



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

AGENDA REPORT

TO: Honorable Mayor and Members of the City Council
FROM: Anastazia Aziz, AICP, Principal Planner
MEETING DATE: March 7, 2018
SUBJECT: Historic Resources Inventory Ad Hoc Committee
CEQA STATUS: Does not constitute a "Project" as defined by California Environmental Quality Act (CEQA) Guidelines Section 15378.

RECOMMENDATION

Authorize the creation of an Ad Hoc Committee to review the Historic Resources Inventory Request for Proposal, with the Mayor appointing one member each from the City Council, Planning Commission, and Historic Resources Committee to said committee.

DISCUSSION

A Request for Proposal (RFP) to review the City's Historic Resources Inventory was released on February 14, 2018, with a due date of March 26, 2018. Review of the proposals is anticipated to take place in early April, and will include interviews with potential consultants. Creating an Ad Hoc Committee comprised of a Member of the City Council, Planning Commission and Historic Resources Committee to review responses to the RFP (along with key City staff) will ensure a wide range of perspectives and expertise are included.

OPTIONS

1. Take no action.
2. Provide alternate direction.

FISCAL IMPACT

The FY 17-18 budget authorized up to \$75,000 to commission a historical survey. However, in order to facilitate the Shoreline Management Plan, which was required as part of a Coastal Development permit for the recently-completed Recreation Trail seawall repair, \$50,000 from the historical survey budget was allocated to the Shoreline Management Plan. Approximately \$35,000 remains in the FY 17-18 budget to fund the historical survey which is adequate for the FY 17-18. Additional funds will be requested for FY 18-19 based on the proposals and associated quotes received.

GOAL ALIGNMENT

Cultural Heritage – Safeguard the cultural heritage of the community through effective programs, education and policymaking.

ATTACHMENTS

1. Request for Proposal.

RESPECTFULLY SUBMITTED:

Anastazia Aziz

Anastazia Aziz, AICP
Principal Planner

REVIEWED BY:



Ben Harvey
City Manager



**CITY OF PACIFIC GROVE
COMMUNITY AND ECONOMIC DEVELOPMENT
DEPARTMENT**

**REQUEST FOR PROPOSAL
FOR PROFESSIONAL SERVICES
for a**

Historic Resources Inventory Update

RFP Issue Date: February 14, 2018.

RFP Due Date & Time: March 26, 2018, 3:00pm

Late proposals will not be accepted.

Contact: Anastazia Aziz, AICP, Principal Planner
Community & Economic Development
Department 300 Forest Avenue
Pacific Grove, CA 93950

Phone: (831) 648-3192

Email: aaziz@cityofpacificgrove.org

INTRODUCTION AND PROJECT BACKGROUND

The City of Pacific Grove (“City”) is requesting proposals (RFP) from qualified consultants to award a contract to update the City’s Historic Resource Inventory (HRI). The update includes a deletions survey, an additions survey and recommended conservation areas and/or districts including structures that contribute to the City’s HRI. The work shall be conducted in phases (detailed under ‘Scope of Work’). The RFP requests that the entities respond to this RFP with the following materials:

- Executive Summary Letter
- Project Schedule
- Project Cost (separately sealed)
- Scope of Services

The City of Pacific Grove is located on the Monterey Peninsula, and shares borders with the City of Monterey, Pebble Beach, and with the coastline adjacent to the Monterey Bay including the National Marine Sanctuary. The City encompasses a diversity of natural and built resources ranging from sandy beaches, rocky shores, a beloved coastal recreational trail and many historic resources including the oldest continuously operating lighthouse on the West Coast, Asilomar State Conference Grounds, and structures within the Pacific Grove Retreat. The City of Pacific Grove website is www.cityofpacificgrove.org.

PACIFIC GROVE HISTORIC PRESERVATION BACKGROUND

The Historic Context Statement, adopted in 2011, identifies development patterns and significant property types within the city. The document is a key tool to better understand and evaluate the city’s historic resources. The contents are organized according to periods of development related to the city’s historic occupation and development:

- Native American & Mission Periods (to 1820)
- Mexican & Early American Periods (1821-1872)
- Early Development of Pacific Grove (1873-1902)
- Pacific Grove Comes of Age (1903-1926)
- City of Homes (1927-1945)
- Suburban Expansion (1946-1965).

