

CITY OF PACIFIC GROVE

NOTICE INVITING SEALED BIDS FOR
TRASH ENCLOSURE AT FANDANGOS PARKING LOT

The City of Pacific Grove invites sealed bids for construction of a trash enclosure at Fandangos parking lot.

All bids submitted shall meet the following terms and conditions:

1. Bids shall be delivered to the office of the City Clerk at City Hall at 300 Forest Avenue, not later than the hour of **2:00 p.m., on Friday, December 7, 2018**, at which hour and date all bids will be publicly opened and examined. Bids shall be submitted in a sealed envelope, and the outside of the envelope shall be clearly marked, "TRASH ENCLOSURE AT FANDANGOS PARKING LOT". It is sole responsibility of the bidder to see that his bid is received in proper time. Any bids received after the scheduled closing time for receipt of bids may be rejected.

2. Any bidder may withdraw his or her bid, either personally or by written request at any time prior to the scheduled closing time for receipt of bids, but no bidder may withdraw his or her bid for a period of thirty (30) days after the opening thereof.

3. All bids submitted shall include a completed "Proposal", which is included in the Bidder Package. Each bid must be accompanied by Cash, Cashiers' Check, Certified Check or Bidder's Bond in an amount equal to not less than 10% (ten percent) of the total amount of the bid price. The work performed under this contract must conform to requirements of the project Special Provisions, which are described in the Bidder Package.

4. The contract will be awarded to the lowest responsible bidder (as defined in the City purchasing regulations) whose work, in the opinion of the Council, will best meet the requirements of the City of Pacific Grove. It is clearly understood by all bidders that said Council reserves the right to reject any and all bids and to waive informalities in said bids.

5. A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5.

6. In accordance with the provisions of California Labor Code Sections 1770, 1773, 1773.1, 1773.2, 1773.6, and 1773.7, the current prevailing wages in Monterey County, California, as determined by the Director of the California Department of Industrial Relations as required to be paid to mechanics and laborers, employed directly upon the site of the work.

7. No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].

No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

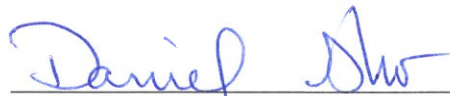
This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

8. Time is of the essence for this project and bidders should review the project time frame contained in the "Special Provisions" to insure they can meet the project guidelines concerning scheduling of work and special actions required in the course of work.

9. A Bidder Package, including plans and specifications, special provisions, sample contract, and proposal forms may be viewed at the Community and Economic Development Department at 300 Forest Avenue, City of Pacific Grove, CA 93950.

10. The contact for technical questions concerning project plans and specifications is Milas Smith., at (831) 648-3188. Questions concerning the bid process and general project information should be directed to Daniel Gho, Public Works Director at (831) 648-5722, ext. 203.

Dated: 11-5-18



Public Works Director

Bids to be opened at 2:00 P.M.
on Friday, December 7, 2018
at City Hall
300 Forest Avenue
Pacific Grove, California 93950

SPECIFICATIONS

CITY OF PACIFIC GROVE TRASH ENCLOSURES AT FANDANGOS PARKING LOT



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CITY OF PACIFIC GROVE
Monterey County, California

TRASH ENCLOSURE AT FANDANGOS PARKING LOT

SPECIAL PROVISIONS

CITY OF PACIFIC GROVE
Monterey County, California

SPECIAL PROVISIONS

TRASH ENCLOSURE AT FANDANGOS PARKING LOT

The work embraced herein is shown on a set of plans for a trash enclosure at Fandangos Parking Lot in the City of Pacific Grove, entitled "CITY OF PACIFIC GROVE TRASH ENCLOSURE", dated August 2018.

The work, as indicated by the plans shall be done in accordance with the Special Provisions and the Contract annexed hereto, and also in accordance with the Standard Specifications 2010 of the State of California, Department of Transportation, referred to herein as the "Standard Specifications", which are hereby incorporated by reference.

