

**CITY OF PACIFIC GROVE  
MAINTENANCE SERVICES AGREEMENT**

This MAINTENANCE SERVICES AGREEMENT (“Agreement”) is made and effective \_\_\_\_\_, by and between the City of Pacific Grove, a municipal corporation (“City”), and \_\_\_\_\_ (“CONTRACTOR”).

City wishes to retain the services of an experienced and qualified CONTRACTOR to provide [Describe services to be provided] (“Services”). CONTRACTOR represents and warrants that it is qualified to perform those Services. In consideration of the mutual covenants and conditions set forth herein, the parties agree as follows:

1. TERM

Unless terminated in accordance with Section 8 below, the AGREEMENT will continue in full force and effect from the Effective Date through [Insert Date]. Upon mutual written AGREEMENT, the term of this AGREEMENT can be extended annually for an additional one (1) year period, or longer as the parties agree.

2. SCOPE OF SERVICES

CONTRACTOR will provide the Services listed in the Scope of Services attached hereto as Exhibit A. CONTRACTOR warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

3. PERFORMANCE

- a. CONTRACTOR shall at all times faithfully, competently and to the best of its ability, experience, and talent, perform all tasks described herein. CONTRACTOR shall employ, at a minimum, generally accepted standards and practices utilized by persons engaged in providing similar services as are required of CONTRACTOR hereunder in meeting its obligations under this Agreement.
- b. CONTRACTOR shall obtain a valid City Business License and shall maintain said Business License for the term of this Agreement and any extensions.
- c. CONTRACTOR shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by CONTRACTOR or in any way affect the performance of its Services pursuant to this Agreement. CONTRACTOR shall at all times observe and comply with all such laws and regulations. City, and its officers, employees, and agents shall not be liable at law or in equity occasioned by failure of CONTRACTOR to comply with this Section.
- d. CONTRACTOR must maintain a valid California Contractor’s License throughout the term of this Contract.

- e. CONTRACTOR agrees that in the performance of this Agreement or any sub-agreement hereunder, neither CONTRACTOR nor any person acting on CONTRACTOR's behalf shall refuse to employ or refuse to continue in any employment any person or discriminate on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, genetic information, marital status, sexual preference, sex, gender identity, gender expression, military or veteran status or age. Harassment in the workplace is not permitted in any form. CONTRACTOR further agrees to comply with all laws with respect to employment when performing this Agreement.
- f. CONTRACTOR shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit D attached to and part of this Agreement.
- g. CONTRACTOR declares and warrants that no undue influence or pressure is used against or in concert with any officer, employee or agent of City in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial agreement or financial inducement. No officer, employee, or agent of City will receive compensation, directly or indirectly, from CONTRACTOR, or from any officer, employee or agent of CONTRACTOR, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling City to any and all remedies at law or in equity.

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

**CONTRACTOR is bound by the contents of City's Request for Proposal on file hereto and incorporated herein as Exhibit E, and the contents of the proposal submitted by CONTRACTOR, available on file at the [insert location ], hereto and incorporated herein as Exhibit E. In the event of conflict, the requirements of City's Request for Proposals and this Agreement shall take precedence over those contained in CONTRACTOR's Proposal.]**

4. CITY MANAGEMENT

The City Manager, or designee, shall represent City in all matters pertaining to the administration of this Agreement, review and approval of all products submitted by CONTRACTOR, but not including the authority to enlarge the Scope of Work or change the compensation due to CONTRACTOR. The City Manager shall be authorized to act on City's behalf and to execute all necessary documents which enlarge the Scope of Work or change CONTRACTOR's compensation, subject to Section 6 hereof.

