

The Special Protections identify water quality sample design, collection, and reporting requirements. Since the fall of 2013 the Central California Regional ASBS Monitoring Program (CCASBSRMP) has been collecting and analyzing water quality samples from discharges, ocean receiving waters (pre- and storm), reference ocean receiving waters (storm), and background sites in Monterey Bay<sup>4</sup>. It is anticipated that the 2015-2016 CCASBSRMP monitoring results, and definition of the 85<sup>th</sup> percentile benchmark, anticipated in summer 2016, will be available to FCE for the assessment of pollutant load reduction targets proposed in this task.

FCE will compare results from recent monitoring conducted at PG ASBS ocean outfalls with those of the reference system to evaluate if there is an exceedance of the natural ocean water quality during wet weather caused by discharges from the ocean outfalls. The monitoring results will be compared to guidance found in the Special Protections to maintain natural ocean water quality. If it is determined that an exceedance has occurred, FCE will evaluate the need for additional non-structural and structural BMPs to maintain natural ocean water quality. The Special Protections require that "BMPs to control stormwater runoff discharges (at the end-of-pipe) during a design storm shall be designed to achieve on average the following target levels:

- (1) Table Instantaneous Maximum Water Quality Objectives in Chapter II of the Ocean Plan; or
- (2) A 90% reduction in pollutant loading during storm events, for the applicant's total discharges."

Considering the Cities' existing and proposed BMPs along with water quality results from the ten (10) urban stormwater discharges sampled along the PG ASBS, FCE will determine which of the above target levels the Cities' should work to achieve.

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<sup>4</sup> Central Coast Regional ASBS Monitoring Program, Interim Report 2013-2014,  
[http://ccasbsrmp.stanford.edu/pdf/CC%20ASBS%20Interim%20Report\\_8-13-15.pdf](http://ccasbsrmp.stanford.edu/pdf/CC%20ASBS%20Interim%20Report_8-13-15.pdf)

**Deliverables:** FCE will provide the Cities with an Assessment Report of Pollutant Load Reduction Targets. The report will summarize the comparison of water quality monitoring results and, as needed, recommend to the Cities pollution load reduction targets.

### **Task 2.6 ASBS Outfall Discharge Source Identification and Outfall Prioritization**

For each ASBS outfall where it has been determined that discharges pose a threat to the natural ocean water quality of the ASBS (as determined in Task 2.5), FCE will perform a general source identification of the tributary area to assess if the pollutants are from a non-anthropogenic source or from a known anthropogenic source. If more than one ASBS outfall is determined to currently be a threat to the natural ocean water quality of the ASBS, the deliverable for this task will include a prioritization of the outfalls.

To accomplish the source identification, FCE will identify potential sources for the constituents of concern. The monitored constituents include trace metals, polynuclear hydrocarbons (PAHs), pyrethroid and organophosphate pesticides, bioaccumulation, toxicity, nutrients and conventional constituents, and fecal indicator bacteria (FIBs). The identified potential sources will vary depending on the offending constituent. For example, FIBs can be elevated due to sewage leakage and domestic animal and wildlife feces, whereas total suspended solids (TSS, a “conventional constituent”) can be associated with erosion.

Within the outfall drainage area(s) where a constituent(s) exceeds natural ocean water quality, FCE will employ three methods for source identification: a desktop evaluation, interviews with City staff and stakeholders, and a field investigation. To complete the desktop evaluation, FCE will rely on readily available aerial photographs, land use and other GIS data to identify potential constituent sources. FCE will then rely on the experience of stakeholders and City staff to convey information about potential sources by conducting interviews and collecting valuable information from people with familiarity and history in the area. FCE will compile information gleaned through interviews and the desktop evaluation and complete a field survey to confirm and/or identify new potential source locations for the offending constituent(s).

If more than one outfall exceeds the natural water quality of the ASBS, FCE will provide a prioritization of the outfalls based on risk to water quality. The General Exception requires the ASBS Compliance Plan to include a map indicating the priority of discharges, where high priority discharges are those that pose the greatest threat to water quality and potentially require the installation of structural BMPs. FCE will collaborate with the City to select evaluation factors for prioritization, such as available monitoring data, size of outfall or discharge, drainage area size and land use, and practicality and safety of structural BMP placement and monitoring.

**Deliverables:** FCE will provide the Cities with as ASBS Outfalls Source Identification and Prioritization technical letter. The letter will summarize the source identification methodology and findings. The letter will include both a written description and figures showing the location of identified constituent sources, along with a matrix and map summarizing the outfall prioritization results. The source identification and outfall prioritization results will additionally be provided to the Cities in GIS shapefile format.

## Task 2.7 Structural Best Management Practices Implementation Plan

Building upon the deliverables and findings in Tasks 2.5 and 2.6, FCE will identify suitable structural BMPs for incorporation into the Plan. For priority outfalls, FCE will identify the size and location of structural BMPs to manage constituent sources (Task 2.6) and achieve the pollutant load reduction targets (Task 2.5) for compliance with the Special Protections.

