



**City of Pacific Grove
Request for Proposal (RFP)
for
Professional Auditing Services**

Issue Date: **March 21, 2023**

Proposal Due Date: **April 19, 2023**

Submit responses to:

City of Pacific Grove
Administrative Services Department
Attn: Jennifer Pope, Management Analyst
300 Forest Avenue
Pacific Grove, California 93950
jpope@cityofpacificgrove.org

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1. RFP Overview

1.1 Introduction and Background

The City of Pacific Grove is a Charter City known for small-town hospitality and friendliness. It is run by a council-manager form of government. The major operating departments of the City are: City Manager, Administrative Services, Community Development, Public Works, Police, Fire, Recreation and the Library. The City population is 15,545 and it is approximately 2.86 square miles. The City shares borders with the City of Monterey, the Pacific Ocean, and the Del Monte Forest.

The City Finance Department is staffed with 6.33 FTE's. The department is the recipient of five consecutive Government Finance Officers Certificate of Excellence (COE) Award in Financial Reporting; four consecutive GFOA Distinguished Budget Awards; and five consecutive California Society of Municipal Finance Officers (CSMFO) Operating Excellence Budget Awards. The City has retained the current audit firm since Fiscal Year 15/16.

The Finance staff have previously prepared the Transmittal, Statistical Section, and text associated with the Management Discussion and Analysis (MD&A) Section of the ACFR. The current audit firm prepares a MD & A template, with tables and charts based on the financial statements. The City accrues revenues and expenditures through the end of August, with financial statements provided to the City Council by the second meeting in December.

1.2 Purpose of RFP

The City of Pacific Grove is seeking proposals for the preparation of both financial and compliance audit reports covering the City and its related operations from qualified firms of certified public accountants. A complete description of services to be provided is described later in this document. The contract will be for a period of three years with an option to renew for an additional two years. The first reporting period to be audited is July 1, 2022, through June 30, 2023. Responding firms shall be solely responsible for any expenses incurred in preparing proposals in response to this request.

1.3 Schedule of Events

The RFP schedule of events identifies the City's best estimate of the schedule that will be followed.

RFP Event	Date/Time
RFP Issued	March 21, 2023
Deadline for Written Questions	April 5, 2023, at 5:00 pm
Deadline for Letter of Intent to Respond	April 5, 2023, at 5:00 pm
City Issues Response to Written Questions	April 12, 2023
Deadline for Submitting a Proposal	April 19, 2023, at 3:00 pm
City Evaluation of Proposals	April 20-25, 2023
Selected Consultant Interviews	May 1-3, 2023
City Determines Finalist	May 8, 2023
Contract Awarded	May 17, 2023

The City reserves the right to adjust this schedule as it deems necessary.

1.4 RFP Coordinator

All communications concerning this RFP must be submitted in an e-mail to, Jennifer Pope, Management Analyst. The RFP Coordinator will be the sole point of contact for this RFP. The coordinator can be reached via email at jpope@cityofpacificgrove.org.

1.5 RFP Amendment and Cancellation

The City reserves the unilateral right to amend this RFP in writing at any time. The City also reserves the right to cancel or reissue all or any part of the RFP at its sole discretion. This information will be posted to the City's website. If an amendment is issued, it will be provided to all Consultants who have submitted a Letter of Intent to Respond.

1.6 Letter of Intent to Respond

Consultants who anticipate submitting a proposal should submit an email indicating a Consultant's intent to respond to this RFP. The letter of intent should be emailed to the RFP Contact. The subject line should read, "Company Name – Letter of Intent to Respond". The following information should be included in the Letter of Intent to Respond:

- Name of Consultant
- Consultant's Address
- Consultant's Contact Person
- Contact Person's Telephone Number & E-mail Address

Submittal of a Letter of Intent to respond, by the specified deadline, is highly desirable for submitting a proposal and is necessary to ensure a Consultant's receipt of RFP amendments and other communications regarding the RFP. The Letter of Intent does not bind Consultants to submit a proposal. Not submitting a Letter of Intent does not preclude a Consultant from submitting a proposal by the required deadline.

1.7 Questions Pertaining to the RFP

All questions pertaining to this RFP must be submitted by e-mail to the RFP contact: Jennifer Pope, Management Analyst at jpope@cityofpacificgrove.org. All Consultants who have notified the City of their intent to respond to the RFP will be provided, via e-mail, a copy of all questions submitted as well as the City's response.

1.8 Public Records Law

Pursuant to the California Public Records Act, Government Code Section 6250 and following, public records may be inspected and examined by anyone desiring to do so, at a reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. All submitted proposals are subject to the California Public Records Act, and may be determined to be public records subject to disclosure, even if the Consultant claims confidential treatment. The City will disclose public records as required under the California Public Records Act.

1.9 Rights to Submitted Materials

All Proposals and related correspondence, reports, charges, schedules, exhibits and other documentation submitted with this RFP will become the property of the City and a matter of public record. All documents submitted in response to this request will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to these disclosure requirements.

1.10 City Agreements and Insurance Requirements

The successful proposer(s) will be required to sign a contract with the City relating to the work to be performed. Once selected, the proposer must procure and maintain insurance in accordance with the City's insurance requirements for the duration of the contract. The cost of this insurance is the proposer's responsibility.

2. Scope of Work and Specifications

2.1 Overview of Services

The City of Pacific Grove (City) is seeking proposals to perform the following services:

1. Audit all funds of the City in accordance with auditing standards generally accepted in the United States of America and Government Auditing Standards, issued by the Comptroller of the United States.
2. Prepare the City's Annual Comprehensive Financial Report (ACFR) including accompanying schedules and notes no later than December 5 of each contract year. The form of the ACFR is to be compliant with the requirements of the Government Finance Officers Association (GFOA) Certificate Program.
3. Provide the City with draft financial statements in an excel and pdf format with sufficient time to allow for the preparation of the Statistical Section and supporting text for the M D & A. Typically, the City has requested two weeks for review of the statements, and an additional week to complete the M D & A and Statistical Section. While this is requested, alternative timelines and options can be proposed.
4. Assist in the preparation of tables and charts related to the audited financial statements for incorporation into the City's Management's Discussion and Analysis (MD&A), apply limited audit procedures to the MDA, and provide any supplementary information pertaining to the City's financial documents as required by the City.
5. Issue a separate "management letter" that includes recommendations for improvements in internal control, accounting procedures, and other significant observations that are considered to be non-reportable conditions. Prior to the issuance of the final management letter, the auditor shall deliver a draft copy to the City of Pacific Grove's Administrative Services Director/Assistant City Manager for review and management's responses.
6. Render a report and opinion on the basic financial statements including both Government-Wide Financial Statements and Fund Financial Statements.

7. Attend a minimum of one City Council meeting for the purpose of discussing the audit and its conclusions.
8. Provide one (1) electronic file of each auditor-prepared report with the search feature enabled and suitable for posting to the City's website. The City may also request bound hard-copies of the ACFR.
9. Assist with the implementation of applicable Governmental Accounting Standards Board (GASB) pronouncements including, but not limited to, GASB 94, and 96.
10. Prepare and submit to the State Controllers' Office: The Financial Transactions Report, the Annual Street Report, and any additional reports as required by the State Controllers' Office on an annual basis in accordance with the time frames set by the State Controllers' Office.
11. Perform Agreed Upon Procedures Applied to the Appropriations Limit, as consistent with recommendations by the League of California Cities, and as presented in the League publication entitled Article XIII B Appropriations Limitation Uniform Guidelines. Prepare and provide one (1) electronic and one (1) hard-copy report.
12. Audit the Measure X financial statements of the City for each fiscal year and provide a compliance audit report on the requirements noted TAMC Ordinance No. 2016-01 and in the Measure X Master Programs Funding Agreement, attached as Exhibit C, as of June 30, 2021. Provide one electronic copy of the compliance report and one (1) hard-copy of the report.
13. If required pursuant to OMB Circular A-133, perform a Single Audit on the expenditures of federal grants and render the appropriate audit reports on Internal Control over Financial Reporting based upon the audit of the City's financial statements in accordance with Government Auditing Standards and the appropriate reports on compliance with Requirements Applicable to each Major Program, Internal Control over Compliance and on the Schedule of Expenditures of Federal Awards in Accordance with OMB Circular A-133. The single audit report will include an appropriate schedule of expenditures of federal awards, footnotes, findings, and questioned costs, including reportable conditions and material weaknesses, and follow-up on prior audit findings where required.

2.2 Standards to Follow

To meet the requirements of this request for proposal, these audits are to be performed in accordance with all applicable and generally accepted auditing standards including, but not limited to: the standards set forth for financial audits by the Government Accounting Standards Board (GASB), in the General Accounting Office's (GAO) Government Auditing Standards, and in the U.S. Office of Management (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

3. Proposal Submission Requirements

3.1 General Instructions

Proposals should provide a straightforward, concise description of the Consultant's company, qualifications, proposed solution, and capabilities to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content.

Proposals should be organized consistent with the outline provided in this section of the RFP. Consultants must follow all formats and address all portions of the RFP set forth herein providing all information requested.

Submittals must be received no later than Wednesday, April 19, 2023. Proposals received after this date and time will not be considered.

3.2 Proposal Format

Proposals must be structured, presented, and labeled in the following manner:

- Transmittal Letter
- Table of Contents
- Executive Summary
- Company Information
- Company Background
- Company Qualifications
- References
- Proposed Audit Schedule
- Pricing
- Proposed Legal Agreement(s)
- Additional Information

Failure to follow the specified format, to label the responses correctly, or to address all of the subsections may result in the rejection of the Proposal.