## 5. PAYMENT

- a. For Services rendered pursuant to this AGREEMENT, CONTRACTOR shall be paid in accordance with the Payment Schedule attached hereto as Exhibit B, provided, however, that in no event will the total amount of money paid the CONTRACTOR, for the Services initially contemplated by this AGREEMENT, exceed the sum of [Insert amount], unless otherwise first approved in writing by the City.
- b. The City Manager's contract authority is limited to \$39,999.99, which includes all costs. Contracts, including any contract amendments that exceed the total threshold, require City Council approval. Any contracts, including contract amendments that exceed the total threshold, which do not have City Council approval, shall be void.
- c. CONTRACTOR shall submit invoices monthly for actual Services performed. Invoices shall be submitted on or about the first business day of each month, or as soon thereafter as practical, for Services provided in the previous month. Payment shall be made within thirty (30) days of receipt of each invoice as to all non-disputed fees. If City disputes any of CONTRACTOR's fees, it shall give written notice to CONTRACTOR within thirty (30) days of receipt of an invoice of any disputed fees set forth on the invoice.

## 6. LABOR CODE AND PREVAILING WAGE REQUIREMENTS:

- a. CONTRACTOR agrees to comply with the requirements of California Labor Code sections 1810 through 1815. Eight hours of labor constitutes a legal day's work per Labor Code section 1810. CONTRACTOR will forfeit the statutory penalty to City for each worker employed in the execution of this Agreement by CONTRACTOR or any subcontractor for each calendar day during which such worker is required or permitted to work more than eight hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Labor Code sections 1810 through 1815.
- b. Copies of the determination of the Director of the Department of Industrial Relations of the prevailing rate of per diem wages for each craft, classification or type of worker needed to execute this Agreement are available for download from the State website:  
  
<http://www.dir.ca.gov/OPRL/dprevagedetermination.htm>.
- c. CONTRACTOR must post at the work site, or if there is no regular work site then at its principal office, for the duration of the Contract, a copy of the determination by the Director of the Department of Industrial Relations of the specified prevailing rate of per diem wages. (Labor Code § 1773.2.) When applicable, copies of the prevailing rate of per diem wages will be on file at City's Administrative Services Department and available to CONTRACTOR and any other interested party upon request.
- d. CONTRACTOR, and any subcontractor engaged by CONTRACTOR, may pay not less than the specified prevailing rate of per diem wages to all workers employed in the execution of the contract. (Labor Code § 1774.) CONTRACTOR is responsible for

compliance with Labor Code section 1776 relative to the retention and inspection of payroll records.

- e. CONTRACTOR must comply with all provisions of Labor Code section 1775. Under Section 1775, CONTRACTOR will forfeit the statutory penalty to City for each worker employed in the execution of the Agreement by CONTRACTOR or any subcontractor for each calendar day, or portion thereof, in which the worker is paid less than the prevailing rates. CONTRACTOR may also be liable to pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day, or portion thereof, for which each worker was paid less than the prevailing wage rate.

Nothing in this Agreement prevents CONTRACTOR or any subcontractor from employing properly registered apprentices in the execution of the Contract. CONTRACTOR is responsible for compliance with Labor Code section 1777.5 for all apprenticeable occupations. This statute requires that contractors and subcontractors must submit contract award information to the applicable joint apprenticeship committee, must employ apprentices in apprenticeable occupations in a ratio of not less than one hour of apprentice's work for every five hours of labor performed by a journeyman (unless an exception is granted under § 1777.5), must contribute to the fund or funds in each craft or trade or a like amount to the California Apprenticeship Council, and that contractors and subcontractors must not discriminate among otherwise qualified employees as apprentices solely on the ground of sex, race, religion, creed, national origin, ancestry or color. Only apprentices defined in Labor Code section 3077, who are in training under apprenticeship standards and who have written apprentice contracts, may be employed on public works in apprenticeable occupations.

- f. CONTRACTOR has reviewed and agrees to comply with any applicable provisions for any public work subject to Department of Industrial Relations (DIR) Monitoring and Enforcement of prevailing wages, including the registration requirements of Labor Code Section 1771.1(a). City hereby notifies CONTRACTOR that CONTRACTOR is responsible for submitting certified payroll records directly to the State Compliance Monitoring Unit (CMU). For further information concerning compliance monitoring please visit the website location at: <http://www.dir.ca.gov/dlse/cmu/cmu.html>.
- g. CONTRACTOR must comply with Labor Code section 1771.1(a), which provides that CONTRACTOR may award any contracts and subcontracts for work that qualifies as a "public work" only to subcontractors which are at that time registered with the DIR and qualified to perform public work pursuant to Labor Code section 1725.5. CONTRACTOR must obtain proof of such registration from all such subcontractors."
- h. If federal funds are used to pay for the Work, CONTRACTOR and any subcontractor agree to comply, as applicable, with the labor and reporting requirements of the Davis-Bacon Act (40 USC § 276a-7), the Copeland Act (40 USC § 276c and 18 USC §874), and the Contract Work Hours and Safety Standards Act (40 USC § 327 and following).