The original city layout as developed in the nineteenth century included the area between Lighthouse Avenue and Monterey Bay; the oldest buildings are generally located in this tight-knit grid. The city then expanded outward through a series of additions, subdivision, and annexations. Larger parcels with more recent construction are located in Pacific Grove Acres and in the hills near Forest Avenue. Notable Pacific Grove sites include the Point Pinos Lighthouse (1854), located at the northwest corner of the city; Lovers Point, a beach and park just north of the city center; the Monarch Butterfly Sanctuary near the city’s western edge; and the Julia Morgan designed Asilomar complex at the southwest corner of the city. Monterey’s famous “Cannery Row” is just east of the Pacific Grove city limits.

The City has taken significant steps over the years to preserve its cultural and aesthetic heritage, including:

- Establishing a local Historic Resources Inventory (HRI) in 1978, based upon an original survey of 541 properties, later expanded to approximately 1,400 properties.
- Adopting a Historic Preservation Ordinance in 1994 to provide for preservation of historic structures, including an Architectural Review Board (ARB) review process for exterior alterations to, and demolitions and relocations of, historic structures.

- Establishing a Historic Resources Committee (HRC) in 1997 to decide on HRI additions and deletions and the content of applications for historic demolitions and relocations, as well as adopting a set of local evaluation criteria upon which to review HRI additions and deletions.
- Adoption of *Architectural Review Guidelines for Single-Family Residences* (1998) including *Appendix I: Working with Buildings on the Historic Resources Inventory*.
- Revising the review process for exterior alterations in 2001 to enable ARB approval of historic preservation permits (for exceptions to zoning standards).
- Formalizing CEQA review procedures by issuing Historic Assessment Guidelines in 2008 and the Initial Historic Screening process in 2009.
- Approving a citywide Historic Context Statement and Preservation Program Considerations in 2011 as a tool to better understand and evaluate the City's historic resources.
- Updating the Historic Preservation Ordinance, effective February 1, 2018, to shift design review for historic structures from the ARB to the HRC, revise local evaluation criteria and other minor amendments.

The City does not currently have the Mills Act economic incentive program in place.

Today, the Historic Resource Inventory is outdated and must be updated for compliance with CEQA and consistency with the Secretary of Interior's Standards for the Treatment of Historic Properties and the California Office of Historic Preservation's (OHP's) Instructions for Recording Historical Resources. Approximately 1,400 structures are on the City's HRI and the following six are listed on the National Register of Historic Places:

- Pt. Pinos Lighthouse
- Asilomar Conference Grounds
- F.L. Buck House
- Oliver Smith Trimmer House
- Centrella Hotel
- Gosby House

One additional structure is listed on the California State Register:

- Chautauqua Hall

California Environmental Quality Act

When a proposed project might adversely affect a historical resource, the California Environmental Quality Act (CEQA) requires the City carefully consider the possible impacts before proceeding (Public Resources Code Sections 21084 and 21084.1). Revisions to CEQA made in 1992, particularly Chapter 1075 of the Statutes of 1992, highlight the importance of evaluating possible impacts upon historic resources.

CEQA applies to discretionary projects and equates a substantial adverse change in the significance of a historical resource with a significant effect on the environment (Section 21084.1). "Substantial adverse change" is defined as demolition, destruction, relocation or alteration activities that would impair historical significance (Section 5020.1).

This presents the City with two key questions which it must address in sequence.

1. First, does a significant historical resource exist?
2. Second, where a significant historical resource does exist, will the proposed project result in a substantial adverse change such that the qualities that make the resource significant are impaired or lost?

PROJECT OBJECTIVES

Project objectives are in alignment with recommendation D.2 of the 2011 Pacific Grove Preservation Program Considerations. The priority of this update and funding available is to focus on properties currently on the Historic Resource Inventory outlined in Objectives 1 through 3. Objectives 4 through 6 will also be considered dependent on cost and available funding.

1. Evaluate the current status of structures listed on the City's Historic Resources Inventory and determine if these structures retain enough historic integrity to remain eligible for listing. Identify structures, if any, that are no longer eligible for local listing due to alterations or demolition or lack of historic integrity. Include the level of CEQA review necessary to remove any structures proposed for removal.
2. Identify which structures remain eligible despite alterations.
3. Identify structures, if any, that are eligible for listing for the National Register of Historic Places or California Register of Historical Resources that are currently on the HRI.
4. Identify other structures within the city, including but not limited to buildings, infrastructure and key development patterns not currently on the National Register of Historic Places, California Register of Historical Resources or the City HRI that may be eligible.
5. Propose a classification system for structures eligible for the City's local HRI.
6. Analyze whether there are any geographic or thematic groupings of properties that would comprise a potential historic conservation areas or district(s), or other method of categorization, particularly in the "Retreat" neighborhood. If so, identify which properties within these areas are eligible as contributors to the potential conservation areas or district(s). Identify appropriate methods and applications of design review.