3.2.1 Transmittal Letter

The proposal must provide a written transmittal of the proposal in the form of a standard business letter. The Transmittal Letter will reference and respond to each of the following bulleted items.

- Signature of a company officer empowered to bind the Consultant to the provisions of this RFP and any contract awarded pursuant to it.

- A high-level statement of the Consultant’s credentials to deliver the services sought under the RFP.
- A statement indicating the proposal remains valid for at least 90 days.
- A statement that the Consultant or any individual who will perform work for the Consultant is free of any conflict of interest (e.g., employment by the City).

3.2.2 Table of Contents

All pages are to be numbered and the table of contents should identify each major section.

3.2.3 Executive Summary

This section of the proposal should provide a concise synopsis of Consultant’s proposal and credentials to deliver the services sought under the RFP. In addition, it should explain how the Auditing Services Firm will differentiate itself from other Consultant solutions and the reasons the City should select the proposed solution. This may include a list of the unique features that give the Consultant a competitive edge in the agenda management system market.

3.2.4 Company Information

This section of the proposal must include the following company information:

- Provide the legal entity name, Federal Employer Identification Number (EIN), and form of business (i.e. Corporation, LLC, etc.).
- Identify if the Consultant is a subsidiary of a larger company. If so, whom?
- Provide a primary contact name, address, phone number, and email address.
- Identify the location of company headquarters and offices, which will support the implementation.
- Identify the location, hours of operation, and contact information of ongoing maintenance and support staff.
- Provide the current number of employees at the company.
- Provide the current number of employees dedicated to the solution you are proposing.
- Identify all subcontractors and associated scope of work.
- List the company’s Pacific Grove business license number or statement of understanding that a business license must be purchased prior to doing business with the City.
- Identify any pending litigation against the Consultant.
- Identify if the Consultant has filed any bankruptcy or insolvency processing in the last 10 years.
- Identify any mergers, acquisitions, or sales of the Consultant company within the last five years (if so, an explanation providing relevant details).

3.2.5 Company Background

This section should identify the following:

- A description of the Consultant's background, nature of business, and organizational history.
- A statement of how long the Consultant has been providing the solution you are proposing, as required by this RFP.
- Disclose the Consultant's annual company revenues and profit for the last three company fiscal years. It is acceptable to include this information as an appendix in the proposal.

3.2.6 Company Qualifications

In this section of the proposal, the Consultant should identify company and staff qualifications and experience in implementing solutions. More specifically, this section should identify the following:

- Describe your experience in providing Auditing Services; especially for municipalities similar in size to Pacific Grove.
- Identify some examples of your existing client base including the number of clients you provided the services being proposed here.
- Experience in preparing the relevant sections of the financial statements to meet GFOA requirements.

3.2.7 References

The Consultant must provide at least five references. At least three of the references should be for providing auditing services in the last three years. The City prefers references from local government agencies with similar demographics. For each reference, Consultant should provide the following information:

- Entity name
- Customer contact information (name, title, phone, and email)
- Scope of work performed identifying the services provided
- Services start and end dates

3.2.8 Draft Audit Schedule

The City accrues revenues and expenditures through the end of August. While the City is flexible with interim audit scheduling, there is a preference to year-end audit fieldwork is in early October, with draft Basic Financial Statements provided to the City in November. This would allow the City time to review the document; and use the data to complete the MD &A and the Statistical Section. The City Council has typically requested a final electronic ACFR and audit presentation by the second Council Meeting in December. This also provided staff with sufficient time apply for the GFOA Award. Due

to COVID-19, an electronic copy was typically provided to the Council prior to December 31, with the presentation following in January.

The City is open to alternative schedules, especially in the first audit year. Please provide an overview a sample audit schedule for the first year; and tentative timeline for the following years. The City may need at least three weeks to complete the review, MD & A, and Statistical Section based on the draft financials. If any alternative methods are proposed to streamline the process, please provide additional details. At minimum, please include the following the key dates:

- Interim Audit
- Fieldwork/Year-End
- Draft financial statements
- Completed electronic ACFR

3.2.9 Pricing

The City is seeking a clear and comprehensive understanding of all costs associated with providing auditing services. In this section, the Consultant must itemize all costs, see Exhibit A. For ongoing costs Consultant is to include options for three to five years. As an optional item, the City may request ten (10) bound copies of the ACFR. Please provide an additional pricing for this service as a separate line item.

3.2.10 Proposed Legal Agreement

It is recognized that the formal basis of any agreement between the City and the Consultant is a contract rather than a proposal. In this section, the Consultants must include a draft of the proposed legal agreement(s) for services.

The proposed legal agreement(s) may serve as the basis for contract negotiations between the City and the selected Consultant(s) or the City may elect to use its own agreement, attached as Exhibit B, as the basis. Consultants' legal agreements should take into account the City's status as a municipal corporation subject to California law and include contract language that is suitable for contracts with California public entities.

4 Proposal Evaluations

After the proposals are received, the City shall review and evaluate them for responsiveness to the RFP in order to determine whether the proposer possesses the qualifications necessary for the satisfactory performance of the services required. The City may also investigate the qualifications of all proposers to whom the award is contemplated, and the City may request clarifications of proposals directly from one or more proposers.

In reviewing the proposals, the City will consider the following:

- The qualifications (including education, training, licenses, experience, and past performance) of the proposer and its agents, employees, and sub-consultants in completing services of a similar type, size, and complexity.

- The feasibility of the proposal based upon the methodology of the proposed scope of services to meet the City’s needs, the quality of services proposed, and the reasonableness of the total service costs and of the proposed time over which the work will be completed.
- Understanding of the work to be completed based on the clarity of the proposal and responsiveness to this RFP.
- Quality, clarity, completeness, and responsiveness of proposal.
- Demonstrated ability to work in a cooperative and collaborative manner with clients.
- Proposed timeline.
- Anticipated value and price.
- Perceived risk or lack of risk
- Company financial stability.
- References for each of the primary service(s) proposed.
- Results of interviews.
- Reasonableness of proposed terms and conditions of draft legal agreement(s)
- Ability to negotiate and execute a contract in a timely manner.

The City reserves the right, at its sole discretion, to request clarifications of proposals or to conduct discussions for the purpose of clarification with any or all Consultants. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the City and, if held, shall be after initial evaluation of proposals are complete. If clarifications are made as a result of such discussion, the Consultant shall put such clarifications in writing.

5 General Terms and Conditions

5.1 General Conditions

- The City reserves the right to reject any and all proposals, to waive any informality, to request interviews of Contractor(s) prior to award and to select and negotiate the Contract services in the best interest of the City.
- The City reserves the right to accept all or part of any proposal, and to negotiate a contract for services and cost with the selected Contractor.
- The Contractor shall provide all necessary personnel, materials and equipment to perform and complete all work under this proposal.
- The Contractor shall be unbiased and Consultant neutral.

- Unless otherwise stated, invoices are to be submitted to the Administrative Services Department upon delivery of service to the City. The invoice must include an itemization of all services provided, including unit list price, net price, extensions total amount(s) due, and amounts previously paid.
- Unless otherwise stated, payment will be made within thirty (30) days of the completion of the service, in an acceptable fashion, to the City, and receipt of invoice, whichever is later.
- The contract for the services described in the RFP should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these services from any other Consultant.
- Neither party shall be liable for any inability to perform its obligations under any subsequent agreement due to war, riot, insurrection, civil commotion, fire, flood, earthquake, storm or other act of nature.
- Notification of the parties shall be considered to have been constructively received when it is mailed via the United States Postal Service, e-mailed, or delivered in hand to the parties as stated in the contract.
- Proposal shall also mean quotation, bid, offer, qualification/experience statement, and services. Proposers shall also mean Consultants, proposer's, bidders, or any person or firm responding to a Request for Information.
- The City reserves the right to retain all proposals for a period of 60 days for exam and comparison.
- All contracts entered into by the City of Pacific Grove shall be governed by the Laws of the State of California. Any disputes shall be resolved within the venue of the State of California.
- The proposer may submit an alternative proposal or proposals that it believes will also meet the City's objectives but in a different way. In this case, the proposed must provide an analysis of the advantages and disadvantages of each of the alternatives, and discuss under that circumstances the City would prefer one alternative to the other(s).

5.2 Reference Checks

The City of Pacific Grove reserves the right to contact any reference or any client listed in the documents for information that may be helpful to the City in evaluating the Contractor's performance on previous assignments.

5.3 Changes to RFP

Changes to the RFP will be e-mailed to all Consultants that submitted a letter of intent to respond. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP.

5.4 Submittal Address

Send proposals to Jennifer Pope, Management Analyst at jpopo@cityofpacificgrove.org or mail to:

City of Pacific Grove
Administrative Services Department
Attn: Jennifer Pope, Management Analyst
300 Forest Avenue
Pacific Grove, CA 93950

If submitting by mail, please ensure Professional Audit Services is written in the lower left-hand corner of the envelope. Three bound copies and one electronic copy should be submitted.

Proposals must be complete and submitted by the due date. Late submissions or delivery via facsimile will not be considered. The City assumes no responsibility for delays caused by delivery service. Postmarking by the due date will not substitute for actual receipt.

PROPOSAL FOR AUDITING SERVICES

Include this worksheet with the proposal.