7. INSPECTION

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

8. SUSPENSION OR TERMINATION OF AGREEMENT WITHOUT CAUSE

- a. City may at any time, for any reason, without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon CONTRACTOR at least thirty (30) days prior written notice. Upon receipt of said notice, CONTRACTOR shall immediately cease all work under this Agreement, unless the notice provides otherwise. If City suspends or terminates a portion of this Agreement, such suspension or termination shall not make void or invalidate the remainder of this Agreement.
- b. In the event this Agreement is terminated pursuant to this Section, City shall pay to CONTRACTOR the actual value of the Services performed up to the time of termination, provided that the Services performed are of value to the City. Upon termination of the Agreement pursuant to this Section, CONTRACTOR shall submit an invoice to City pursuant to Section 6.c.

9. DEFAULT OF CONTRACTOR/FORCE MAJEURE

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

## 10. OWNERSHIP OF DOCUMENTS

- a. CONTRACTOR shall maintain complete and accurate records with respect to sales, costs, expenses, receipts, and other such information required by City that relate to the performance of Services under this Agreement. CONTRACTOR shall maintain adequate records of Services provided in sufficient detail to permit an evaluation of Services. All such records shall be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible. CONTRACTOR shall provide free access to the representatives of City or its designees at reasonable times to such books and records; shall give City the right to examine and audit said books and records at CONTRACTOR's office; shall permit City to make copies and transcripts there from as necessary; and shall allow inspection of all work, data, documents, proceedings, and activities related to this Agreement. If there is a substantial billing deviation adverse to City, then the cost of an audit shall be borne by CONSULTANT. Such records, together with supporting documents, shall be maintained at City Hall for a minimum period of five (5) years after receipt of final payment.
- b. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files, surveys, notes, and other documents prepared in the course of providing the Services to be performed pursuant to this Agreement shall become the sole property of City and may be used, reused, or otherwise disposed of by City without the permission of CONTRACTOR. With respect to computer files, CONTRACTOR shall make available to City, at City's office and upon reasonable written request by City, the necessary computer software and hardware for purposes of accessing, compiling, transferring, and printing computer files.

## 11. RECORD AUDIT

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

## 12. INDEMNIFICATION

CONTRACTOR shall indemnify, defend with legal counsel approved by City, and hold harmless City, its officers, employees, agents, and volunteers (collectively, City) from and against all liability, loss, damage, expense, cost (including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's negligence, recklessness or willful misconduct in the performance of work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage which is caused by the sole or active negligence or willful misconduct of the City. Should conflict of interest principles preclude a single legal counsel from representing both City and CONTRACTOR, or should City otherwise find CONTRACTOR's legal counsel

unacceptable, then CONTRACTOR shall reimburse the City its costs of defense, including without limitation reasonable legal counsel fees, expert fees and all other costs and fees of litigation. The CONTRACTOR shall promptly pay any final judgment rendered against the City (and its officers, employees, agents and volunteers) with respect to claims determined by a trier of fact to have been the result of the CONTRACTOR's negligent, reckless or wrongful performance. It is expressly understood and agreed that the foregoing provisions are intended to be as broad and inclusive as is permitted by the law of the State of California and will survive termination of this Agreement.

CONTRACTOR obligations under this section apply regardless of whether such claim, charge, damage, demand, action, proceeding, loss, stop notice, cost, expense, judgment, civil fine or penalty, or liability was caused in part or contributed to by City. However, without affecting the rights of City under any provision of this agreement, CONTRACTOR shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability involved, the obligation of CONTRACTOR will be for that entire portion or percentage of liability not attributable to the active negligence of City.