FCE will evaluate the existing structural BMPs that already meet the requirements, for example the City of Pacific Grove's Continuous Deflection Separation (CDS) units, along with the structural BMPs proposed in the Monterey-Pacific Grove ASBS Stormwater Management Project (SMP), those proposed in the draft Plan (September 2015), and new structural BMPs identified through the course of this project. The Pacific Grove ASBS Draft Compliance Plan (September 2015) identified TSS as a potential proxy to manage with BMPs to mitigate multiple constituents, such as trace metals, PAHs, and pyrethroids<sup>5</sup>.

To evaluate the proposed structural BMP's FCE will consider the following:

1. Hydrology, topography, aerial photography, land use, BMP removal efficiencies and other pertinent criteria to **determine BMP type, size, location** to most practically meet the Special Protection requirements.
2. A **quantification analysis** of existing pollutant loadings and required load reductions to each priority outfall, the BMP design storm capture and/or treatment volume, and the associated pollutant load reductions.
3. A **preliminary feasibility analysis** for each proposed structural BMP site, and how all BMP sites may or may not function in the overall protection of ASBS natural water quality. The feasibility analysis will summarize opportunities, site constraints, potential environmental impacts, required local and/or regulatory permits, and other applicable information.
4. A **planning level cost estimate** for individual and combined proposed BMP facilities. The cost estimate will include necessary planning, design, permits, construction, operation and maintenance, energy, waste removal, post construction performance monitoring (if applicable), right of way acquisition, and a basic evaluation of whether or not the structural BMP will have significant economic impacts on the community.
5. A **schedule** for each proposed structural BMP that will include planning, design, permitting, construction duration, and post construction monitoring (if applicable), including an estimated ASBS system operation date (month/year). The Cities are required to comply with pollutant load reductions by March 20, 2018, and the schedule developed under this task can be used during discussions with the SWRCB and as the Updated Compliance Plan (Task 2.8) compliance and implementation schedule.

**Deliverables:** FCE will provide the Cities with Structural BMP Implementation Plan that will identify each structural BMP identified for implementation including a (1) description and concept design, (2) quantification of potential pollutant reduction, (3) feasibility analysis, (4) planning level cost

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<sup>5</sup> Pacific Grove ASBS Compliance Plan, <http://monterey.org/Portals/1/peec/stormwater/Pacific-Grove-ASBS-Compliance-Plan-wAppendices.pdf>

estimate, and (5) schedule for implementation. The Structural BMP Implementation Plan will include this information (numbers 1-5) both for individual BMPs and for how the BMPs will work in concert throughout the ASBS drainage area to achieve compliance with the Special Protections.

#### **Task 2.8 Updated Compliance Plan (2016)**

FCE will compile the deliverables from Tasks 2.1 through 2.7 into an updated 2016 ASBS Compliance Plan for review by the Cities. FCE will incorporate all the comments, feedback, and edits received on the previous task deliverables into an Administrative Draft Compliance Plan (2016 Admin Draft). The 2016 Admin Draft will be provided to both Cities for review. Comments received from the Cities will be incorporated into a Final Compliance Plan (2016) for submittal to the SWRCB.

**Deliverables:** FCE will provide the Cities with an Administrative Draft Compliance Plan (2016) and a Final Compliance Plan (2016) for submittal to the SWRCB.

REIMBURSEMENT AGREEMENT  
between  
City of Monterey and City of Pacific Grove

**Pacific Grove Area of Special Biological Significance Compliance Plan Update**

THIS AGREEMENT is executed this \_\_\_\_ day of February, 2016, by and between the CITY OF MONTEREY, a municipal corporation ("Monterey"), and City of Pacific Grove, a municipal corporation, ("Pacific Grove"). Monterey and Pacific Grove are collectively referred to herein as "Parties."

RECITALS

WHEREAS, the Pacific Grove Area of Special Biological Significance ("ASBS") is one of 34 designated ASBS in nearshore waters along the California coast. The Pacific Grove ASBS extends for 3.2 miles along the Pacific Grove shoreline west from the Monterey Bay Aquarium to Asilomar Boulevard just before Point Pinos, with close to 500 ocean acres within the Monterey Bay National Marine Sanctuary (MBNMS).

WHEREAS, the Pacific Grove ASBS receives runoff from approximately 1,106 acres in Pacific Grove and 101 acres in Monterey including a small portion from the federal U. S. Army Presidio of Monterey.

WHEREAS, the City of Pacific Grove and City of Monterey applied for and received coverage under the California Ocean Plan Discharge Prohibition General Exception related to municipal separate storm sewer system (MS4) point-source discharges reaching the Pacific Grove ASBS through City of Pacific Grove MS4 ocean outfalls.