In case of conflict between any portion of the Standard Specifications and these Special Provisions and/or the plans, precedence shall be given first to the plans, second to the Special Provisions, and third to the Standard Specifications. The plans and/or these Special Provisions shall be used in lieu of the conflicting portions of the Standard Specifications.

SECTION 1. - GENERAL

1-1.07B - Glossary - Wherever State, Department, Department of Public Works, Director of Public Works, Division of Highways, Owner, City, District, or words of like portent or meaning are used in the Standard Specifications or other contract documents they shall have the meaning of the City of Pacific Grove, Monterey County, California, or its designated officials acting for the said City, within the scope of such duties entrusted to them.

Wherever the words of Engineer, Chief Engineer, Director or words of like portent or meaning appear in the Standard Specifications, they shall have the meaning of the Public Works Director for the City of Pacific Grove acting either directly or through properly authorized agents, such agents acting within the scope of such duties entrusted to them.

SECTION 4. - SCOPE OF WORK

The bidder's attention is directed to all of the provisions of Section 4 of the Standard Specifications for the requirements and conditions concerning the scope of work.

4-1.05 - Changes and Extra Work - Changes and extra work shall not be in effect until an agreed change order is signed by the City. Absent a signed change order, the City shall not share or accept the burden of cost or expense for any item other than those items set forth in the bidding schedule.

All cost incidental to the construction of the project are considered as included in the items for which payment is to be made.

4-1.06 - Differing Site Conditions - No geotechnical field investigation was performed for the project sites. Sandy soil is anticipated to be encountered during excavation; however, hard rock may be encountered during excavation at any depth and location. Varying degrees of hard bedrock materials and presence of ground water can likely to be encountered in the

vicinity of the shoreline. The Contractor shall make his own investigation of the site and is encouraged to perform his own soil investigation to evaluate subsurface soil conditions. No additional payment shall be made for unanticipated material encountered during excavation, including any rock excavation work requiring additional effort and special equipment.

SECTION 5. - CONTROL OF WORK

The bidder's attention is directed to all of the provisions of Section 5 of the Standard Specifications for the requirements and conditions concerning the control of work. The Engineer shall be notified in writing at once should the Contractor find discrepancies in, or omissions from the plans and specifications, or be in doubt as to their meaning.

The City corporation yard will not be available for use as the Contractor's equipment/materials storage and staging area. The Contractor may stage equipment adjacent to the project site in a fenced off location utilizing two adjoining parking spots.

Other major construction activities are underway by other forces or by other Contractors within or adjacent to the project work area. Contractor shall cooperate with all other Contractors to avoid delays or hindrance to each others' work.

The work shall be performed and sequenced in such a manner that the existing sanitary sewer collection system, storm drain system flows, and potable water meter connection will be maintained with zero interference to adjacent businesses.

5-1.07 - Lines and Grades - The Contractor shall be responsible for establishing the lines and grades required for completion of the work.

5-1.36 - Property and Facility Preservation - The Contractor's attention is direct to this section of the Standard Specifications.

The Contractor shall preserve or replace in kind all retaining walls, guard rails, fences, landscaping, trees, mail boxes, sign posts, sidewalks, etc., in the construction area unless otherwise noted in the plans or directed by the Engineer. The construction area including adjacent private property shall be restored to as good or better condition than found.

The Contractor shall be responsible for the preservation of survey monuments and property corners encountered in the work. The Contractor shall engage the services of a licensed land surveyor or registered civil engineer authorized to practice land surveying in the State of California to reference, and if disturbed or destroyed, re-establish the survey monuments.

SECTION 6. - CONTROL OF MATERIALS

The bidder's attention is directed to all of the provisions of Section 6 of the Standard Specifications for the requirements and conditions concerning the Control of Materials.

The City will furnish no materials unless specifically called for on the plans or specified in the specifications.