Name of Firm: _____

Name of Contact: _____

Location of Firm: _____

Please provide the breakdown of costs associated with the following services:

City Audit and ACFR \$ _____

Agreed Upon Procedures for the Annual Appropriation Limit and Report \$ _____

State Controller Annual Financial Transactions Report \$ _____

State Controller Annual Street Report \$ _____

Measure X Compliant Report \$ _____

Single Audit and Single Audit Report (as, needed) \$ _____

Optional: Additional Printed Copies of the ACFR \$ _____

Total \$ _____

**CITY OF PACIFIC GROVE
PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICE AGREEMENT (“PSA”) FOR NON-CONSTRUCTION PROJECTS (“Agreement”), is made and effective as of [Insert date], between the City of Pacific Grove (“City”), a municipal corporation and [Insert consultant], [a sole proprietorship, partnership, limited liability partnership, corporation] (“CONSULTANT”). In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

This Agreement shall commence on [Insert date] and shall remain and continue in effect until the tasks described herein are completed, but in no event later than [Insert date], unless sooner terminated pursuant to the provisions of this Agreement.

2. SCOPE OF WORK

CONSULTANT shall perform the tasks and services (“Services”) described and set forth in Exhibit A, Scope of Services, attached hereto and incorporated herein as though set forth in full. CONSULTANT shall complete the tasks according to the schedule of performance which is also set forth in Exhibit A. To the extent that Exhibit A is a proposal from CONSULTANT, such proposal is incorporated only for the description of the Scope of Services and no other terms and conditions from any such proposal shall apply to this Agreement unless specifically agreed to in writing.

3. PERFORMANCE

CONSULTANT shall at all times faithfully, competently and to the best of their ability, experience, and talent, perform all Services described herein. CONSULTANT shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONSULTANT hereunder in meeting their obligations under this Agreement.

[IF RFP ADD: CONTENTS OF REQUEST FOR PROPOSAL AND PROPOSAL

CONSULTANT is bound by the contents of City’s Request for Proposal on file hereto and incorporated herein as Exhibit D, and the contents of the proposal submitted by CONSULTANT, available on file at _____, hereto and incorporated herein as Exhibit E. In the event of conflict, the requirements of City’s Request for Proposals and this Agreement shall take precedence over those contained in CONSULTANT’s proposals.]

4. CITY MANAGEMENT

The City Manager, or their designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONSULTANT, but not including the authority to enlarge the Scope of Work or change the

compensation due to CONSULTANT. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents that enlarge the Scope of Work or change CONSULTANT's compensation, subject to Section 6 hereof.

5. PAYMENT

- a. The City agrees to pay CONSULTANT monthly, in accordance with the payment rates and terms and the Payment Schedule as set forth in Exhibit B, attached hereto and incorporated herein by this reference as though set forth in full, based upon actual time spent on the above tasks. This amount shall not exceed [Insert amount] dollars (\$__.00) for the total term of the Agreement unless additional payment is approved as provided in this Agreement.
- b. The City Manager's contract authority is limited to \$39,999.99, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.
- c. CONSULTANT shall not be compensated for any Services rendered in connection with its performance of this Agreement that are in addition to those set forth herein, unless such additional services are authorized in advance and in writing by the City Manager or the City Council. CONSULTANT shall be compensated for any additional services in the amounts and in the manner as agreed to by City Manager and CONSULTANT at the time City's written authorization is given to CONSULTANT for the performance of said services.
- d. CONSULTANT shall submit invoices monthly for actual Services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for Services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If the City disputes any of CONSULTANT's fees it shall give written notice to CONSULTANT within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice. Any final payment under this Agreement shall be made within forty-five (45) days of receipt of an invoice therefore.

6. INSPECTION

City shall at all times have the right to inspect the work and materials. CONSULTANT shall furnish all reasonable aid and assistance required by City for the proper examination of the work and all parts thereof. Such inspection shall not relieve CONSULTANT from any obligation to perform said work strictly in accordance with the specifications or any modifications thereof and in compliance with the law.

7. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- a. The City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONSULTANT at least thirty (30) days prior written notice. Upon receipt of said notice, CONSULTANT shall immediately cease all Services under this Agreement, unless the notice provides otherwise. If the City

suspends or terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

- b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to CONSULTANT the actual value of the Services performed up to the time of termination, provided that the Services performed are of value to the City. Upon termination of the Agreement pursuant to this Section, CONSULTANT will submit an invoice to the City pursuant to Section 6.

8. DEFAULT OF CONSULTANT

- a. CONSULTANT's failure to comply with the provisions of this Agreement shall constitute a default. In the event that CONSULTANT is in default for cause under the terms of this Agreement, City shall have no obligation or duty to continue compensating CONSULTANT for any Services performed after the date of default and can terminate this Agreement immediately by written notice to the CONSULTANT. If such failure by the CONSULTANT to make progress in the performance of Services hereunder arises out of causes beyond the CONSULTANT's control, and without fault or negligence of the CONSULTANT, it shall not be considered a default.
- b. If the City Manager or designee determines CONSULTANT is in default in the performance of any of the terms or conditions of this Agreement, they shall cause to be served upon CONSULTANT a written notice of the default. The CONSULTANT shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event CONSULTANT fails to cure its default within such period of time or fails to present City with a written plan for the cure of the default, City shall have the right, notwithstanding any other provision of this Agreement, to terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this Agreement.

9. OWNERSHIP OF DOCUMENTS

- a. CONSULTANT shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of Services under this Agreement. CONSULTANT shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONSULTANT shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records; shall permit City to make transcripts or copies therefrom as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. If there is a substantial billing deviation adverse to City, then the cost of an audit shall be borne by CONSULTANT. Such records, together with supporting documents, shall be maintained for a period of five (5) years after receipt of final payment.

- b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONSULTANT. With respect to computer files, CONSULTANT shall make available to City, at CONSULTANT's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, copying and/or printing computer files. CONSULTANT hereby grants to City all right, title, and interest, including any copyright, in and to the documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared by CONSULTANT in the course of providing the Services under this Agreement.

10. RECORD AUDIT

In accordance with Government Code, Section 8546.7, for expenditures of greater than \$10,000, records of both City and CONSULTANT shall be subject to examination and audit by the Auditor General for a period of three (3) years after final payment.

11. INDEMNIFICATION AND DEFENSE

Indemnity

To the fullest extent permitted by law, CONSULTANT shall indemnify and hold harmless City and any and all of its officers, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of CONSULTANT, its officers, agents, employees or subconsultants (or any City or individual that CONSULTANT shall bear the legal liability thereof) in the performance of Services under this Agreement. CONSULTANT's duty to indemnify and hold harmless City shall not extend to the City's sole or active negligence.

Duty to defend

In the event City, its officers, employees, agents and/or volunteers are made a party to any action, lawsuit, or other adversarial proceeding arising from the performance of the Services encompassed by this Agreement, and upon demand by City, CONSULTANT shall defend City at CONSULTANT's cost or at City's option, to reimburse City for its costs of defense, including reasonable attorney's fees and costs incurred in the defense of such matters to the extent the matters arise from, relate to or are caused by CONSULTANT's negligent acts, errors or omissions. Payment by City is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and City, as to whether liability arises from the sole or active negligence of the City or its officers, employees, or agents, CONSULTANT will be obligated to pay for City's defense until such time as a final judgment has been entered adjudicating the City as solely or actively negligent. CONSULTANT will not be entitled in the absence of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

12. INSURANCE

CONSULTANT shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit C attached to and part of this Agreement.

13. INDEPENDENT CONSULTANT

- a. CONSULTANT is and shall at all times remain as to City a wholly independent consultant and/or independent contractor. The personnel performing the Services under this Agreement on behalf of CONSULTANT shall at all times be under CONSULTANT's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONSULTANT or any of CONSULTANT's officers, employees, or agents, except as set forth in this Agreement. CONSULTANT shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of City. CONSULTANT shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.
- b. No employee benefits shall be available to CONSULTANT in connection with the performance of this Agreement. Except for the fees paid to CONSULTANT as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONSULTANT for performing Services hereunder for City. City shall not be liable for compensation or indemnification to CONSULTANT for injury or sickness arising out of performing Services hereunder.

14. LEGAL RESPONSIBILITIES

CONSULTANT shall keep itself informed of State and Federal laws and regulations that in any manner affect those employed by it or in any way affect the performance of its Services pursuant to this Agreement. CONSULTANT shall at all times observe and comply with all such laws and regulations. City, and its officers, employees, and agents shall not be liable at law or in equity occasioned by failure of the CONSULTANT to comply with this Section.

15. UNDUE INFLUENCE

CONSULTANT declares and warrants that no undue influence or pressure was used against or in concert with any officer, employee or agent of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer, employee or agent of City has or will receive compensation, directly or indirectly, from CONSULTANT, or from any officer, employee or agent of CONSULTANT, in connection with the award of this Agreement or any Services to be performed as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

16. NO BENEFIT TO ARISE TO CITY OFFICERS AND EMPLOYEES

No officer, employee of City, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Services performed under the Agreement

during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.

17. RELEASE OF INFORMATION/CONFLICTS OF INTEREST

- a. All information gained by CONSULTANT in performance of this Agreement shall be considered confidential and shall not be released by CONSULTANT without City's prior written authorization. CONSULTANT, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONSULTANT gives City notice of such court order or subpoena.
- b. CONSULTANT shall promptly notify CITY should CONSULTANT, its officers, employees, agents, or subconsultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request ("Discovery"), court order, or subpoena from any person or party regarding this Agreement and the work performed there under or with respect to any project or property located within the City, unless City is a party to any lawsuit, arbitration, or administrative proceeding connected to such Discovery, or unless CONSULTANT is prohibited by law from informing City of such Discovery. City retains the right, but has no obligation, to represent CONSULTANT and/or be present at any deposition, hearing, or similar proceeding as allowed by law. Unless City is a party to the lawsuit, arbitration, or administrative proceeding and is adverse to CONSULTANT in such proceeding, CONSULTANT agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONSULTANT. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.
- c. If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person doing Work under this Agreement to complete and file a "Statement of Economic Interest" with CITY disclosing CONTRACTOR's and/or such other person's financial interests.