SCOPE OF WORK

The project area is the total area within the City limits of Pacific Grove. There are approximately 1,400 properties currently listed on the City's Historic Resources Inventory.

The approach to the survey update shall be based upon current professional methodology standards and procedures developed by the California Office of Historic Preservation and National Park Service.

Kick-Off Meeting. The City will arrange a **public** outreach meeting with the selected consultant, the Historic Resources Committee, Heritage Society and members of the public. The meeting may include individual notification of all Historic Inventory property owners.

Conduct Historical Research. Research the history of Pacific Grove. Sources include the Pacific Grove Public Library history files, Pacific Grove Heritage Society archives, published books and pamphlets, historic maps and photographs, previous surveys, studies and General Plan Elements, including the City's General Plan Historic and Archaeological Resources Element, Historic Context Statement, City and County property records and online research. Evaluate the City's existing Historic Resource Inventory.

Fieldwork. Perform a "reconnaissance" survey of the properties currently listed on the City's Historic Resource Inventory. Properties shall be observed, recorded and photographed by the consultant from the public right-of-way utilizing a City approved field survey form. The obtained information shall be used to evaluate material and architectural integrity. Verify preliminary evaluations with on-site field work and

corroborate other property-specific data.

Data Management. Compile the results of the reconnaissance survey and property specific research into a database for sorting and analysis.

Analysis. Conduct an analysis of the data in conjunction with the Historic Context Statement. Factors in the analysis should include historic significance and integrity, architectural style, neighborhood cohesion and relationships to larger development patterns in an area. Prepare a preliminary determination of significance for each property based upon all of the data collected. Evaluation will be based on National Register, California Register and local criteria. Prepare groupings of properties and analyze any geographic or thematic relationships. Assign preliminary California Resource Status Codes to all relevant properties.

Update Meeting. The City will arrange a public meeting with the City's Historic Resources Committee, the Pacific Grove Heritage Society and members of the public that includes individual notification to all Historic Resources Inventory property owners to review data and analysis prior to final evaluation and documentation.

Final Evaluation and Documentation. Assign a final evaluation of significance for each of the properties based on all of the previous steps and assign a final California Resource Status Code. The consultant will document all of the properties surveyed on State of California Department of Parks and Recreation (DPR) 523A - Primary Record forms. All photographs shall be a City-approved color digital format (deliverable). Finalize the database (deliverable) and complete the inventory of Pacific Grove's historic resources with DPR data recorded in the California Historical Resources Information System (CHRIS) (verification).

Prepare a report (deliverable) that includes:

- An executive summary.
- Project methodology.
- A summary of the City's existing historic resource preservation framework (survey and evaluation history, General Plan and zoning ordinance, design guidelines).
- Survey results and findings.
- Definitions.
- Conclusions and recommendations.

Wrap Up Meeting. The Historic Resources Committee will review the Historic Resources Inventory Update and adopt the revised document. All HRI property owners will be individually notified of these meetings.

LIMITATIONS

1. All reports and pertinent data and/or materials shall be the sole property of the City of Pacific Grove and may not be used or reproduced in any form without the explicit written permission of the City.
2. This RFP does not commit the City to award a contract, to pay any costs incurred in the preparation of the proposal response to this request, or to produce or contract for services or supplies. The City reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source, or to cancel in part or in its entirety, this RFP, if

it is in the best interest of the City to do so. The City may require the selected proposer to participate in negotiations and to submit such price, technical or other revisions of their proposals as may result from negotiations.

3. The City has the authority to terminate its contract with the consultant at any time during the period of the study, if it is found by the City that the consultant's performance is not satisfactory.
4. All proposers are hereby notified that, during any prospective performance, consultant must agree to provide Equal Employment Opportunity and shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, age, marital status, national origin, sexual orientation or HIV positive findings. Such actions shall include, but are not limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay, or other forms of compensation; and selection for training, including apprenticeship.

In the event of consultant's noncompliance with the non-discrimination provisions of the prospective contract, the City shall impose such contract sanctions as it may determine to be appropriate including, but not limited to, withholding of payments to consultant under the contract until consultant complies and/or cancellations, terminations, or suspension of the contract, in whole or in part.