Testing for quality and acceptability of materials, including compaction tests shall be the responsibility of the Contractor and performed at his expense. Materials and work shall be tested in accordance with the methods in use by the State of California, Department of Transportation and shall be performed by a recognized testing firm. The Contractor's testing firm shall have prior approval of the City. All tests not meeting the requirements will be retested with written test results and reports submitted to the Engineer. Field reports shall be submitted provided to the Engineer during construction. A final report shall be submitted to the City for final acceptance.

No asphalt concrete compaction tests are required for the trench resurfacing and patching areas. However, compaction tests shall be required for the asphalt concrete street pavement reconstruction and overlay areas.

6.306 - Guarantee - The work in this contract shall be guaranteed from defects in materials, workmanship, and installation for a period of **two (2) years** from the date of acceptance. The Contractor shall bear the cost of items and workmanship proven defective.

SECTION 7. - LEGAL RELATIONS AND RESPONSIBILITY

The provisions of Section 7, Legal Relations and Responsibility, of the Standard Specifications shall apply.

7-1.01A (2) - Prevailing Wages - In accordance with the provisions of California Labor Code Sections 1770, 1773, 1773.1, 1773.2, 1773.6, and 1773.7, the general prevailing rate of wages in the County in which the Work is to be done has been determined by the Director of the California Department of Industrial Relations. These wage rates appear in the California Department of Industrial Relations publication entitled General Prevailing Wage Rates. Interested parties can obtain the current wage information by submitting their requests to the Department of Industrial Relations, Division of Labor Statistics and Research, P.O. Box 42603, San Francisco CA 94142, or on the World Wide Web at <http://www.dir.ca.gov>. The rates at the time of the bid advertisement date of a project will remain in effect for the life of the project in accordance with the California Code of Regulations, as modified and effective.

7-1.02K(6) - Occupational Safety and Health Standards - The Contractor shall conform to all applicable occupational safety and health standards, rules, regulations and orders established by the State of California.

The Contractor shall have a written, effective Injury and Illness Prevention Program (IIPP).

7-1.02K(6)(b) - Excavation Safety - The Contractor is responsible for excavation safety. Trenches must be closed or plated at the end of each working day. No open trenches will be allowed at night or on weekends.

7-1.02R - Environmental Stewardship - The Contractor's requirements regarding environmental management and environmental protection shall conform to the provisions of Section 14, "Environmental Stewardship" as set forth in the Standard Specifications.

Contractor shall comply with all air pollution and environmental control rules, regulations, ordinances and statutes that apply to the project and any work performed pursuant to the contract. No person shall discharge or cause to be discharged into the municipal storm drain system or watercourses any materials, including but not limited to pollutants or waters containing any pollutants that cause or contribute to a violation of applicable water quality standards, other than storm water.

Contractor shall develop and implement an erosion and sediment control plan that result in the following outcomes:

- A. No deposit or discharge of sediment from the construction area onto adjacent properties or into waterways and related natural resources in excess of those that occur through natural processes;
- B. No deposit of mud, soil, sediment, concrete washout, trash, or other similar construction-related material onto public rights of way and private streets, and into the City's storm water system and related natural resources, either by direct deposit, dropping, discharge, erosion, or tracking by construction vehicles, in excess of those that occur through natural processes. Any such discharge shall be cleaned-up immediately. As a part of complying with this requirement private streets and driveways and nearby public rights of way will be swept by the Contractor at the end of each work day, or more often if circumstances warrant it, and the sweepings properly disposed of to ensure that such materials from the construction site do not enter the City's storm drainage system.
- C. No exposure of graded areas and stockpile areas to storm water run-on. Run-on shall be controlled by diversion structures such as dikes, secondary containment or covers.
- D. No runoff from graded areas or stockpile areas containing sediments. Runoff containing sediments shall be captured in secondary containment structures and either treated to remove sediments prior to discharge or infiltrated on-site. ; and
- E. From October 15 to April 15, soil stabilization of graded areas shall be in place in any portion of the site where construction activities have temporarily or permanently ceased.
- F. No release of hazardous substances, such as oils, paints, thinners, fuels and other chemicals.