18. DISCRIMINATION

CONSULTANT agrees that in the performance of this Agreement, neither CONSULTANT nor any person acting on CONSULTANT's behalf shall discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sexual orientation, sex, gender identity, gender expression, military or veteran status or age.

19. NOTICES

Any notices which either party may desire to give to the other party under this Agreement must be in writing and may be given either by (i) personal service, (ii) delivery by a reputable document delivery service, such as but not limited to, Federal Express, which provides a receipt showing date and time of delivery, or (iii) mailing in the United States Mail, by first class mail, addressed to the address of the party as set forth below or at any other address as that party may later designate by notice:

To City: [Insert City Employee]
City of Pacific Grove
300 Forest Avenue
Pacific Grove, CA 93950
Attention: City Clerk

To CONSULTANT: _____

Notice is effective on the date of personal service, or 5 days following deposit in a United States mailbox, or date of postmark. The parties may agree to service by email.

20. THIRD PARTY BENEFICIARIES

Nothing contained in this Agreement shall be construed to create, and the parties do not intend to create, any rights in third parties.

21. ASSIGNMENT

CONSULTANT shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of CITY. Because of the personal nature of the Services to be rendered pursuant to this Agreement, only CONSULTANT shall perform the Services described in this Agreement. CONSULTANT may use assistants, under their direct supervision, to perform some of the Services under this Agreement.

[If specific to Consultant, add: CONSULTANT shall provide City fourteen (14) days' notice prior to the departure of [Insert name of particular person with expertise] from CONSULTANT's employ. Should [insert name] leave CONSULTANT's employ, City shall have the option to immediately terminate this Agreement, within three (3) days of the close of said notice period. Upon termination of this Agreement, CONSULTANT's sole compensation shall be payment for actual Services performed up to, and including, the date of termination or as may be otherwise agreed to in writing between City and the CONSULTANT. Before retaining or contracting with any sub-consultant for any Services under this Agreement, CONSULTANT shall provide City with the identity of the proposed sub-consultant, a copy of the proposed written contract between CONSULTANT and such sub-consultant, which shall

include and indemnity provision similar to the one provided herein and identifying City as an indemnified party, or an incorporation of the indemnity provision provided herein, and proof that such proposed sub-consultant carries insurance at least equal to that required by this Agreement or obtain a written waiver from City for such insurance.]

22. LICENSES

At all times during the term of this Agreement, CONSULTANT shall have in full force and effect, all licenses required of it by law for the performance of the Services described in this Agreement. CONSULTANT shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.

23. GOVERNING LAW

City and CONSULTANT understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in Monterey County, or federal district court with jurisdiction over City. CONSULTANT agrees not to commence or prosecute any dispute arising out of or in connection with this Agreement other than in the aforementioned courts and irrevocably consents to the exclusive personal jurisdiction and venue of the aforementioned courts.

24. ENTIRE AGREEMENT

This Agreement contains the entire understanding between the parties relating to their obligations described in this Agreement. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written and pertaining to the subject of this Agreement or with respect to the terms and conditions of this Agreement, are merged into this Agreement and shall be of no further force or effect. Each party is entering into this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. No amendment shall be valid unless in writing, executed by both parties.

25. DISPUTE RESOLUTION; ATTORNEY'S FEES

CONSULTANT shall continue to perform under this Agreement during any dispute. CONSULTANT and 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.

26. WORK SCHEDULED/TIME OF COMPLETION

City and CONSULTANT agree that time is of the essence in this Agreement.

27. AUTHORITY TO EXECUTE THIS AGREEMENT

The person or persons executing this Agreement on behalf of CONSULTANT warrants and represents that they have the authority to execute this Agreement on behalf of the CONSULTANT and have the authority to bind CONSULTANT to the performance of its obligations hereunder.

28. 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.

29. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction or arbitrator the remainder of this Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF PACIFIC GROVE

CONSULTANT

By: _____
Department Director

By: _____
Consultant

Date: _____

Date: _____

By: _____
City Manager or Mayor

By: _____
City Administrative Services Department

Date: _____

Date: _____

Approved As To Form:

City Attorney

Date

Attachments:

Exhibit A	Scope of Services
Exhibit B	Payment Schedule
Exhibit C	Insurance Requirements
[Exhibit D	Request for Proposal]
[Exhibit E	Consultant's Proposal]

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT SCHEDULE

EXHIBIT C

INSURANCE REQUIREMENTS

Without limiting CONSULTANT's indemnification of City, and prior to commencement of Work, CONSULTANT shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to City.

General liability insurance. CONSULTANT shall maintain commercial general liability insurance with coverage at least as broad as Insurance Services Office form CG 00 01, in an amount not less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, for bodily injury, personal injury, and property damage. The policy must include contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted.

Automobile liability insurance. CONSULTANT shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Consultant arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Professional liability (errors & omissions) insurance. CONSULTANT shall maintain professional liability insurance that covers the Services to be performed in connection with this Agreement, in the minimum amount of \$1,000,000 per claim and in the aggregate. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement and CONSULTANT agrees to maintain continuous coverage through a period no less than three (3) years after completion of the Services required by this Agreement.

Workers' compensation insurance. CONSULTANT shall maintain Workers' Compensation Insurance (Statutory Limits) and Employer's Liability Insurance (with limits of at least \$1,000,000).

CONSULTANT shall submit to CITY, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of CITY, its officers, agents, employees and volunteers.

Umbrella or excess liability insurance. [Optional depending on limits required]. CONSULTANT shall obtain and maintain an umbrella or excess liability insurance policy with limits that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability, automobile liability, and employer's liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrency of effective dates with primary policies;
- Policies shall "follow form" to the underlying primary policies; and

- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Other provisions or requirements

Proof of insurance. CONSULTANT shall provide certificates of insurance to City as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsements must be approved by City's Risk Manager prior to commencement of performance. Current certification of insurance shall be kept on file with City at all times during the term of this contract. City reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by CONSULTANT, his agents, representatives, employees or subconsultants.

Primary/noncontributing. Coverage provided by CONSULTANT shall be primary and any insurance or self-insurance procured or maintained by City shall not be required to contribute with it. The limits of insurance required herein may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of City before the City's own insurance or self-insurance shall be called upon to protect it as a named insured.

City's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these specifications or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by CONSULTANT or City will withhold amounts sufficient to pay premium from CONSULTANT payments. In the alternative, City may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VI (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the City's Risk Manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against CITY, its elected or appointed officers, agents, employees and volunteers or shall specifically allow CONSULTANT or others providing insurance evidence in compliance with these specifications to waive their right of recovery prior to a loss. CONSULTANT hereby waives its own right of recovery against City, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). CONSULTANT acknowledges and agrees that any actual or alleged failure on the part of the City to inform CONSULTANT of non-compliance with any requirement imposes no additional obligations on the City nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Notice of cancellation. Consultant agrees to oblige its insurance agent or broker and insurers to provide to CITY with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that City and its officers, employees, agents, and volunteers shall be additional insureds under such policies. This provision shall also apply to any excess/umbrella liability policies.

Prohibition of undisclosed coverage limitations. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

Separation of insureds. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the insurer's limits of liability. The policy(ies) shall not contain any cross-liability exclusions.

Pass through clause. CONSULTANT agrees to ensure that its subconsultants, subcontractors, and any other party involved with the project who is brought onto or involved in the project by CONSULTANT, provide the same minimum insurance coverage and endorsements required of CONSULTANT. CONSULTANT agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. CONSULTANT agrees that upon request, all agreements with consultants, subcontractors, and others engaged in the project will be submitted to City for review.

City's right to revise specifications. The City reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the CONSULTANT ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the CONSULTANT, the City and CONSULTANT may renegotiate CONSULTANT's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by City. City reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by City.

Timely notice of claims. CONSULTANT shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from CONSULTANT's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. CONSULTANT shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the work.

EXHIBIT D

REQUEST FOR PROPOSAL

EXHIBIT E

CONSULTANT'S PROPOSAL

AMENDMENT #1 TO MEASURE X MASTER PROGRAMS FUNDING AGREEMENT
BETWEEN
THE TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
PACIFIC GROVE

THIS AMENDMENT No. 1 to the agreement originally dated August 7, 2017, between the Transportation Agency for Monterey County, hereinafter referred to as “TAMC,” and Pacific Grove, hereinafter referred to as “Jurisdiction,” is hereby entered into between TAMC and the Jurisdiction.