SUBMISSION REQUIREMENTS

One original paper and five paper copies must be received along with an electronic version of files (DVD or USB) **no later than 3:00pm on Monday, March 26, 2018** to the following:

*Anastazia Aziz, AICP, Principal Planner
c/o City Clerk
300 Forest Avenue
Pacific Grove, CA 93950
Phone: (831) 648-3192*

Submittals shall be made in a sealed envelope or box marked "**Proposal for the City of Pacific Grove Historic Resources Inventory Update**". The City will date and time stamp all envelopes or boxes when they are received. Envelope(s) shall show the Proposer's name and address in the upper left hand corner. Submittals will be opened immediately following the submittal closing time at the location mentioned above.

- Late or faxed RFPs may not be accepted.
- All statements, whether selected or rejected, shall become the property of the City.
- Cost of preparation of the RFP shall be borne by the submitting party.
- Statements shall be signed by an authorized employee in order to received consideration.
- The City will not be responsible for RFPs delivered to a person/location other than specified above.
- The City reserves the right to reject any and all RFPs that do not comply with these submittal instructions.

Submittal Contents

Consultants submitting proposals are required to adhere to the following format in their proposals:

1. Letter of transmittal.
2. A description explaining consultant's understanding of City's needs related to this project, as outlined in Project Objectives and Scope of Work.
3. A description and cost estimate of any additional data required.

4. Background and experience, including resumes of key staff involved and brief summary of examples of similar completed project scopes.
5. A description of consultant's capabilities and ability to complete study.
6. Detailed description of approach to be taken in addressing proposed Project Objectives and Scope of Work, including project schedule showing start and completion dates of all major tasks.
7. Description of consulting team, including subcontractors, if any, consultant staffing plan, and management plan to be used to produce study. A statement that the consultant will maintain the staff indicated on the team, including the overall project manager, unless provided for in writing and authorized by the City of Pacific Grove.
8. A cost estimate for each task and all services included in this proposal, including all billing rates. The cost should include attending four public hearings - two Historic Resources Committee meetings, one Planning Commission and one City Council meeting.
9. Commitment to negotiate in good faith a Professional Services Agreement for preparation of the Historic Resource Inventory Update, and provide a not-to-exceed compensation total for expenses, including reimbursables.

MATERIALS AVAILABLE

Proposing consultants are encouraged to utilize materials available from the City's Community and Economic Development [Planning](#) and [Historic Resources](#) websites for background information

BUDGET

The total budget for the project is \$75,000 including all reimbursables. Should this proposed budget not be sufficient, please (1.) indicate a scope of work that can be completed for that amount with (2.) an itemized list of additional deliverables and cost to complete the update.

FILING AND SELECTION PROCESS

The RFPs will be evaluated based on demonstrated competence and professional qualifications for performance of the services required. The selection process will involve an evaluation of qualifications and experience of consultants through a process developed by the City to narrow the total number of interested parties to a short list of no more than three consultants. These consultants may be interviewed, with one consultant being recommended for selection by the City Council. A professional services agreement will be consummated with the selected consultant.

The City reserves the right to disqualify submittals based on insufficient response to this Request for Proposals. The City also reserves the right to negotiate specific requirements and costs.

Additional RFP Information

Contract. The contracted firm will be required to sign a contract with the City relating to the work to be performed (Attachment 1).

Response Material Ownership. The material submitted in response to the RFP becomes the property of the City of Pacific Grove and will only be returned to the contracted firm at the City's option. Responses may be reviewed by any person after the final selection has been made. The City of Pacific Grove has the right to use any or all ideas presented in reply to this request. Disqualification of a Consultant does not eliminate this right.

Acceptance of Proposal Content. The contents of the proposal of the successful Consultant may become

contractual obligations if the City of Pacific Grove wishes to execute a contract based on the submitted proposal. Failure of the successful Consultant to accept these obligations in a contract may result in cancellation of the award and such Consultant may be removed from future solicitations.

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

General Conditions of RFP.