Best Management Practices (BMPs) for construction sites include, but are not limited to: spill prevention and control measures; solid waste containment; concrete waste management; proper vehicle and equipment cleaning, fueling, and maintenance; erosion control measures. Detailed procedures for each of these activities can be found in the California Storm Water Best Management Practice Handbooks (<http://www.cabmphandbooks.org/construction.asp>), the Caltrans Storm Water Quality Handbooks, BMP Guidance Series by Monterey Regional Storm Water Management Program, and the Erosion and Sediment Control, Field Manual by San Francisco Bay Regional Water Quality Control Board.

Activities to be performed by Contractor from October 15 to April 15 include, but are not limited to:

- A. Contractor shall maintain the temporary and permanent vegetation (if any), erosion and sediment control measures, and other protective measures in good and effective operating condition by performing routine inspections to determine condition and effectiveness, by restoration of destroyed vegetative cover, and by repair of erosion and sediment control measures and other protective measures.
- B. Contractor shall inspect the following areas at least once every seven (7) calendar days and within 24 hours of the end of any storm that produces measurable rainfall at the site:
 - B.1. Disturbed areas of the construction site,
 - B.2. Areas that have not been finally stabilized,
 - B.3. Areas used for storage of materials exposed to precipitation, and
 - B.4. Areas where vehicles exit the site

Where sites have been finally stabilized, such inspection shall be conducted at least once every month.

- C. Areas noted above shall be inspected for evidence of, or the potential for,
 - C.1. Erosion, or
 - C.2. Sediments entering waterways or the drainage system, or
 - C.3. Pollutants entering waterways or the drainage system.

Erosion and sediment control measures shall be observed to ensure that they are operating correctly. Discharge locations or points shall be inspected to ascertain whether erosion control measures are effective in preventing degradation of receiving water quality in violation of receiving water quality standards. Locations where vehicles exit the site shall be inspected for evidence of offsite sediment tracking.

- D. Deficiencies observed during inspections shall be noted and rectified before the end of the workday.

The Contractor shall be fully responsible for any damage, clean-up, and imposed fines resulting from non-compliance with environmental laws and regulations including any sewage spillage/overflow and storm water pollution during the course of the work. The Contractor shall indemnify and hold City harmless, from and against any and all claims arising out of Contractor's performance of the work called for under these Special Provisions/Technical Specifications, including all damages, costs, attorney's fees, expenses and liabilities incurred in the defense or investigation of any claim or action or proceeding arising therefrom.

Trees shall be protected from damage during construction. Root severing or pruning shall be avoided when possible. Tunneling under roots is preferred. The City Forester shall be contacted prior to any root pruning. Roots of 2 inch or larger diameter are considered major or significant roots. After grading or trenching to the required depth, any roots exposed should be cut with a saw and sealed with a recommended tree seal compound. Pruning roots in this manner will avoid any root damage by heavy equipment. Following removal of the soil in cut area, exposed roots should be inspected for stability, smoothness of pruning cut and sealing. Any additional damage should be repaired in the same manner, or in the manner specified by the City Forester.

Whenever cuts are made in the ground near the roots of trees, appropriate measures shall be taken to prevent exposed soil from drying out. After these steps are taken, top pruning is essential. Compute approximate percent of size of roots, then green foliage should be pruned in an equal amount to the area cut in roots.

Never sever more than one third of the large supporting roots during any root pruning operation. Make smooth clean cuts on large roots and apply recommended dressings to prevent decay of remaining portion of root. Prune equal foliage from the tree to compensate for root loss. If further root pruning is necessary, allow the tree one year to develop new fibrous roots and then proceed with the second root pruning and thinning operation. Timely pruning, during the growth season, will develop healthy fibrous roots and full compacted foliage. Torn or bruised roots should be cut back to sound undamaged wood and a recommended wound dressing applied. Trimming roots back to lateral root junction will promote new growth of lateral roots resulting in a dense root system. Cuts would be made flush with the junction or smaller lateral roots so that stubs or snags are not left to decay.