No City officer, employee or agent shall be personally liable to CONTRACTOR, in the event of any default or breach by City or for any amount that may become due to CONTRACTOR.

### 13. INSURANCE

Without limiting CONTRACTOR's indemnification of City, and prior to commencement of work, CONTRACTOR shall obtain, provide, and maintain at its own expense during the term of this AGREEMENT, policies of insurance of the type and amounts described in **Exhibit C** and in a form that is satisfactory to City.

### 14. INDEPENDENT CONTRACTOR

- a. CONTRACTOR is and shall at all times remain as to City a wholly independent contractor. The personnel performing the services under this Agreement on behalf of CONTRACTOR shall at all times be under CONTRACTOR's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of CONTRACTOR or any of CONTRACTOR's officers, employees, or agents, except as set forth in this Agreement. CONTRACTOR shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. CONTRACTOR shall not incur or have the power to incur any debt, obligation, or liability whatever against City, or bind City in any manner.

- b. No employee benefits shall be available to CONTRACTOR in connection with the performance of this Agreement. Except for the fees paid to CONTRACTOR as provided in the Agreement, City shall not pay salaries, wages, or other compensation to CONTRACTOR for performing services hereunder for City. City shall not be liable for compensation or indemnification to CONTRACTOR for injury or sickness arising out of performing services hereunder.
- c. Any and all employees or sub-contractors of CONTRACTOR under this Agreement, while engaged in the performance of any work or services required by CONTRACTOR under this Agreement, shall be considered employees or sub-contractors of CONTRACTOR only and not of City. Any and all claims that may arise under the Workers' Compensation Act on behalf of said employees or sub-contractors, while so engaged and all claims made by a third party as a consequence of any negligent act or omission on the part of the CONTRACTOR's employees or sub-contractors, while so engaged in any of the work or services provided for or rendered herein shall not be City's obligation.

#### 15. SUBCONTRACTORS

Before CONTRACTOR retains or hires a subcontractor to provide any work, labor, or services relative to this AGREEMENT, CONTRACTOR must:

- a. Present the name and identifying information of the subcontractor that will provide any work, labor, or services to City.
- b. Present to the City the form of subcontract that will be used with the subcontractor for City's approval, which approval will not be unreasonably withheld. Such subcontract AGREEMENT must include an indemnity agreement that is generally in accord with the indemnity obligations contained in Section 11 of this Agreement and must specifically name the City as an indemnified party; and
- c. Secure from the subcontractor evidence of insurance coverage that meets with this Agreement including naming the City as an additional insured as required by this Agreement, unless such requirement is waived in writing by the City.

#### 16. NO BENEFIT TO ARISE TO CITY OFFICERS AND EMPLOYEES

No City officer, employee of City, or their designees or agents, and no public officer who exercises authority over or responsibilities with respect to the Services provided under the Agreement during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.



17. CONFLICT OF INTEREST

CONTRACTOR shall at all times avoid conflicts of interest, or the appearance of conflicts of interest, in the performance of this Agreement, and shall comply with the City's conflict of interest code.

If City determines CONTRACTOR comes within the definition of Contractor under the Political Reform Act (Government Code §87100 et seq.), CONTRACTOR shall complete and file and shall require any other person performing Services under this Agreement to complete and file a "Statement of Economic Interest" with City disclosing CONTRACTOR's and/or such other person's financial interests.

18. NO WAIVER OF BREACH/TIME

The waiver by City of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement. Time is of the essence in carrying out the duties hereunder.

19. CONFIDENTIAL INFORMATION/RELEASE OF INFORMATION

- a. All information gained by CONTRACTOR in performance of this Agreement shall be considered confidential and shall not be released by CONTRACTOR without City's prior written authorization. CONTRACTOR, its officers, employees, agents, or sub-contractors, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary" provided CONTRACTOR gives City notice of such court order or subpoena.
- b. CONTRACTOR shall promptly notify City should CONTRACTOR, its officers, employees, agents, or sub-contractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the Services performed thereunder or with respect to any project or property located within the City. City retains the right, but has no obligation, to represent CONTRACTOR and/or be present at any deposition, hearing, or similar proceeding. CONTRACTOR agrees to cooperate fully with City and to provide the opportunity to review any response to discovery requests provided by CONTRACTOR. However, City's right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

