



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

AGENDA REPORT

TO: Honorable Mayor and Members of City Council

FROM: Thomas Fruthey, City Manager

MEETING DATE: March 4, 2015

SUBJECT: Ordinance to permit Design-Build for the City's Local Water Project

CEQA: The Council certified a FEIR for this project on Nov. 24, 2014 - SCH Number 2014021058.

RECOMMENDATION

Hold second reading and adopt an ordinance implementing the terms of Article 40 of the City Charter, to allow the Design-Build approach to design and construct the City of Pacific Grove Local Water Project.

DISCUSSION

Design-Build is a method of construction project delivery in which one entity – the design-build team – works under a single contract with the project owner to provide design and construction services. Design-Build is an alternative to the traditional bid-design-build project delivery method. Under the latter approach, design and construction services are split into separate work efforts and separate contracts, and are undertaken by separate entities requiring separate procurement and contract negotiation efforts. Staff and consultants working on the development of the Local Water Project have presented and discussed the Design-Build approach throughout the planning of the project as well as with the State Water Resources Control Board from whom the City has applied for a low-interest construction loan. The Facilities Plan Report (<http://38.106.5.85/modules/showdocument.aspx?documentid=9754>) and the project's environmental documentation (<http://38.106.5.85/modules/showdocument.aspx?documentid=11905>) have identified the benefits of using the Design-Build approach for this project.

Prior to proceeding on the Local Water Project, the most prudent approach is to implement the terms of Article 40 of the City Charter to specifically authorize the Design-Build approach. Article 40 of the City Charter allows an ordinance to implement its terms. The Charter also confers upon the City Council a process whereby the affirmative vote of five of Council members can authorize a work to be performed in an alternate manner to the bid process ordinarily prescribed by Article 40; this can enable unique contracts such as the Local Water Project. The proposed ordinance affirms this alternative as allowed by Article 40; the ordinance includes a declaration of facts that constitute an urgent necessity for the preservation of life, health or property based upon the primary goals and benefits specified in the Recitals.

As noted during Council discussion at first reading, straightforward portions of the project—such as locating conflicts with existing utilities and final engineering design of the waste sewer force main pipeline under Ocean View Boulevard—can be separated from the main responsibilities of the Design-Build Entity. Following design by others, construction can then be completed by the

Design-Build Entity or by local construction firms. Project elements such as the design or construction of the force main pipeline are relatively routine for a typical design or construction firm. These elements can therefore be addressed by a relatively large number of firms, including firms local to the Monterey Peninsula. The final decision as to how best to design and to construct such elements cannot be made until the City is further into the project.

A summary of the draft ordinance, approved by the City Attorney, was published in the City's newspaper of record. There have been no changes that have in any way amended the general scope and original purpose of the ordinance since first reading, as addressed by Article 15 (e) of the Charter.

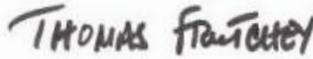
FISCAL IMPACT

Substantial savings in time and overall cost of the Local Water Project can be anticipated to result from this action, when compared to the design-bid-build approach. Savings in time will allow the City to transfer the Golf Course and Cemetery from potable to the less expensive non-potable water earlier, saving even more money. Water supply for irrigation purposes at the Cemetery and Golf Course could be lost or severely diminished if the project cannot be built within its projected time frame. The cost projections and state grant and loan amounts have all been predicated on using the Design-Build approach.

ATTACHMENTS

1. Ordinance No. 15-_____

RESPECTFULLY SUBMITTED,



Thomas Fruthey
City Manager

ORDINANCE NO. _____

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

FINDINGS

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

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

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

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

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

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

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

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

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

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

acceptance by the City.

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

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

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

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

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

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

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

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

declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person or circumstance, be declared invalid or unconstitutional.

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

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

AYES:

NOES:

ABSENT:

APPROVED:

BILL KAMPE, Mayor

ATTEST:

SANDRA KANDELL, Deputy City Clerk

APPROVED AS TO FORM:

DAVID C. LAREDO, City Attorney

Relevant Charter and Code Provisions

Charter: Article 40 Contracts on Public Works; Materials and Supplies

(a) In the erection, improvement and repair of all public buildings and works, in all street and sewer work, and in furnishing supplies or materials for same when the expenditure required for the same shall exceed the sum of Fifteen Thousand Dollars (\$15,000.00), the same shall be done by contract and shall be let to the lowest responsible bidder, after notice by publication in the official newspaper, and security for the due execution and performance of any such contract may be required of the successful bidder. The Council may provide by ordinance for the detailed procedure for carrying out this Article.

Provided, that the Council may reject any and all bids presented and may re-advertise in their discretion, and provided further, that after rejecting bids the Council may declare and determine by an affirmative vote of five of its members that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city employees or others, and after adoption of a resolution to this effect, it may proceed to have the same done in the manner stated without further observance of the foregoing provisions of this Article.