7-1.03 - Public Convenience - The Contractor's attention is called to the rules and guidelines listed under this section of the Standard Specifications. It is important to keep good public relations with the local residences and general public. The Public Works Director will assist the Contractor in providing notices to the local newspapers, police, fire, and other applicable public agencies. The Contractor shall provide the Public Works Director with advance notice of the planned construction scheduling with sufficient time to assist with public notification. The Contractor will be responsible to provide advance public notices to local businesses and residences impacted by the construction.

The Contractor shall install public access detour and signs to redirect the public around the work area during construction; in order to provide for continuous vehicular and pedestrian access.

The Contractor shall provide for all necessary vehicular and pedestrian traffic control, barricades, or flag personnel for the street closures and the rerouting of traffic. No streets shall remain impassable for more than 8 hours without the prior consent of the Public Works Director. The Public Works Department, Police Department and Fire Departments shall be contacted for detour changes prior to their implementation. Detour routes shall be approved by the Public Works Department.

Convenient access to driveways, houses, buildings, and businesses shall be maintained during construction.

Portions of the project is located within the City's business/commercial district. Special effort shall be made to minimize disruption to businesses.

The Contractor shall provide all signs, lights, barricades, flag personnel, etc., required to adequately warn, guide and protect the traveling public. All signing shall meet the requirements of the California State "Manual of Warning Signs, Lights, and Devices for Use in Performance of Work upon Highways."

The City shall not share costs for traffic control; full compensation thereof shall be included in other bid items.

7-1.05 - Indemnification - The Contractor's requirements regarding indemnification of the City of Pacific Grove shall conform to the provisions in Sections 7-1.05, "Indemnification", set forth in the Standard Specifications

7-1.06 - Insurance - The Contractor's requirements regarding insurance shall conform to the provisions of Section 7-1.06, "Insurance" as set forth in the Standard Specifications.

7-1.06C - Workers' Compensation and Employer's Liability Insurance - The Contractor shall maintain adequate workers' compensation insurance under the laws of the State of California, for all labor employed by the Contractor or by any subcontractor under them, who may come within the protection of such workers' compensation laws for the State of California, and shall provide, where practicable, employees general liability insurance for the benefit of their employees and the employee of any subcontractor under them, not protected by such compensation laws, and proof of such insurance, satisfactory to the City shall be given by filing certificates of such insurance with the City, in form satisfactory to said City. If such insurance is underwritten by any agency other than the State Compensation Insurance Fund, such agency shall be a company authorized to do business in the State of California.

SECTION 8. - PROSECUTION AND PROGRESS

The provisions of Section 8, Prosecution and Progress, of the Standard Specifications shall apply to the work to be done.

8-1.02C(5) - Baseline Schedule - The Contractor shall submit to the Public Works Director a construction schedule prior to start of work. Construction schedule shall be approved by the City.

Normal working hours are between 8:00 AM and 5:00 PM, Monday through Friday. Work outside these working hours, or on weekends shall require prior approval of the Public Works Director.

8-1.05 - Time - Time is of the essence. The work shall be scheduled to start immediately after the award of contract.

Contract time starts on the date specified in the Notice to Proceed. Once the Contractor has begun the work, one hundred fifty (150) working days will be allowed to complete the entire work.

8-1.10 - Liquidated Damages - The Contractor shall pay to the City of Pacific Grove the sum of one thousand dollars (\$1,000) for each and every calendar day's delay in finishing the work, or portion of work, in excess of the number of calendar days prescribed, the sum of liquidated damages to be deducted from the amount due to the Contractor for work completed.

8-1.11 - Utility and Non-Highway Facilities - Existing utilities and structures expected to be adjacent to or encountered in the work are not shown on the plans. The Contractor shall be responsible to determine the exact location of all existing utilities before commencing work. The Contractor shall be required to notify the Underground Utility Location Service (800-227-2600) at least one week prior to start of construction. The Contractor is fully responsible for any and all damages, which might be occasioned by his failure to exactly locate and preserve any and all underground utilities.