20. NOTICES

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

To City: (City Employee/Department)  
City of Pacific Grove  
300 Forest Avenue  
Pacific Grove, CA 93950

To CONTRACTOR: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

21. THIRD PARTY BENEFICIARIES

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

22. ASSIGNMENT

CONTRACTOR shall not assign the performance of this Agreement, nor any part thereof, nor any monies due hereunder, without prior written consent of City. Subject to the foregoing, all terms of the Agreement will be binding upon, enforceable by and inure to the benefit of the parties and their successors and assigns.

23. GOVERNING LAW

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

24. DISPUTE RESOLUTION; ATTORNEY'S FEES

CONTRACTOR shall continue to perform under this Agreement during any dispute. CONTRACTOR and City hereby agree to make good faith efforts to resolve disputes as quickly as possible. In the event any dispute arising from or related to this Agreement results in litigation or arbitration, the prevailing party shall be entitled to recover all reasonable costs incurred, including court costs, attorney fees, expenses for expert witnesses (whether or not called to testify), expenses for accountants or appraisers (whether or not called to testify), and other related expenses. Recovery of these expenses shall be as additional costs awarded to the prevailing party, and shall not require initiation of a separate legal proceeding.

25. AUTHORITY TO EXECUTE THIS AGREEMENT

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

26. ENTIRE AGREEMENT

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

27. AMENDMENT

- a. Any modification or amendment to this Agreement must be in writing.
- b. Neither City nor CONTRACTOR shall be deemed to have waived any obligation of the other, or to have agreed to any modification to this Agreement unless it is in writing, and signed by the party giving the waiver.

28. INTERPRETATION OF CONFLICTING PROVISIONS

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

29. SEVERABILITY

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

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

CITY OF PACIFIC GROVE

CONTRACTOR

By: \_\_\_\_\_  
Department Director

By: \_\_\_\_\_  
CONTRACTOR

Date: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Manager or Mayor

By: \_\_\_\_\_  
City Administrative Services Department

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved As To Form:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

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

**Exhibit A**

Scope of Work/Services

**Exhibit B**

Payment Schedule

## Exhibit C

### Insurance Specifications

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

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

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

- A drop down feature requiring the policy to respond if any primary insurance that would otherwise have applied proves to be uncollectible in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies;
- Policies shall “follow form” to the underlying primary policies; and
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

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

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

## **Other provisions or requirements**

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

## VERIFICATION OF CALIFORNIA CONTRACTOR'S LICENSE

I certify, under penalty of perjury, that I have a valid California Contractor's license issued pursuant to Business and Professions Code section 7000 and following, and was so licensed at the time that the bid was awarded:

California Contractor's License:

License Number	Class	Expiration Date
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\_\_\_\_\_  
CONTRACTOR (PRINT OR TYPE)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

(Public Contract Code § 6100)

**CERTIFICATE REGARDING WORKERS' COMPENSATION**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

\_\_\_\_\_  
Name (print or type)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

**CERTIFICATE REGARDING DEPARTMENT OF INDUSTRIAL  
RELATIONS CONTRACTOR REGISTRATION**

I certify, under penalty of perjury, that Contractor is registered with the Department of Industrial Relations pursuant to Labor Code section 1725.5.

Contractor's Department of Industrial Relations registration number is \_\_\_\_\_.

\_\_\_\_\_  
Name & Title (print or type)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature

(Labor Code section 1725.5)

## LIST OF SUBCONTRACTORS

WORK IDENTIFICATION:

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NAME AND ADDRESS OF BIDDER: \_\_\_\_\_

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Name/Address/Phone No./State License Number of Subcontractor/City of Pacific Grove Business License Number	Department of Industrial Relations Registration Number*	Items of Work	Portion of Work (% of Contract Price)
		% of Total Contract Price by Subcontract	
		% of Total Contract Price by Contractor	

\*Pursuant to Division 2, Part 7, Chapter 1, (commencing with section 1720 including section 1725.5) of the Labor Code