RECITALS:

- A. **WHEREAS**, TAMC and Jurisdiction entered into a Measure X Master Programs Funding Agreement on August 7, 2017, hereinafter referred to as “Agreement;”
- B. **WHEREAS**, both the Agreement and Measure X implementing ordinance (Ordinance 2016-01) included a Maintenance of Effort requirement defined as an average of the prior three years spent for local transportation purposes; and
- C. **WHEREAS**, subsequent to the adoption of Measure X, the State of California adopted “SB 1,” which provided, among other things, funding to local jurisdictions based upon a different Maintenance of Effort calculation, thus creating potential confusion and conflicts in such calculations for Measure X jurisdictions; and
- D. **WHEREAS**, TAMC also received feedback from local jurisdictions during the Fiscal Year 2017/18 Measure X Annual Reporting period that this Maintenance of Effort calculation would penalize local jurisdictions that make large one-time investments in transportation maintenance improvements;
- E. **WHEREAS**, on July 16, 2019, the Measure X Citizens Oversight Committee recommended that the Maintenance of Effort definition be revised to “an amount not less than the annual average of its expenditures from its general fund during the preceding three fiscal years 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151. This baseline amount will be indexed annually to the Engineering News Record construction index.”;
- F. **WHEREAS**, on October 23, 2019, the TAMC Board of Directors, with support from the Measure X Citizens Oversight Committee and Jurisdiction, duly approved Ordinance 2019-01, which amended the Measure X implementing ordinance (Ordinance 2016-01) to revise the definition for calculating the Maintenance of Effort, as described above; and
- G. **WHEREAS**, TAMC and Jurisdiction desire to amend the Agreement to make the Maintenance of Effort definition consistent with Ordinance 2019-01.

NOW, THEREFORE, the parties agree to amend the Agreement as follows:

1. Article I, Paragraph 4

The definition of "Maintenance of Effort Report" shall be replaced in its entirety with the following:

Maintenance of Effort Report: A report to be adopted by a jurisdiction, no later than December 31 of each year the Measure X tax is in effect, verifying that Measure X funds received by the reporting jurisdiction have been used to augment, and not supplant, local resources spent in the fiscal year, as described in Article IV Section A.6. The amount of local resources spent for the fiscal year is calculated as the annual average of its expenditures from its general fund during the 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151. This baseline amount will be indexed annually to the Engineering News Record construction index."

2. Article IV, Section A, Paragraph 6

Article IV, Section A, Paragraph 6 shall be replaced in its entirety with the following:

6. RECIPIENT shall certify, no later than August 31, 2017 and December 31st of each year thereafter, in an annual Maintenance of Effort Report verification that these Measure X funds are used to augment and not supplant local resources spent. RECIPIENT shall expend each fiscal year from its general fund for street and highway purposes an amount not less than the annual average of its expenditures from its general fund during the 2009-10, 2010-11, and 2011-12 fiscal years, but not less than what was expended in 2016-17 (when Measure X passed), as reported to the Controller pursuant to Streets and Highways Code section 2151 ("Maintenance of Effort"). This baseline amount will be indexed annually to the Engineering News Record construction index."

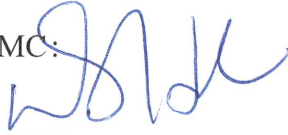
3. REMAINDER OF TERMS UNCHANGED

All other terms of the Agreement remain in full effect.

An executed copy of this Amendment No. 1 shall be attached to the Agreement and shall be incorporated as if fully set forth therein.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 1 to the Agreement with Consultant.

TAMC:



Debra L. Hale
Executive Director

12/10/19

(date)

Approved as to form:



TAMC Counsel

12/10/19

JURISDICTION:



City Manager
City of Pacific Grove

(date)

Approved as to Form



(date)

Measure X
Master Programs Funding Agreement
between the
TRANSPORTATION AGENCY FOR MONTEREY COUNTY
AND
CITY OF PACIFIC GROVE

This Master Programs Funding Agreement (“Agreement”) is effective the 7th of ~~AUGUST~~, 2017, and is entered into by and between the Transportation Agency for Monterey County (“TAMC”) and City of Pacific Grove (“RECIPIENT”).

RECITALS

1. On November 8, 2016, the voters of Monterey County, pursuant to the provisions of the Local Transportation Authority and Improvement Act, California Public Utilities Code Section 180000 et seq. (the “Act”), approved Measure X (TAMC Ordinance No. 2016-01) on the Monterey County Ballot, thereby authorizing TAMC to impose and administer the proceeds from a three-eighths cent transaction and use tax (“Measure X”).
2. The duration of the Measure X sales tax will be 30 years from the initial year of collection, which will begin April 1, 2017, with said tax to terminate/expire on March 31, 2047. The tax proceeds will be used to pay for the programs and projects outlined in TAMC’s Transportation Safety and Investment Plan (the “Measure X Investment Plan”), as it may be amended.
3. This Agreement delineates the requirements of the Measure X funds that are directly allocated to local jurisdictions, as authorized by Measure X and the Measure X Investment Plan. A table showing the Measure X Local Distribution Summary for the first year of this Agreement is attached hereto as Exhibit A.

NOW, THEREFORE, it is mutually agreed by and between the parties as follows:

Article I: Definitions

As used herein, the following terms have the following meanings:

1. Annual Program Compliance Report: An Annual Program Compliance Report is a document produced by RECIPIENT no later than December 31 of each year the Measure X tax is in effect, and describes the efforts taken by the jurisdiction to comply with the requirements for the receipt and use of Measure X funds. A template Annual Program Compliance Report is attached as Exhibit B.
2. Eligible Expenses: Those expenses which are eligible to be funded from Measure X, as set forth in greater detail in Article III.C. The first date from which expenses are eligible for funding is January 1, 2017.

3. Local Road Projects: Projects identified in the Policies and Project Descriptions as “Local Road Maintenance, Pothole Repairs and Safety” projects for each jurisdiction, and as may be amended in the RECIPIENT’s Measure X Five-Year Capital Improvement Program.
4. Maintenance of Effort Report: A report to be adopted by a jurisdiction, no later than December 31 of each year the Measure X tax is in effect, verifying that Measure X funds received by the reporting jurisdiction have been used to augment, and not supplant, local resources spent in the fiscal year, as described in Article IV Section A.6. The amount of local resources spent for the fiscal year is calculated by using an average of the prior three (3) years spent for local transportation purposes and shall be the same amount reported to the State Controller pursuant to Streets and Highways Code section 2151.
5. Measure X: TAMC Ordinance No. 2016-01, approved by the voters on November 8, 2106, establishing a three-eighths of one percent (0.375) retail transactions and use tax for a period of thirty (30) years.
6. Measure X Five Year CIP: A Capital Improvement Program looking forward for the next five (5) years that specifically references projects anticipated to be funded by Measure X. The Measure X Five Year CIP is to be updated annually by the RECIPIENT and cover a period of five (5) years from the time of the annual update.
7. Measure X Investment Plan: The Transportation Safety and Investment Plan adopted by TAMC, the County of Monterey, and each city within the County of Monterey, setting forth an expenditure plan for Measure X proceeds.
8. Pavement Management Program: A computerized program for the identification and assessment of the quality of pavement within the jurisdiction, including ETC (“Extent of pavement analyzed, Type of recorded pavement distress, and Condition of the roadway”).
9. Policies & Project Descriptions: A statement of policies governing the requirements for, and allocation of, tax proceeds and project descriptions of anticipated use of tax proceeds by TAMC and the various jurisdictions. The Policies & Project Descriptions are in addition to and elaborate upon the Measure X Investment Plan.
10. Regional Transportation Planning Assessment: An annual assessment currently paid by local jurisdictions from local funds as a form of congestion management fee that is used to fund TAMC’s regional transportation planning efforts.
11. Regional Development Impact Fee Program: A program of development fees prepared and adopted by TAMC and assessed on new development within the County of Monterey, in order that new development pay its fair share of the costs to mitigate negative impacts to the regional transportation system.

Article II: Funding Allocations

1. This Agreement authorizes TAMC to allocate to RECIPIENT its share of the funds derived from Measure X as described in the voter-approved Measure X Investment Plan and TAMC's Policies and Project Descriptions ("Policies and Project Descriptions") for the Local Road Projects program of the Measure X Investment Plan, which constitutes 60% of Measure X revenues after administrative and Board of Equalization expenses have been paid. TAMC will distribute Measure X funds for Local Road Projects pursuant to a formula weighted 50 percent by the jurisdiction's population and 50 percent of lane miles within the jurisdiction utilizing data from the California Department of Finance and Department of Transportation as set forth in Section III.2 below. RECIPIENT's allocations are subject to change based on variations in these measurements, as determined annually pursuant to Article III Section A.2.
2. The remainder of funds received from Measure X and not allocated to RECIPIENT jurisdictions shall be allocated to TAMC for Regional Projects, and administration and Board of Equalization expenses as provided for in Measure X, the Measure X Investment Plan and the Projects & Policies Descriptions.
3. All eligible expenses, as described in Article III Section C, and incurred by RECIPIENT as of January 1, 2017 shall be reimbursable with the RECIPIENT's share of Measure X Local Road Projects funds, to the extent that such funds cover the claim for reimbursement.
4. Measure X funding provided for Local Road Projects is to be used for transportation purposes only, and to supplement and not replace existing local revenues used for transportation purposes. Refer to Article III Section A Paragraph 6 for requirements related to Maintenance of Effort.

Article III: Payments and Expenditures

A. TAMC's Duties and Obligations

1. Within ten (10) working days of actual receipt of the quarterly Measure X sales tax revenues from the State Board of Equalization ("BOE"), TAMC shall remit to the RECIPIENT its designated amount of available funds disbursed on a quarterly basis by the formulas described above.
2. TAMC shall annually update the Measure X fund revenue projections and the resulting fund allocation formulas to reflect the most current population using the California Department of Finance's annual population estimates (Report E-1 published in May) and the California Department of Transportation's annual lane miles estimates (California Public Road Data Report published in October) as it is made available, but no later than

June 30 of each year. TAMC shall use the updated Measure X program allocation formulas in the allocations beginning July 1 of each new fiscal year, which is from July 1 to June 30.