After identifying existing utilities, the Contractor shall pothole to field verify the exact locations and depths of existing utilities, including service connections prior to construction. The Engineer shall be notified of any potential conflicts at least 3 days prior to excavation. Unless otherwise specified as a separate pay item in the Bidding Schedule, payment for potholing shall be considered as included in the prices for other items of work.

Any delays to the Contractor's operations as a direct result of underground mains or facilities which were not indicated on the plans, or were located in a position substantially different from that indicated on the plans will not be considered as a right of way delay, and the Contractor shall not be entitled to any compensation for any such delay.

The Contractor will be granted an extension of time equal to the number of working days lost as a result of any conflicts with underground utilities that were not shown on plans or were in a position substantially different from that indicated on the plans.

SECTION 9. - PAYMENT

9-1.02A - Measurement - All work to be paid for at contract unit prices will be field measured in accordance with units specified in the Bid Schedule and as stated in the Notice to Contractors. The Engineer measures and determines quantities for payment.

9-1.03 - Payment Scope - The Contractor shall accept the compensation provided in the contract as full payment for furnishing all labor, materials, tools, equipment, and incidentals necessary to perform the work shown on the plans and to construct a complete and usable facility.

CITY OF PACIFIC GROVE
Monterey County, California

TRASH ENCLOSURE AT FANDANGOS PARKING LOT

PROPOSAL FORMS

PROPOSAL TO THE CITY OF PACIFIC GROVE, CALIFORNIA

TRASH ENCLOSURE AT FANDANGOS PARKING LOT

NAME OF BIDDER _____

BUSINESS ADDRESS _____

PLACE OF RESIDENCE _____

GENERAL DESCRIPTION

The construction referred to herein is in the City of Pacific Grove, Monterey County, California, located on existing streets or easements within the corporate limits of the City of Pacific Grove, and is to be constructed in accordance with the plans therefore, the Special Provisions and the Contract annexed hereto and in accordance with the Standard Specifications 2010 of the State of California, Department of Transportation.

Said work to be done is shown in part upon a set of drawings entitled "CITY OF PACIFIC GROVE TRASH ENCLOSURE", dated August 2018.

TO THE CITY COUNCIL:

The undersigned, as bidder, declares that the only person or parties interested in this proposal as principals are those named herein; that this proposal is made without collusion with any other person, firm, or corporation; that he has carefully examined the location of the proposed work, the annexed proposed form of contract, and the plans therein referred to; and he proposes and agrees if this proposal is accepted, that he will contract with the City of Pacific Grove in the form of the copy of the contract annexed hereto, to provide all necessary machinery, tools, apparatus and other means of construction and to do all the work and furnish all the materials specified in the contract, in the manner and time therein prescribed, and according to the requirements of the Engineer as therein set forth and that he will take in full payment therefore the following unit prices, to wit:

**CITY OF PACIFIC GROVE
BIDDING SCHEDULE**

TRASH ENCLOSURE AT FANDANGOS PARKING LOT

Base Bid	Bid Amount
Trash Enclosure	
Add Alternates	Amount
Concrete Color Additive	
Aluminum Louvers	

BIDDER'S STATEMENT OF SUBCONTRACTORS

The undersigned submits herewith a list of subcontractors whom he proposes to employ on the work, with the proper firm name and business address of each.

Firm Name

Principal Name

Address

Portion of Work

Firm Name

Principal Name

Address

Portion of Work

Firm Name

Principal Name

Address

Portion of Work

Signed _____

BIDDER'S BOND

For: City of Pacific Grove
Monterey, County, California

KNOW ALL MEN BY THESE PRESENTS,
THAT WE _____

AS PRINCIPAL, and

AS SURETY,

are held and firmly bound unto the City of Pacific Grove, hereinafter called the City, in the penal sum of TEN PER CENT (10%) of the TOTAL AMOUNT OF THE BID of the Principal above named, submitted by said principal to the City of Pacific Grove, Monterey County, California, for the work described below, for the payment of which sum in lawful money of the United States, as well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, firmly by these presents. In no case shall the liability of the surety hereunder exceed the sum of ten percent (10%) of the total amount of the bid.