- a) The City reserves the right to reject any and all proposals, to waive any informality, to request interviews of Consultant(s) prior to award and to select and negotiate the Contract services in the best interest of the City.
 - b) The Consultant shall guarantee to perform the services offered and the total price of the proposal for a period of no less than 60 days from the deadline for submission of proposals.
 - c) 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 Consultant.
 - d) The Consultant shall provide all necessary personnel, materials and equipment to perform and complete all work under this proposal.
 - e) The Consultant shall be unbiased and vendor neutral.
 - f) The City intends to recommend award of a contract to the City Council for the requested services within one (1) month of receipt of the proposals. The Consultant shall be prepared to commence work immediately upon execution of a contract with the City.
 - g) Unless otherwise stated, invoices are to be submitted to the Community and Economic Development Public Works Department division 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.
 - h) 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.
 - i) This contract will be for the services described in the RFP response; however, this agreement should not be considered exclusive. As deemed necessary, the City reserves the right to obtain these services from any other vendor.
 - j) Unless otherwise specified all costs listed are firm for the term of the contract.
 - k) 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.
 - l) Notification of the parties shall be considered to have been constructively received when it is mailed via the United States Postal Service or delivered in hand to the parties as stated in the contract.
 - m) Proposal shall also mean quotation, bid, offer, qualification/experience statement, and services.
- Proposers shall also mean vendors, proposer's, bidders, or any person or firm responding to a Request for Information.

Reference Documents

- **Historic Context Statement**
<https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/hcs1.pdf>
<https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/hcs2.pdf>
<https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/hcs3.pdf>

<https://www.cityofpacificgrove.org/sites/default/files/general-documents/historic-resources/pg-ppc2011.10.31-final.pdf>

- **Historic Resources Inventory**

<https://www.cityofpacificgrove.org/living/community-economic-development/planning/historic-resources/historic-resources-inventory>

- **General Plan Chapter 7 Historic and Archaeological Resources**

<https://www.cityofpacificgrove.org/sites/default/files/general-documents/general-plan/gpchapter07.pdf>

- **Historic Preservation Ordinance**

<http://www.codepublishing.com/CA/PacificGrove/#!/PacificGrove23/PacificGrove2376.html#23.76>

- Sample Contract (attached)

CITY OF PACIFIC GROVE AGREEMENT FOR CONSULTANT PROFESSIONAL SERVICES
(Over \$35,000)

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

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

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONSULTANT to perform, and CONSULTANT hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: _____.

2. **PAYMENTS BY CITY.** City shall pay the CONSULTANT in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONSULTANT under this Agreement shall not exceed the sum of \$ _____.

3. **TERM OF AGREEMENT.** The term of this Agreement is from _____ to _____ unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONSULTANT and City and with City signing last, and CONSULTANT may not commence work before City signs this Agreement.

4. **ADDITIONAL PROVISIONS/EXHIBITS.** The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A: *[scope of services/payment provisions, etc.]*

5. **PERFORMANCE STANDARDS.**

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

5.02. CONSULTANT, its agents, employees, and subconsultants shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.

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

6. **PAYMENT CONDITIONS.**

6.01. CONSULTANT shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONSULTANT may submit such invoice monthly or at the completion of each phase of the project, as provided on page 16 of the proposal, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONSULTANT for the previous

period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the City Auditor-Controller for payment. The City Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.02. CONSULTANT shall be eligible to receive reimbursement for actual travel expenses up to the amount specified in the cost proposal.

7. TERMINATION.

7.01. During the term of this Agreement, the City may terminate the Agreement for any reason by giving written notice of termination to the CONSULTANT at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

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

8. INDEMNIFICATION (Revised per PARSAC).

8.01 Indemnification for Professional Liability. Where the law establishes a professional standard of care for Consultant's Services, to the fullest extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all losses, liabilities, damages, costs and expenses, including attorney's fees and costs to the extent same are caused in whole or in part by any negligent or wrongful act, error or omission of Consultant, its officers, agents, employees or sub-consultants (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of professional services under this Agreement.

8.02 Indemnification for Other than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Consultant shall indemnify, protect, defend and hold harmless City, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including attorney's fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Consultant or by any individual or entity for which Consultant is legally liable, including but not limited to officers, agents, employees or subconsultants of Consultant.

8.03 Limitation of Indemnification. Notwithstanding any provision of this [Indemnification] to the contrary, design professionals are required to defend and indemnify the City only to the extent permitted by Civil Code Section 2782.8, which limits the liability of a design professional to claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The term "design professional," as defined in Section 2782.8, is limited to licensed architects, licensed landscape

architects, registered professional engineers, professional land surveyors, and the business entities that offer such services in accordance with the applicable provisions of the California Business and Professions Code. The provisions of this section do not apply to claims occurring as a result of City's sole or active negligence. The provisions of this section shall not release City from liability arising from gross negligence or willful acts or omissions of City or any and all of its officials, employees and agents.

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

9. INSURANCE.

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

Commercial general liability insurance, no less broad than Insurance Services Office (ISO) CG 00 01, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent CONSULTANTs, Products and Completed Operations, with a minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If CONSULTANT maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by CONSULTANT.