3. TAMC shall report quarterly to the public the amount of Measure X revenues distributed to RECIPIENT for the quarter and fiscal year to date.
4. TAMC shall provide for an independent annual audit of its financial statements, including revenues and expenditures, and also of its calculation of the allocation formula for distributing Measure X revenues to each recipient and render an annual audit report to the TAMC Board within 240 days following the close of the fiscal year.
5. TAMC may conduct an audit of expenditures made by RECIPIENT to determine whether such expenditures are in compliance with this AGREEMENT and the Measure X Investment Plan, and shall provide timely notice to RECIPIENT prior to conducting such audit.

B. Recipient's Duties and Obligations

1. RECIPIENT shall expend all Measure X funds received in compliance with Measure X, the Measure X Investment Plan, and the Policies & Project Descriptions, as they may be adopted or amended by TAMC from time to time, and this Agreement.
2. RECIPIENT shall conduct an independent annual audit of Measure X revenues received and expenditures made by RECIPIENT to demonstrate such expenditures comply with this AGREEMENT and the Measure X Investment Plan, and shall provide said audit to TAMC by December 31, 2018, and each December 31st of each year thereafter, throughout the existence of Measure X funding, including the December 31st of the last year of funding.
3. RECIPIENT shall set up and maintain an appropriate system of accounts to report on Measure X funds received. RECIPIENT must account for Measure X funds, including any interest received or accrued, separately from any other funds received from TAMC or any other source. All Measure X revenues received and expended shall be accounted for and tracked in its own separate budget and fund titled "Transportation Safety & Investment Plan Account" and will not be comingled with any other funds. The accounting system shall provide adequate internal controls and audit trails to facilitate an annual compliance audit for each fund type and the respective usage and application of said funds. TAMC and its representatives, agents and nominees shall have the absolute right upon reasonable written notice to RECIPIENT, which is not less than 72 hours, to inspect and copy any accounting records related to such funds, except to the extent specifically prohibited by applicable law.
4. RECIPIENT shall comply with all reporting requirements in Article IV.

5. RECIPIENT hereby agrees to and accepts the formulas used in the allocation of Measure X revenues as reflected in the ballot measure and the Measure X Investment Plan, and agrees to accept and utilize the California Department of Finance Estimates of Population figures (Report E-1, updated each May) and the California Department of Transportation's annual lane miles estimates (California Public Road Data Report published in October) for California cities and counties for the annual update of the sales tax allocation formulas to begin in each new fiscal year.
6. RECIPIENT shall maintain participation in TAMC's Regional Development Impact Fee program and impose these fees on new development as applicable to assure that new development pays for its impacts on the regional transportation system.
7. RECIPIENT shall continue to participate in TAMC's Regional Transportation Planning Assessment program as set forth therein.
8. In order to receive its share of Local Road Projects funds, RECIPIENT shall develop a Pavement Management Program, or participate in the development of a regional Pavement Management Program, developed by TAMC.
9. RECIPIENT shall abide by the Maintenance of Effort requirements imposed by Measure X and State law. RECIPIENT shall annually report on its Maintenance of Effort as provided in Article IV.

C. Eligible Expenditures

RECIPIENT may expend Local Road Projects funds on any or all of the following categories:

1. Road and Street Maintenance and Repairs: Filling potholes, repairing, resurfacing or reconstruction of roads, streets and bridges, or otherwise conducting maintenance to extend the lifetime of the roadway network and/or reduce or eliminate liability and safety concerns. Repairs, reconstruction or maintenance of walkways or bikeways are also eligible.
2. Road Safety and Operations: Improvements designed to reduce traffic collisions and related injuries and fatalities, as well as projects designed to reduce traffic delays. Examples of safety projects include, but are not limited to: roundabouts, turning lanes, traffic signals or other intersection improvements, hazard eliminations, safety barriers, traffic calming or speed reduction measures. New lane miles or roadways are not eligible with the exception of the Pinnacles Parkway Connection project.
3. Walkability and Pedestrian Safety: Projects designed to make neighborhoods or corridors walkable by making walking safer, more comfortable and convenient. Examples include, but are not limited to: sidewalks, lighted crosswalks, walking paths, landscaping or other barriers from traffic, bulb-outs to shorten the crossing distance, safe-haven islands, pedestrian countdown signals, street or path lighting and traffic calming.

4. Bike Safety Projects: Projects designed to support safe and convenient bicycling for all levels of riders. Examples include, but are not limited to: new or improved bikeways (lanes, paths, bridges, protected lanes or other barriers to automobile traffic); removing barriers to bicycling (curbs, medians, etc.); signal detectors; and, bicycle racks, lockers and other storage facilities.
5. Street Enhancements: Streetscape projects that enhance the safety and experience of the transportation corridor. Examples include, but are not limited to: lighting, landscaping, and drainage improvements.
6. New Technology: Projects that support or include new technology to promote transportation safety, mobility, cost savings or air quality improvements. Examples include, but are not limited to: electric vehicle chargers, vehicle detection systems, traffic signal synchronization, as well as the required participation in the Pavement Management Program referenced in Art. III.B.8, above.
7. Planning, Engineering and Design, Environmental Review and Mitigation and Acquisition: The costs of planning, engineering, design and environmental review and mitigation and acquisition necessary to undertake any project within a category described above are also eligible expenses under Measure X and this Agreement.
8. Reporting and Implementation of this Agreement: The costs of fulfilling the requirements imposed by this Agreement, including the preparation of audits and reports, are eligible expenses, provided, however, that only the direct costs of such actions (such as actual hours worked by staff) are eligible.

D. Other Expenditure Restrictions

1. Transportation Purposes Only: RECIPIENT shall use all Measure X funds solely for transportation purposes as defined by the authorizing ballot measure. Any jurisdiction that violates this provision must fully reimburse all misspent funds, including all interest which would have been earned thereon at the Pooled Money Investment Account Earnings Yield Rate at determined by the California State Controller's Office.
2. Staff Cost Limitations: Direct costs associated with the delivery of programs and projects associated with Measure X programs, including direct staff costs and consultant costs, are eligible uses of Measure X funds. Indirect costs are eligible for funding provided that the jurisdiction has a Caltrans-approved Indirect Cost Allocation Plan / Indirect Cost Rate Proposal (ICAP/ICRP or equivalent) established. Jurisdictions with an ICAP/ICRP approved by its cognizant agency will submit a copy of the cognizant agency approval, the approved proposal, plan, and other relevant data prior to invoicing for indirect costs. If a jurisdiction does not currently have an approved ICAP/ICRP or equivalent, a flat rate of 40% is eligible for indirect costs.
3. Matching Funds: Measure X funds can be utilized to match grants, loans, programs and pay annual debt service to fund eligible approved bonds for local road maintenance or safety projects as defined Article II Section C.

4. Environmental and Engineering Standards: RECIPIENT shall design projects to meet current standards, and shall include bicycle and pedestrian access whenever possible. RECIPIENT shall thoroughly study projects for environmental impacts and incorporate identified environmental mitigations consistent with applicable environmental law.

Article IV: Reporting Requirements

A. Requirements and Withholding

RECIPIENT shall comply with each of the reporting requirements set forth below. If RECIPIENT fails to comply with one or more of these requirements, TAMC may withhold payment of further Measure X funds to RECIPIENT until full compliance is achieved, as described in Article V.

1. RECIPIENT shall complete, at RECIPIENT's expense, a separate independent audit of RECIPIENT's financial statements for the prior fiscal year ended June 30 of Measure X funds received and used. To that end, RECIPIENT shall provide such audit to TAMC by December 31st of each year.
2. RECIPIENT shall, at RECIPIENT'S own expense, and by December 31st of each year, submit to TAMC Annual Program Compliance Reports (covering the prior fiscal year) regarding programs and projects on which RECIPIENT expended Measure X funds.
3. RECIPIENT shall document expenditure activities and report on the performance of Measure X-funded activities through the Annual Program Compliance reporting process, annual audits, the Five-Year Capital Improvement Program Report, the Pavement Management Program Report, the Maintenance of Effort Report, and shall provide any additional information reasonably requested by TAMC.
4. RECIPIENT shall prepare and submit to TAMC a Measure X 5-Year Capital Improvement Program that identifies the eligible transportation projects that are anticipated to be funded with the jurisdiction's share of Local Road Projects funds. RECIPIENT shall update this document on an annual basis no later than August 31, 2017 and December 31st of each year thereafter. A template of the form that RECIPIENT shall use to submit this report is included as Exhibit C.
5. RECIPIENT shall submit annual Pavement Management Program reports no later than December 31st each year on the conditions of RECIPIENT's streets, to ensure timely repairs and keep the public informed. A template of the form that RECIPIENT shall use to submit these reports in included as Exhibit D.
6. RECIPIENT shall certify, no later than August 31, 2017 and December 31st of each year thereafter, in an annual Maintenance of Effort Report verification that these Measure X funds are used to augment and not supplant local resources spent. RECIPIENT shall expend each fiscal year from its general fund for street and highway purposes an amount

not less than the annual average of its expenditures from its general fund during the preceding three fiscal years, as reported to the Controller pursuant to Streets and Highways Code section 2151 ("Maintenance of Effort"). For purposes of this calculation, an average of the prior three (3) years spent for local transportation purposes will be used. Exemptions from this calculation include one-time capital expenses, and expiration of any voter-approved fund sources that were used for local transportation purposes. In the case of expired voter-approved fund sources, the three-year average baseline would be recalculated in the next annual verification period without said expired fund sources. Revenues from a fee imposed or contribution first received by a local jurisdiction on or after January 1, 2016 which are used on or after July 1, 2016, by that local jurisdiction for maintenance or improvement purposes on its streets and highways shall be considered as general fund expenditures for the purposes of compliance with the provisions of this Section in the fiscal year in which such expenditures are made. A template of the form that RECIPIENT shall use to submit these reports is included as Exhibit E.