THE CONDITION OF THIS OBLIGATION IS SUCH

that whereas the Principal has submitted the above-mentioned bid to the City of Pacific Grove for certain construction specifically described as follows, for which the bids are to be opened at _____ California,
_____, for _____
(insert date of bid opening)

(COPY HERE THE EXACT DESCRIPTION OF WORK INCLUDING LOCATION, AS IT APPEARS ON THE PROPOSAL.)

NOW, THEREFORE, if the aforesaid Principal is awarded the contract and, within the time and manner required under the specifications, after the prescribed forms are presented to him for signature, enters into a written contract in the prescribed form, in accordance with the bid, and files the two bonds with the City of Pacific Grove, one to guarantee faithful performance and the other to guarantee payment for labor and materials, as required by law, then this obligation shall be null and void; otherwise, it shall be and remain in full force and virtue.

In the event suit is brought upon this bond by the Obligee and judgment is recovered, the surety shall pay all costs incurred by the Obligee in such suit, including a reasonable attorney's fee to be fixed by the court.

IN WITNESS WHEREOF, we have hereunto set our hands and seals on this _____ day of _____ A.D.

BY: _____

Principal

EXAMPLE CONTRACT

CITY OF PACIFIC GROVE AGREEMENT FOR PROFESSIONAL SERVICES «Project Name» WITH «Contractor Name»

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 «Contractor_Name», (hereinafter “CONTRACTOR”).

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

1. **SERVICES TO BE PROVIDED.** The City hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The services are generally described as follows: «Project_Name»
2. **PAYMENTS BY CITY.** City shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by City to CONTRACTOR under this Agreement shall not exceed the sum of \$ «Contract_Amount».
3. **TERM OF AGREEMENT.** The term of this Agreement is from «Date_start_of_contract» to «Date_Contract_ended» unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and City and with City signing last, and CONTRACTOR 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. CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the City, or immediate family of an employee of the City.
 - 5.02. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
 - 5.03. CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use City premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.
6. **PAYMENT CONDITIONS.**

6.01. CONTRACTOR shall submit to the Contract Administrator an invoice on a form acceptable to City. If not otherwise specified, the CONTRACTOR may submit such invoice 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 CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice as the City may require. The Contract Administrator or his or her designee shall certify the invoice, either in the requested amount or in such other amount as the City approves in conformity with this Agreement, and shall promptly submit such invoice to the City Auditor-Controller for payment. The City Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

6.01(a). LIQUIDATED DAMAGES unless stated otherwise in the Special Provisions, it is agreed by the Parties to the Agreement that in case all the work called for under the Agreement is not completed before or upon the expiration or the time limit as set forth in these specifications, damage will be sustained by the City and that it is and will be difficult or impossible to ascertain and determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum of \$1,000 (one thousand), per day for each and every day's delay beyond the time prescribed to complete the work or the actual damages ascertained, whichever will be greater; and the Contractor agrees to pay such liquidated damages as herein provided; and in case the same are not paid, agrees that the City may deduct the amount thereof from any money due or that may become due the Contractor under the Agreement.

It is further agreed that, in case the work called for under the Agreement is not finished and completed in all parts and requirements within the time specified, the City shall have the right to extend the time for completion of the Agreement or not, as may seem best to serve the interest of the City; and if it decides to extend the time limit for the completion of the Agreement, it shall further have the right to charge to the Contractor, its heirs, assigns or sureties, and to deduct from the final payment of the work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence and other overhead expenses during the period of such extension, except that the cost of final measurements and preparation of final estimate shall not be included in such charges.