WHEREAS, the General Exception requires implementation of Special Protections for Areas of Special Biological Significance, Governing Point Source Discharges of Storm Water and Nonpoint Source Waste Discharges (Special Protections) for Beneficial Uses of ASBS and requires development of ASBS-specific Compliance Plans by permitted dischargers, like Pacific Grove and Monterey;

WHEREAS, in 2014, the Cities of Pacific Grove and Monterey developed and submitted a draft Pacific Grove ASBS Compliance Plan to the SWRCB; this document was subsequently updated by Pacific Grove and Monterey in 2015;

WHEREAS, Pacific Grove and Monterey are now seeking an updated analysis of Pacific Grove ASBS data past and present in order to develop the final structural and nonstructural water quality protection strategies necessary to meet the regulatory requirements of the Special Protections by March 20, 2018, to maintain natural ocean water quality. The compliance strategies identified shall be clearly and succinctly enunciated in an updated ASBS Compliance Plan to be submitted to the SWRCB in September 2016;

WHEREAS, Monterey and Pacific Grove are collectively funding a technical update to the Pacific Grove Area of Special Biological Significance (PG ASBS) Compliance Plan to be completed by Fall Creek Engineering, Inc., to be completed and submitted to the State Water Resources Control Board (SWRCB) in September 2016;

WHEREAS, the City of Pacific Grove conducted a Request for Proposals (RFP) competitive process based on technical qualification for the work proposed, and has selected Fall Creek Engineering, Inc.;

WHEREAS, Fall Creek Engineering, Inc. is entering into a contract with the City of Pacific Grove to complete the PG ASBS Compliance Plan Update and associated research and deliverables;

WHEREAS, Monterey has agreed to reimburse Pacific Grove \$30,915 towards the total cost of the PG contract; the PG contract total is a not-to-exceed sum of \$80,915; and

NOW THEREFORE, in consideration of the mutual promises contained in this agreement, Monterey and Pacific Grove agree as follows:

1. This Agreement shall commence on the date of its execution set forth above and shall continue for a period of one year, or until the services provided by Fall Creek Engineering, Inc. have been completed and Pacific Grove has been reimbursed by Monterey in the agreed-upon amount of \$30,915, as provided for in paragraph 3 below, whichever shall occur later.
2. Pacific Grove shall be responsible for approval of the bills for services from Fall Creek Engineering, Inc. and the processing of payment for the invoices.
3. Pacific Grove shall provide Monterey with written invoice(s), indicating the amount to be reimbursed by Monterey pursuant to the terms of this Agreement. AGENCY shall include along with said invoice a copy of the bill from Fall Creek Engineering, Inc. and proof of payment of that bill by Pacific Grove. Upon receipt of such invoice and documentation, Monterey shall promptly provide payment to Pacific Grove up to the agreed-upon amount of \$30,915.
4. Any cancellation or termination of the agreement for services between Fall Creek Engineering, Inc. and Pacific Grove shall result in termination of this Agreement and shall release Monterey of its obligations to reimburse Pacific Grove as set forth in this Agreement.
5. Pacific Grove shall assume all risk of and responsibility for, and agrees to indemnify, defend, and hold harmless the City of Monterey, its officers, agents, and employees, from and against any and all claims, demands, suits, actions, recoveries, judgments, liabilities, costs and expenses, damages and losses whatsoever (including, but not limited to, injuries to or death of persons, court costs, and attorney's fees) arising directly or indirectly from (1) the work, services, or materials provided under this Reimbursement Agreement, or (2) any failure to perform the Pacific Grove's obligations, or (3) any improper or deficient performance of such contractual obligations.

Pacific Grove shall, at its own expense, appear, defend and pay all charges for attorneys and other costs and expenses arising from such claim, demand, suit or action. If any judgment shall be rendered against the City of Monterey for which indemnification is provided under this Reimbursement Agreement, Pacific Grove shall at its own expense satisfy and discharge the same.

The indemnification obligations set forth in this section shall expressly survive the termination or expiration of this Reimbursement Agreement.

Agency shall, at its own expense, maintain in full force and effect the insurance requirements at Exhibit A hereto.

6. No official or employee of Monterey or Pacific Grove shall be personally liable for any default or liability under this Agreement.

7. This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether oral or written, relating to the subject matter thereof. Any modification of this Agreement will be effective only if it is in writing signed by both parties hereto.

8. This Agreement shall be interpreted as though prepared by both parties.

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

10. The parties agree that in the performance of this Agreement they will comply with all applicable State, Federal and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Monterey.

IN WITNESS WHEREOF, this Agreement is entered into by the parties hereto on the day and year first above written in Monterey, California.

Date: \_\_\_\_\_, 2016

CITY OF MONTEREY

By \_\_\_\_\_  
Michael McCarthy, City Manager

Date: \_\_\_\_\_, 2016

CITY OF PACIFIC GROVE

By \_\_\_\_\_  
Ben Harvey, Interim City Manager