B. Public Outreach

1. RECIPIENT shall install or mount Measure X signage adjacent to Measure X funded construction projects through completion, where practical and shall reference TAMC, so Monterey County taxpayers are informed as to how RECIPIENT is using Measure X funds. TAMC and RECIPIENT shall mutually approve the design for the Measure X signage to be used by RECIPIENT.
2. RECIPIENT shall provide current and accurate information on RECIPIENT's website, to inform the public about how RECIPIENT is using Measure X funds.
3. RECIPIENT shall actively participate in TAMC's public awareness program, developed in collaboration with TAMC, as a means of ensuring that the public has access to the ability to know which projects and programs are funded through Measure X funds.
4. RECIPIENT shall upon reasonable notice and within a reasonable time make its administrative officer or designated staff available to render a report or answer any and all inquiries in regard to RECIPIENT's receipt, usage, and/or compliance audit findings regarding Measure X funds before the TAMC Board and/or the Measure X Citizens Oversight Committee, as applicable.
5. RECIPIENT agrees that TAMC may review and/or evaluate all project(s) or program(s) funded by Measure X. This may include visits by representatives, agents or nominees of TAMC to observe RECIPIENT's project or program operations, to review project or program data and financial records, and to discuss the project with RECIPIENT's staff or governing board.

Article V: Enforcement

A. Verification and Compliance

1. In addition to RECIPIENT reporting requirements, TAMC may request fiscal data from local jurisdictions as needed to ensure compliance. Each local jurisdiction shall furnish the data to the TAMC not later than 90 days after receiving a request therefor. TAMC may withhold payments to local jurisdictions which do not comply with requests for information or which provide incomplete information.
2. Failure to meet any of the conditions included in this AGREEMENT by the RECIPIENT shall result in the suspension of the distribution of funds to the RECIPIENT. Resumption of funding distribution to the RECIPIENT shall resume only after full repayment for any misuse, and confirmation by TAMC of compliance to each of the conditions in this AGREEMENT. Local Road Projects program funding accrued due to the failure of a city/county to meet the above conditions will be held in trust for up to two (2) years for said jurisdiction, after which the funds will be redistributed to the remaining cities/county in Monterey County per formula. Resumption of funding to the RECIPIENT can occur at any time during the life of Measure X upon compliance with the conditions included in this AGREEMENT and full repayment of any prior misused funds.

B. Dispute Resolution Process

1. If at any time either party hereto is considered to have failed to meet any of the conditions included in this AGREEMENT, the parties shall meet and confer in a good faith effort to resolve the matter. Such meet and confer shall occur within thirty (30) days of a notice from one party to the other of non-compliance.
2. If, after meeting and conferring, there is still a dispute as to compliance or non-compliance with a term or condition of the AGREEMENT, TAMC shall refer the matter to the Measure X Oversight Committee for its review and recommendation. Consistent with the terms of the Ralph M. Brown Act, the Measure X Oversight Committee meeting may be a special meeting, provided that at least 72 hours prior notice is provided to the public and an agenda is posted. After considering the matter, the Measure X Oversight Committee may make its recommendation to the parties to resolve the matter.
3. Pending the consideration and possible resolution of the issue by the Measure X Oversight Committee, TAMC shall withhold future Measure X payments to RECIPIENT under this AGREEMENT, except for allocations required for bond payments, which shall not be withheld.
4. If, after receiving the recommendation from the Measure X Oversight Committee the parties are still in dispute over compliance or non-compliance of this AGREEMENT, the matter shall be agendized at the next available TAMC Board meeting. Each party may submit up to five (5) pages in support of its position, as part of the agenda package to be submitted for such Board meeting. The decision of the TAMC Board on the dispute shall be final.

5. Resumption of funding distribution to the RECIPIENT can occur at any time during the life of Measure X but shall only occur after full repayment of any unauthorized expenditure(s) of Measure X funds, and confirmation by TAMC of RECIPIENT's compliance with each of the conditions in this AGREEMENT. Repayment of unauthorized expenditures may not be made by future Measure X funds.
6. Local Road Projects program funding accrued due to the failure of a city/county to meet the above conditions will be held in trust for up to two (2) years for said jurisdiction, after which the funds will be redistributed to the remaining cities/county in Monterey County per the formula set for in Art.II.
7. In the event that RECIPIENT's allocations are exempt from suspension because of bond payments, but RECIPIENT continues to fail to comply with the requirements of this AGREEMENT, RECIPIENT and TAMC agree that an action for specific performance is an available remedy.

Article VI: Other Provisions

A. Indemnity by RECIPIENT

Neither TAMC, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Measure X funds distributed to RECIPIENT pursuant to this AGREEMENT or any work or action taken with such funds. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that RECIPIENT shall fully defend, indemnify and hold harmless TAMC, its governing body, and all its officers, agents, and employees, from any liability imposed on TAMC for injury (as defined in Government Code Section 810.8) occurring by reason of anything done or omitted to be done by RECIPIENT in connection with the Measure X funds distributed to RECIPIENT pursuant to this AGREEMENT or any work or action taken with such funds.

B. Indemnity by TAMC

Neither RECIPIENT, nor its governing body, elected officials, any officer, consultant, agent, or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this Tax Sharing AGREEMENT. Notwithstanding Government Code Section 895.6, it is also understood and agreed, pursuant to Government Code Section 895.4, that TAMC shall fully defend, indemnify, and hold harmless RECIPIENT, and its governing body, elected officials, all its officers, agents, and employees from any liability imposed on RECIPIENT for injury (as defined in Government Code Section 810.8) occurring by

reason of anything done or omitted to be done by TAMC under or in connection with any work, authority or jurisdiction delegated to TAMC under this AGREEMENT.

C. Jurisdiction and Venue

The laws of the State of California will govern the validity of this AGREEMENT, its interpretation and performance, and any other claims to which it relates. All legal actions arising out of this AGREEMENT shall be brought in a court of competent jurisdiction in Monterey County, California and the parties hereto hereby waive inconvenience of forum as an objection or defense to such venue.

D. Term

The term of this AGREEMENT shall be from July 1, 2017 to June 30, 2047, unless amended in writing or a new Master Programs Funding Agreement is executed between TAMC and RECIPIENT.

E. Severability

If any provision of this AGREEMENT is found by a court of competent jurisdiction or, if applicable, an arbitrator, to be unenforceable, such provision shall not affect the other provisions of the AGREEMENT, but such unenforceable provisions shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this AGREEMENT.

F. Modification

This AGREEMENT, its Exhibits, as well as the referenced Policies and Project Descriptions and TAMC Ordinance 2016-01, constitutes the entire AGREEMENT, supersedes all prior written or oral understandings regarding Measure X funds (but not project funding agreements). This AGREEMENT may only be changed by a written amendment executed by both parties. Notwithstanding the foregoing, the Policies and Project Descriptions related to Measure X funds may be changed from time to time by TAMC Board action.

G. Independent Contractor

Nothing in this AGREEMENT is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, partnership, or allow TAMC to exercise discretion or control over the professional manner by which RECIPIENT designs or constructs projects using Measure X funds. RECIPIENT staff performing work using Measure X funds shall at all times remain employees of RECIPIENT and shall not be deemed employees of TAMC for any purpose. RECIPIENT shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any RECIPIENT employee performing work using Measure X funds. Similarly, nothing in this AGREEMENT is intended nor shall be construed to create an employer-employee

relationship, a joint venture relationship, partnership, or allow RECIPIENT to exercise discretion or control over the professional manner by which TAMC designs or constructs projects using Measure X funds. TAMC staff performing work using Measure X funds shall at all times remain employees of TAMC and shall not be deemed employees of RECIPIENT for any purpose. TAMC shall be solely responsible for any and all compensation, payroll taxes, withholdings, workers' compensation and any other insurance or benefits of any kind for any TAMC employee performing work using Measure X funds.

H. Notices

Notice required under this AGREEMENT shall be delivered personally by facsimile or by first-class postage pre-paid mail to RECIPIENT and TAMC at the addresses listed below. Notice shall be deemed effective upon personal delivery or facsimile transmission, or on the third day after deposit with the U.S. Postal Service. RECIPIENT and TAMC shall give prompt notice of any change of address, including contact name and title. Unless otherwise changed according to these notice provisions, notices shall be addressed as follows:

FOR RECIPIENT:

**Daniel Gho, Public Works Director
2100 Sunset Drive
Pacific Grove, CA 93950
831-648-5722**

FOR TAMC:

[insert name title address and phone]

I. Waiver

Any waiver of any terms of this AGREEMENT shall be in writing signed by both parties hereto. 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.

J. Non-Assignment

Neither party hereto may assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the other party.

K. Headings

The headings in this AGREEMENT are for convenience only and shall not be used to interpret the terms of this AGREEMENT.

L. Construction of Agreement

The parties hereto 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.

[Signatures on next page]

In Witness Whereof, the parties have executed this AGREEMENT by their duly authorized officers as of the date first written below.