The Contractor shall not be assessed with liquidated damages nor the cost of engineering and inspection during any delay in the completion of the work caused by Acts of Nature or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather or delays of subcontractors due to such causes; provided that the Contractor shall within ten (10) days from the beginning of any such delay notify the Engineer in writing of the causes of delay, who shall ascertain the facts and the extent of delay, and his findings of the facts thereon shall be final and conclusive. "Unusually severe weather" means that which is considered outside the normal average for the Monterey area as determined by historical weather records. The Contractor will not receive a time extension for normal or below normal precipitation.

6.02. CONTRACTOR shall not receive reimbursement for travel.

7. TERMINATION.

7.01. During the term of this Agreement, the City may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least 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 CONTRACTOR. "Good cause" includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If City terminates this Agreement for good cause, the City may be relieved of the payment of any consideration to CONTRACTOR, and the City may proceed with the work in any manner which City deems proper. The cost to the City shall be deducted from any sum due the CONTRACTOR under this Agreement.

8. INDEMNIFICATION.

8.01. As respects all acts or omissions which do not arise directly out of the performance of professional services, including but not limited to those acts or omissions normally covered by general and automobile liability insurance, CONTRACTOR shall indemnify, defend, and hold harmless the City, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR's performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the City. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

8.02. Architects, Engineers Per Civil Code 2782.8 CONTRACTOR shall indemnify, defend and hold harmless, the City, its officers, officials, employees and volunteers from any and all claims, demands, costs or liability that actually or allegedly arise out of, or pertain to, or relate to the negligence, recklessness or willful misconduct of CONTRACTOR and its agents in the performance of services under this Agreement, but this indemnity does not apply to liability for damages for bodily injury, property damage or other loss, arising from the sole negligence, active negligence or willful misconduct of the City, its officers, officials, employees, and volunteers.

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

9. INSURANCE.

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

Commercial general liability insurance, 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 Contractors, Products/Completed Operations, with 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 CONTRACTOR maintains higher limits than the specified minimum limits, City requires and shall be entitled to coverage for the higher limits maintained by CONTRACTOR.

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

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

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the 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 CONTRACTOR completes its performance of services under this Agreement.

CONTRACTOR 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, CONTRACTOR shall forthwith obtain and submit proof of substitute insurance. Should CONTRACTOR fail to immediately procure other insurance, as specified, to substitute for any canceled policy, the City may procure such insurance at CONTRACTOR’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 CONTRACTOR’S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the City and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR’S insurance. The required endorsement form for Commercial General Liability Additional Insured is **ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000)**. The required endorsement form for Automobile Additional Insured endorsement is **ISO Form CA 20 48 02 99**.

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

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

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

10. RECORDS AND CONFIDENTIALITY.

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

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

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

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

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

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

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

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

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

FOR CITY: Daniel Gho Public Works Director 2100 Sunset Drive Pacific Grove, CA93950 Phone 831-648-5722 dgho@cityofpacificgrove.org	FOR CONTRACTOR: «Name_of_Contract_Signer» «Contractor_Name» «Contractor_Address» «City», «State» «Zip» «Phone_Number» «Email»
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15. MISCELLANEOUS PROVISIONS.

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

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

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

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

15.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute. Contractor and the CITY hereby agree to make good faith efforts to resolve disputes as quickly as possible. In

the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

15.19 Department of Industrial Relations

- No contractor or subcontractor may be listed on a bid proposal for a public works project (submitted on or after March 1, 2015) unless registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5 [with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)].
- No contractor or subcontractor may be awarded a contract for public work on a public works project (awarded on or after April 1, 2015) unless registered with the Department of industrial Relations pursuant to Labor Code section 1725.5.
- This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

This space is left blank, intentionally.

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

CITY OF PACIFIC GROVE

CONTRACTOR
«Contractor_Name»

By: _____
Ben Harvey, City Manager

Date: _____

By: _____
Daniel Gho Public Works Director

Date: _____

Approved as to Form

By: _____
David C. Laredo, City Attorney

Date: _____

By: _____
«Name_of_Contract_Signer»

Date: _____

City Agreement Number: _____.

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