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

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

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

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

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

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the retroactive date shall be no later than the commencement of the work. Coverage applicable to the work performed under this agreement shall be continued for three (3) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this agreement.

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

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

. CONSULTANT shall provide immediate written notice if (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; (3) or the deductible or self-insured retention is increased. In the event of any cancellation or reduction in coverage or limits of any insurance, CONSULTANT shall forthwith obtain and submit proof of substitute insurance. Should CONSULTANT fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at CONSULTANT's sole cost and expense.

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

The general liability policy shall cover inter-insured suits and include a "separation of Insureds" or "severability" clause which treats each insured separately.

CONSULTANT shall provide to City an endorsement that the issuer waives the right of subrogation against the City, its officers, officials, employees, agents and volunteers.

Prior to the execution of this Agreement by the City, CONSULTANT shall file certificates of insurance with the City's contract administrator and City's Contracts/Purchasing Division, showing that the CONSULTANT has in effect the insurance required by this Agreement. The CONSULTANT shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONSULTANT shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by City, annual certificates to City's Contract Administrator and City's Contracts/Purchasing Division. If the certificate is not received by the expiration date, City shall notify CONSULTANT and CONSULTANT shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONSULTANT to maintain such insurance is a default of this Agreement which entitles City, at its sole discretion, to terminate this Agreement immediately.

10. RECORDS AND CONFIDENTIALITY.

10.01. Confidentiality. CONSULTANT and its officers, employees, agents, and subconsultants shall comply with any and all federal, state, and local laws which provide for the confidentiality of records and other

information. CONSULTANT shall not disclose any confidential records or other confidential information received from the City or prepared in connection with the performance of this Agreement, unless City specifically permits CONSULTANT to disclose such records or information. CONSULTANT shall promptly transmit to City any and all requests for disclosure of any such confidential records or information. CONSULTANT shall not use any confidential information gained by CONSULTANT in the performance of this Agreement except for the sole purpose of carrying out CONSULTANT's obligations under this Agreement.

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

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

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

10.05. Royalties and Inventions. City shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONSULTANT shall not publish any such material without the prior written approval of City.

11. NON-DISCRIMINATION. During the performance of this Agreement, CONSULTANT, and its subconsultants, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONSULTANT's employment practices or in the furnishing of services to recipients. CONSULTANT shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONSULTANT and any subconsultant shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

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

13. INDEPENDENT CONSULTANT. In the performance of work, duties, and obligations under this Agreement, CONSULTANT is at all times acting and performing as an independent CONSULTANT and not as an employee of the City. No offer or obligation of permanent employment with the City or particular City department or agency is intended in any manner, and CONSULTANT shall not become entitled by virtue of this Agreement to receive from City any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONSULTANT shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONSULTANT's performance of this Agreement. In connection therewith, CONSULTANT shall defend, indemnify, and hold City harmless from any and all liability which City may incur because of CONSULTANT's failure to pay such taxes.

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

FOR CITY:	FOR CONSULTANT:
Name and Title	Name and Title
300 Forest Avenue Pacific Grove, CA 93950	Address
Address	Address
(831) 648-	Phone
Phone	Phone

15. MISCELLANEOUS PROVISIONS.

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

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

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

15.04. CONSULTANT. The term "CONSULTANT" as used in this Agreement includes CONSULTANT's officers, agents, and employees acting on CONSULTANT's behalf in the performance of this Agreement.

15.05. Disputes. CONSULTANT shall continue to perform under this Agreement during any dispute. CONSULTANT and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers

(whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

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

15.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the City and CONSULTANT under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

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

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

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

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

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

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

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

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

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

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

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

This space is left blank, intentionally.

SAMPLE

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

CITY OF PACIFIC GROVE

CONSULTANT

By: _____
Purchasing Manager

Date: _____

By: _____
Program Manager/Dep't Head

Date: _____

Approved as to Form

By: _____
City Attorney

Date: _____

Approved as to Fiscal Provisions¹

By: _____
Finance

Date: _____

Approved as to Liability Provisions²

By: _____
Risk Management

Date: _____

By: _____
CONSULTANT's Business Name*

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

Name and Title

Date: _____

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

Name and Title

Date: _____

City Agreement Number: _____.

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

¹ Approval by Finance necessary only if financial questions or issues raised in the City's approval of agreement.

² Approval by Risk Management is necessary only if changes are made in paragraph 8 or 9.