City of Pacific Grove

Transportation Agency for
Monterey County (TAMC)

By: Ben Harvey Date: 6/25/17
Ben Harvey
City manager

By: Debra L. Hale Date: 8/7/17
Debra L. Hale
Executive Director

Approved as to Form and Legality:

Approved as to Form and Legality:

By: David Laredo Date: 6/28/17
David Laredo
City Attorney

By: Kathryn Reimann Date: 8/2/17
Kathryn Reimann
TAMC Counsel

EXHIBIT A

MEASURE X LOCAL DISTRIBUTION SUMMARY

TAMC distributes Measure X funds based on the distribution percentages for net Measure X Revenues specified in the Measure X Investment Plan as shown below. Annual amounts will be updated by TAMC annually without amendments to this agreement.

	Population	Lane Miles	Local Road Projects Fund Percentage
Carmel	3775	60	1.19%
Del Rey Oaks	1648	19	0.44%
Gonzales	8296	19	1.22%
Greenfield	16729	44	2.54%
King City	13073	56	2.25%
Marina	20073	129	3.99%
Monterey	28252	235	6.29%
Pacific Grove	15268	129	3.42%
Salinas	153215	578	25.38%
Sand City	338	10	0.16%
Seaside	33312	177	6.16%
Soledad	25430	39	3.50%
County	102085	2512	43.46%

EXHIBIT B

ANNUAL PROGRAM COMPLIANCE REPORT

ANNUAL PROGRAM COMPLIANCE REPORT

The Annual Program Compliance Report should, at a minimum, describe the efforts of the local jurisdiction to comply with the policies of Measure X over the reporting period. The report should include a narrative of how the jurisdiction spent Measure X funds on local projects including the project title; brief description; discussion of the project benefits; and before and after pictures. A balance sheet should also be included with the report detailing the receipt and expenditure of Measure X funds, as shown in the example below.

CITY/COUNTY OF XXX - YEAR 20XX BALANCE SHEET EXAMPLE

REVENUES	
Carryover from Previous Year	
Measure X Revenues	
Earning on Interest	
TOTAL REVENUES:	
EXPENDITURES	
(Listing of Program Expenditures)	
TOTAL EXPENDITURES:	
FUND BALANCE, END OF PERIOD:	

As attachments to the Annual Program Compliance Report, the jurisdiction should include the following additional reports:

- ATTACHMENT 1: Independent Audit of Financial Statements for Measure X Funds, Prior Fiscal Year
- ATTACHMENT 2: Five-Year Capital Improvement Program
- ATTACHMENT 3: Pavement Management Program Report
- ATTACHMENT 4: Maintenance of Effort Report

EXHIBIT C

FIVE YEAR CAPITAL IMPROVEMENT PROGRAM

CITY / COUNTY of XXX
MEASURE X FIVE-YEAR CAPITAL IMPROVEMENT PROGRAM
FOR YEARS 20XX – 20XX

YEAR 1

Project	Description & Phase	Total Cost	Measure X	PCI
Totals:				

YEAR 2

Project	Description & Phase	Total Cost	Measure X	PCI
Totals:				

YEAR 3

Project	Description & Phase	Total Cost	Measure X	PCI
Totals:				

YEAR 4

Project	Description & Phase	Total Cost	Measure X	PCI
Totals:				

YEAR 5

Project	Description & Phase	Total Cost	Measure X	PCI
Totals:				

DEFINITIONS OF REQUESTED INFORMATION:

1. **Project**: The title of the project to receive Measure X funding.
2. **Description & Phase**: A general description of the project and the phase (e.g. Environmental; Design; Right-of-Way; or Construction) that will be funded in the given year.
3. **Total Cost**: The total cost of the project.
4. **Measure X**: The amount of Measure X funding that will be expended on the project.
5. **PCI**: The Pavement Condition Index for the roadway, from the local jurisdiction’s Pavement Management Program.

EXHIBIT D

PAVEMENT MANAGEMENT PROGRAM REPORT

PAVEMENT MANAGEMENT PROGRAM REQUIREMENTS

The approved ordinance for the Transportation Safety & Investment Plan (Measure X) outlines the requirements for the use of local road maintenance, pothole repair and safety funds. It includes a requirement for each jurisdiction to have a pavement management program. "Each city and the County of Monterey shall develop, or participate in the development of by TAMC, a pavement management program. They shall submit regular reports on the conditions of their streets, to ensure timely repairs and keep the public informed. Development of the pavement management program by TAMC is eligible to be funded out of this program prior to distribution of funds to the cities and the County."

SYSTEM REQUIREMENTS: In order to receive Measure X funds, the cities and the County shall utilize a pavement management program (PMP) and submit regular reports on the conditions of their streets, to ensure timely repairs and keep the public informed. The pavement management program should utilize an approved software-based tool for analyzing pavement conditions and reports findings on rehabilitation/maintenance strategies based on funding levels. The pavement management program used by the jurisdiction must contain, at a minimum, the following features:

- Store the inventory all roadways within a jurisdiction (in a compatible database with other jurisdictions).
- Assess the condition of the roadways (based on seven distresses and three severity levels).
- Provide the current Pavement Condition Index (PCI) for the roadways (as per ASTM D6433)
- Identify all pavement sections needing maintenance, rehabilitation, or replacement.
- Calculate budget needs for maintenance, rehabilitation or replacement of deficient pavement sections (for the current year and the next three years at various overall condition levels).
- Develop maintenance strategies for the most cost effective level of maintenance or repair appropriate at the time of the inspection.
- Generate pavement management program reports (in various formats).

All jurisdictions must implement and maintain an approved Pavement Management Program ("StreetSaver" or equivalent). The "StreetSaver" Pavement Management Program developed by Metropolitan Transportation Commission (MTC) is the most utilized program in the Bay Area and would be an excellent program for this region as well. The use of the "StreetSaver" Pavement Management Program is recommended (but not required) since it would allow good compatibility between local jurisdictions and also provide regional benefits. Jurisdictions may elect to use an alternative pavement management program provided it meets the above listed minimum requirements and receives written approval from TAMC.

The Agency will assist with the development of an overall pavement management implementation plan for this region with the participation and coordination of all the cities and the county. The Agency recommends the development of a regional system to benefit from a coordinated system. The regional system would be developed collaboratively between local jurisdictions. In order to have a regional database, it is recommended that all agencies utilize a

common pavement management program. This would allow compilation of information on a regional basis. It would also create opportunities for interagency coordination and to guide regional transportation investments and planning.

UPDATE REQUIREMENTS: The jurisdictions must complete the following updates:

- Review and update the pavement information for all roads every two years.
- Pavement conditions must be re-inspected every three years for arterials and collectors.
- Pavement conditions must be re-inspected every six years for residential streets and local/rural roads, unless otherwise approved by TAMC. Pavement condition surveys may be done by either automated or manual inspections, and may be done either individually or in conjunction with another agency. A percentage of the network can be scheduled each year so that the entire network is updated on a regular cycle.

REPORT REQUIREMENTS: All jurisdictions shall submit an annual Pavement Management Program Report Letter to TAMC no later than December 31 of each year the Measure X tax is in effect using the approved report letter format. It shall include all the highlighted information and shall be on local agency letterhead (see attached template).

All jurisdictions shall also participate in the biennial pavement needs survey conducted for the California Statewide Local Streets and Roads Needs Assessment and provide the requested roadway data for their jurisdiction.

Pavement Management Program Annual Report Letter Template (April 2017)

Instructions:

- Please use Local Agency Letterhead
- Text highlighted in yellow needs to be completed. Remove highlighting in final version.

Date: [Enter current DATE]

To: Todd Muck
Deputy Executive Director
Transportation Agency for Monterey County
55-B Plaza Circle
Salinas, CA 93901

Re: Pavement Management Program Annual Report Letter

The [City/County/of XYZ] confirms that it has a Pavement Management Program that conforms to the criteria established by the Transportation Agency for Monterey County and included in the Measure X Agreement with the Local Agency. An approved Pavement Management Program must be in place to be eligible for Measure X funds.

The Pavement Management Program utilizes a software system developed by:

[] Metropolitan Transportation Commission StreetSaver, [fill in version]
[] Other [Fill in name of system] [fill in version]

The system was updated by [enter consultant name] and contains, at a minimum, the following elements:

- Inventory of all existing pavements under the local agency jurisdiction:

Centerline miles: [fill in miles]
Total lane miles (or equivalent units): [fill in miles]
The last update of the inventory was completed on: [date of inspection]

- Pavement Condition Index (PCI) [fill in PCI]
- Identification of sections of pavement needing maintenance, rehabilitation, or replacement.

Total lane miles (or equivalent units) [fill in miles]

- Estimated budget needs to rehabilitate or replace deficient sections for the current year and the next three years:

[\$ enter dollar amount] (Unconstrained Needs)

You may direct any questions regarding the system to [contact person's name] at [phone number and consultant firm if not listing a city employee].

Sincerely,

[Signature]

[Name of City Manager, Public Works Director or equivalent department head]

EXHIBIT E

MAINTENANCE OF EFFORT REPORT

**CITY / COUNTY of XXX
THREE-YEAR MAINTENANCE OF EFFORT REPORT
FOR YEARS 20XX – 20XX**

Year 1

Fund Source	Amount	Year
Total Expended on Transportation		

Year 2

Fund Source	Amount	Year
Total Expended on Transportation		

Year 3

Fund Source	Amount	Year
Total Expended on Transportation		

Three-Year Average of Transportation Expenditures:

\$ _____

I, the undersigned, certify that the above information is true and correct to the best of my knowledge.

[Signature]

[Name of City Manager, Public Works Director or equivalent department head]