Provided, further, that such contracts likewise may be let without advertising for bids if such work shall be deemed by the Council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by an affirmative vote of five Council members and containing a declaration of facts constituting such urgency.

(b) The Council by ordinance shall adopt policies and procedures, including appropriate bidding regulations, governing purchases of or contracts for supplies, materials and equipment. Purchases of supplies, materials and equipment shall be made only in accordance with the adopted policies and procedures.

(Amended in June 5, 1984, general election).

PGMC: Chapter 2.16 Purchasing System and Procedures Article IV. Public Works Contracts

2.16.320 Written contract.

Every project involving an expenditure greater than the maximum amount for which the purchasing agent is authorized, as specified in Article II of this chapter, for the erection, improvement or repair of public buildings and works, in all sewer and street work, and in furnishing materials or supplies for same shall be let by written contract, approved by the council by resolution, with the lowest responsible bidder in accordance with the procedures prescribed in this article. PGMC [2.16.080](#) notwithstanding, dispensation of bid procedures for projects described in this section shall be made only as allowed in this article. [Ord. 14-005 § 2, 2014; Ord. 1667 N.S. § 1, 1989; Ord. 1405 N.S. § 2, 1984].

2.16.330 Notice inviting bids.

Notices inviting bids shall be published once in an official newspaper of the city at least 10 days before the date of opening the bids. In addition to the published notice, the purchasing agent may solicit bids from prospective vendors and contractors by direct mail requests, by notice on official city bulletin boards, or by any other means advantageous to the city. Notices inviting bids shall include a general description of the contractual services to be purchased and shall state where bid blanks and written specifications may be secured, and shall designate the date, time and place for opening bids. [Ord. 1405 N.S. § 2, 1984].

2.16.340 Bidders' security.

When deemed necessary, bidders' security may be prescribed in the public notice inviting bids. Bidders shall be entitled to return of bid security; provided, that a successful bidder shall forfeit his or her bid security upon his or her refusal or failure to execute the contract within 15 calendar days after the notice of award of contract has been mailed, unless the city is responsible for the delay. The council, on refusal or failure of the successful bidder to execute the contract, may award it to the next lowest responsible bidder. The amount of the lowest bidder's security shall be applied by the city to the contract price differential between the lowest bid and the second lowest bid, and the surplus, if any, shall be returned to the lowest bidder. [Ord. 1405 N.S. § 2, 1984].

2.16.350 Bid opening procedure.

Sealed bids submitted to the city shall be identified as bids on the envelope, and shall be opened in public on the date, at the time and place stated in the public notices. [Ord. 1405 N.S. § 2, 1984].

2.16.360 Tabulation of bids.

All bids received shall be tabulated and after consultation with the appropriate department head shall be forwarded to the council with a recommendation as to the best and lowest bid. A tabulation of all bids received shall be available for public inspection for not less than two years after the bid opening. [Ord. 1405 N.S. § 2, 1984].

2.16.370 Tie bids.

If two or more bids received are for the same amount, quality and service being equal, and if the public interest will not permit the delay of readvertising for bids, the council shall determine the successful bidder by drawing of lots. [Ord. 1405 N.S. § 2, 1984].

2.16.380 Acceptance or rejection of bids.

The council, in its discretion, when it is in the best interests of the city to do so, may waive any informalities or minor irregularities in any bid process, and may reject any or all bids. [Ord. 1405 N.S. § 2, 1984].

2.16.390 Work by day labor.

If all bids are rejected or no bids are received the council may readvertise or may, by an affirmative vote of at least five of its members, declare and determine that in its opinion the work in question may be more economically or satisfactorily performed by day labor, by either city

employees or others, and after adoption of a resolution to that effect, may proceed to have the same done in the manner stated. [Ord. 1405 N.S. § 2, 1984].

2.16.400 Emergencies – Contracts let without bids.

Public works contracts governed by this article may be let without advertising for bids if such work shall be deemed by the council to be of urgent necessity for the preservation of life, health or property, and shall be authorized by resolution passed by an affirmative vote of at least five of its members and containing a declaration of the facts constituting such urgency. [Ord. 1405 N.S. § 2, 1984].

2.16.410 Performance bonds.

The council, before entering into a contract governed by this article, may require a performance bond or other adequate security guaranteeing performance, in an amount as it shall find reasonably necessary to protect the best interests of the city. Form of acceptable security shall be described in the notice inviting bids. [Ord. 1405 N.S. § 2, 1984].

2.16.420 Splitting projects.

No undertaking involving amounts in excess of the maximum amount for which the purchasing agent is authorized, as specified in Article II of this chapter, shall be split into parts for the purpose of avoiding the provisions and restrictions of this article. [Ord. 14-005 § 2, 2014; Ord. 1405 N.S. § 2, 1984].