

ORDINANCE NO. 15-004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE DECLARING AN URGENT NEED FOR AUTHORIZATION AND USE OF THE DESIGN-BUILD CONTRACT PROCUREMENT PROCESS TO CREATE THE PACIFIC GROVE LOCAL WATER PROJECT

FINDINGS

- 1.** The City of Pacific Grove (City) is a Charter City.
- 2.** The City has undertaken significant steps to plan recycled water projects for collaborative benefit in relation to California American Water Company's Monterey Peninsula Water Management Project.
- 3.** The City desires to undertake its Local Water Project (Project), which entails design and construction of a sewage diversion structure and pipeline, satellite recycled water treatment facility, recycled water pumping station, trunk recycled water product delivery pump station and pipeline, together with appurtenances and related facilities and structures that collectively will have a facility design flow capacity of 0.25 million gallons per day.
- 4.** The primary goal of the Project is to replace potable water delivered from California American Water Company (CAW) with high quality recycled water for the irrigation of the Golf Links and El Carmelo Cemetery, and for flushing of two public restrooms. Additional goals are:
 - to preserve potable water supplies for domestic uses and to maximize recycling and reuse of non-potable recycled municipal wastewater;
 - to substitute City use of CAW potable water with recycled water for non-potable water demands; and
 - to reduce discharges of storm water to Monterey Bay and the Pacific Grove Area of Special Biological Significance (ASBS) by the continued incorporation of dry and wet weather storm flows into treatment and recycling options.
- 5.** The primary benefits of the Project are:
 - to conserve potable water for uses requiring potable water only, thereby helping to meet State requirements to conserve water and regional compliance for CAW's reduction of the use of water from the Carmel River; and
 - to prevent illegal diversions from the Carmel River and excessive pumping from the Seaside Aquifer by California American Water, and to be operational prior to January 1, 2017, the State's designated date for imposing the full Cease and Desist Order (CDO); and
 - to conserve energy as it requires less energy per unit of water produced, creates a smaller carbon footprint, and is otherwise resource-efficient as compared with alternatives;

- to provide a new supply of irrigation water, thereby reducing production and operational demands on CAW's planned desalination plant and other system components of the Monterey Peninsula Water Supply Project; and
- to maximize the appropriate reuse and recycling of sewage, storm water, and dry weather flows as its sources of water, it helps achieve State and local goals related to keeping the ASBS free of pollution.

6. The completed Project will facilitate construction and operation of facilities as described in the following documents:

- City of Pacific Grove: "Local Water Project Facility Plan Report", June 23, 2014
- City of Pacific Grove: "Local Water Project Draft Environmental Impact Report", September 16, 2014
- City of Pacific Grove: "Local Water Project Final Environmental Impact Report", November 2014
- City of Pacific Grove: "Local Water Project Preliminary Site Design", to be completed in February 2015
- Topographic Survey of Point Pinos WWTP, April 2013

7. Article 40 of the City Charter provides, in general, that expenditures to create or improve public buildings and works, including water and sewer facilities, exceeding fifteen thousand dollars shall ordinarily be let to the lowest responsible bidder.

8. The City Charter confers upon the City Council the authority, by ordinance, to adopt detailed policies and procedures for implementation of Article 40.

9. Article 40 of the City Charter also confers upon the City Council authority to reject any and all bids, and the ability to declare and determine by an affirmative vote of five of its members that in its opinion the work in question may be more economically or satisfactorily performed in an alternative manner than that prescribed by Article 40.

10. Article 40 of the City Charter enables contracts to be let without advertising for bids if such work shall be deemed by the Council to be of urgent necessity for the preservation of life, health or property, and allows authorization by affirmative vote of five Council members containing a declaration of facts constituting such urgency.

11. Article 40 of the City Charter enables the City Council to adopt an ordinance to enact appropriate bidding regulations to govern unique contracts such as those needed to implement the Project.

12. This ordinance recognizes the unique factors that relate to the Project and is intended to enable the City to contract for the creation of the project utilizing a Design-Build process where a single Design-Build Entity will be responsible for all Design-Build services related to this Project, including, but not limited to, design completion, construction, surveying, geotechnical investigations, scheduling, quality control, inspection, laboratory testing, and any other services that can be generally identified through start-up and

acceptance by the City.

13. The City Council recognizes the primary goals and primary benefits denominated above are unique, and are of urgent necessity for the preservation of life, health, or property within the City.

14. Design-Build services for construction of the Project provide the City a more competitive selection process by allowing a separate pre-qualification of any proposed Design-Build Entity, and subsequent development of a technical proposal from approved Entities. Only those Design-Build Entities that are successfully qualified in Step 1 will be allowed to participate in Step 2.

15. The City may solicit qualifications and proposals for a separate long-term Operations contract through a separate future procurement process. The Design-Build procurement process will include only operations during start-up, acceptance testing, and training periods.

16. The City is the Lead Agency for the Local Water Project and has certified the Project's CEQA-Plus Final EIR.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:

SECTION 1. The foregoing Findings are adopted as findings of the City Council as though set forth fully herein.

SECTION 2. As an alternative to the normal sealed-bid procurement process contemplated by Article 40 of the City Charter, whereby creation of public buildings and works is let to the lowest responsible bidder, the City Manager is instead authorized to undertake the Local Water Project, including design and construction of a sewage diversion structure and pipeline, satellite recycled water treatment facility, recycled water pumping station, trunk recycled water pipeline, together with appurtenances, related facilities, and structures that collectively will have a facility design flow capacity of 0.25 million gallons per day, by use of the Design-Build procurement process. The Design-Build procurement process will allow the City to construct the Project through a more competitive selection process by allowing a separate pre-qualification of any proposed Design-Build Entity, and subsequent development of a technical proposal from approved entities. The Design-Build procurement process is to include operations only during start-up, acceptance testing and training periods. The City Manager may choose to solicit qualifications and proposals for a separate long-term Operations contractor through a separate future procurement process.

SECTION 3. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph,

subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

SECTION 4. This ordinance shall become effective immediately upon enactment.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE this 4th day of March 2015, by the following vote:

AYES: Mayor Kampe, Councilmembers, Cuneo, Fischer, Huitt, Lucius, Peake

NOES: Councilmember Miller

ABSENT: None

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney