



**PACIFIC CITY COUNCIL AGENDA**  
Council Chambers - City Hall. 100 3<sup>rd</sup> Ave. SE

**October 19, 2015**  
**Monday**

**SPECIAL MEETING**

- 1. CALL TO ORDER**
- 2. ROLL CALL OF COUNCIL MEMBERS**
- 3. ADDITIONS TO/APPROVAL OF AGENDA**
- 4. ACTION ITEM**
  - A. Approval of Resolution No. 2015-286: Authorizing the execution of a contract with Fenix Earthworks, LLC, in the amount of \$188,825, for construction of the Stewart Road Multi-Purpose Trail.
- 5. ADJOURN**



Agenda Bill No. 15-134

**TO:** Mayor Guier and City Council Members

**FROM:** Public Works

**MEETING DATE:** October 13, 2015

**SUBJECT:** Stewart Road Multi-Purpose Trail

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**ATTACHMENTS:**

- Resolution No. 2015-286
- Proposed Contract with Fenix Earthworks, LLC for Stewart Road Multi-Purpose Trail Construction

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**Previous Council Review Date:** N/A

**Summary:** The City has allocated funding for the construction of the Stewart Road Multi-Purpose Project. The design was complete and the City solicited bids for construction from the Small Works Roster. The City received seven bids. The engineers estimate for the project was \$175,000. The lowest responsible bidder was Fenix Earthworks, LLC at \$188,825.00.

**Recommended Action:** Staff recommends Council approve Resolution No. 2015-286

**Motion for Consideration:** "I move to approve Resolution 2015-286, A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING THE EXECUTION OF A CONTRACT WITH FENIX EARTHWORKS,LLC FOR CONSTRUCTION OF THE STEWART ROAD MULTI-PURPOSE TRAIL."

**Budget Impact:** If accepted by City Council, the cost of the services is approximately \$188,825.00. The City had \$142,950 allocated to this project. A total of \$8,300 has been spent on surveying. The balance is \$134,650. The street account has additional funds for the project.

**Alternatives:** None recommended.

**CITY OF PACIFIC  
WASHINGTON**

**RESOLUTION NO. 2015-286**

**A RESOLUTION OF THE CITY OF PACIFIC, WASHINGTON, AUTHORIZING  
EXPENDITURE OF FUNDS WITH FENIX EARTHWORKS, LLC FOR THE  
CONSTRUCTION OF STEWART ROAD MULTI-PURPOSE TRAIL PROJECT**

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**WHEREAS**, the City has budgeted funds for the construction of a multi-purpose trail on the northerly side of Stewart Road; and

**WHEREAS**, the City solicited quotes from five small works contractors, received requests from sixteen additional contracts to participate, and received seven quotes; and

**WHEREAS**, Fenix Earthworks, LLC is the lowest responsible bidder;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC,  
WASHINGTON, DOES RESOLVE AS FOLLOWS:**

Section 1. The Pacific City Council hereby authorizes the Mayor to award a Public Works Contract to the lowest and best bidder, and expend funds in the estimated amount of \$188,825.00 for the Stewart Road Multi-Purpose Trail Project.

Section 2. The Pacific City Council hereby authorizes an additional allocation of funds in the amount of \$10,000 for change orders that may be required during construction.

Section 3. This Resolution shall take effect and be in full force upon passage and signatures hereon.

Passed by the City Council at a Special Meeting thereof on the 19th day of October, 2015.

CITY OF PACIFIC

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LEANNE GUIER, MAYOR

ATTEST/AUTHENTICATED:

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AMY STEVENSON NESS, CITY CLERK

APPROVED AS TO FORM:

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CAROL MORRIS, CITY ATTORNEY

PASSED BY THE CITY COUNCIL: October 19, 2015  
EFFECTIVE DATE: October 19, 2015  
RESOLUTION NO: 2015-286

**PROPOSAL**  
**CITY OF PACIFIC**  
**STEWART ROAD MULTI-PURPOSE TRAIL PROJECT**  
**CONTRACT NO. PR0901**

To: Mayor and City Council  
City of Pacific, Washington

Contractor: Fenix Earthworks LLC State License No.: FENIXEL854M9  
Date: 09-30-2015 003-483-087  
Month/Day/Year

*Bidder's Declaration and Understanding*

The Bidder declares that he has carefully examined the Contract Documents for the construction of the project, that he has personally inspected the site, that he has satisfied himself as to the quantities involved, including materials and equipment, and conditions of work involved, including the fact that the description of the quantities of work and materials, as included herein, is brief and is intended only to indicate the general nature of the work and to identify the said quantities with the detailed requirements of the Contract Documents, and that this Proposal is made according the provisions and under the terms of the Contract Documents, which Documents are hereby made a part of this Proposal. The Bidder further declares that he has exercised his own judgment regarding the interpretation, of subsurface information and has utilized all data, which he believes pertinent from City and other sources and has made such independent investigations as the Bidder deems necessary in arriving at his conclusions.

Bidder understands that any bid response documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to disclose bid responses upon a request. Bidder acknowledges that he has advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Bidder may elect to give notice to Bidder of the request so as to allow Bidder to seek a protective order from a Court. Bidder acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion and without notice by the City.

*Contract Execution*

The Bidder agrees that if this Proposal is accepted, he will, within fourteen (14) calendar days after Notice of Award, complete and sign the Contract in the form annexed hereto, and will at that time deliver to the City executed copies of the Performance Bond, Labor and Material Payment bond, the Certificate of Insurance, and other documentation required by the Contract Documents, and will, to the extent of his Proposal, furnish all machinery, tools, apparatus and other means of construction and do the work and furnish all the materials or services necessary to complete all work as specified or indicated in the Contract Documents.

*Start of Construction and Contract Completion*

The Bidder further agrees that within 14 calendar days of October 13, 2015, he will meet with engineering personnel and begin work no earlier than October 19, 2015, and complete the construction within 25 working days of October 19, 2015.

*Lump Sum and Unit Price Work*

The Bidder further proposes to accept as full payment for the work proposed herein the amounts computed under the provisions of the Contract Documents and based on lump sum and unit price amounts, it being expressly understood that the unit prices are independent of the exact quantities

involved. The Bidder agrees that the lump sum prices and the unit prices represent a true measure of the labor, services, and materials required to perform the work, including all allowances for overhead and profit for each type and unit of work called for in these Contract Documents.

If any material, item, or service required by the Contract Documents has not been mentioned specifically, the same shall be furnished and placed with the understanding that the full cost to the City has been merged with prices named in the proposal.

**SCHEDULE OF CONTRACT PRICES  
STEWAR ROAD MULTI-PURPOSE TRAIL PROJECT**

**NOTE:** If a discrepancy between the numerical unit price and the written (words) unit price is found, the written (words) unit price shall control.

Item No.	Estimated Quantity	SP/STD	Description of Item	Unit Price	Amount
<b>PREPARATION</b>					
1.	Lump Sum	STD	Mobilization \$ <u>FIFTEEN THOUSAND DOLLARS</u> (Words) (1-09) Per Lump Sum	L.S.	\$ <u>15,000.00</u>
2.	Lump Sum	STD	Clearing and Grubbing \$ <u>ONE THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (2-01) Per Lump Sum	L.S.	\$ <u>1,500.00</u>
3.	Lump Sum	STD	Remove Structures and Obstructions \$ <u>THREE THOUSAND NINE HUNDRED FIFTY DOLLARS</u> (Words) (2-02) Per Lump Sum	L.S.	\$ <u>3,950.00</u>
<b>GRADING</b>					
4.	300 CY	STD	Roadway Excavation Incl. Haul \$ <u>TWENTY THREE DOLLARS &amp; 50/100</u> (Words) (2-03) Per Cubic Yard	\$ <u>23.50</u>	\$ <u>7,050.00</u>
5.	200 Tons	STD	Choker Course (WSDOT 9-03.12(4)) \$ <u>FORTY DOLLARS</u> (Words) (7-01) Per Ton	\$ <u>40.00</u>	\$ <u>8,000.00</u>
6.	475 Tons	STD	Permeable Ballast (WSDOT 9-03.9(2)) \$ <u>THIRTY EIGHT DOLLARS</u> (Words) (4-04) Per Ton	\$ <u>38.00</u>	\$ <u>18,050.00</u>
<b>HOT MIX ASPHALT</b>					
7.	225 Tons	SP	Pervious Asphalt Pavement \$ <u>ONE HUNDRED TWENTY NINE DOLLARS</u> (Words) (5-06) Per Ton	\$ <u>129.00</u>	\$ <u>29,025.00</u>
<b>EROSION CONTROL AND PLANTING</b>					
8.	75 CY	STD	Topsoil Type A \$ <u>FIFTY DOLLARS</u> (Words) (8-02) Per Cubic Yard	\$ <u>50.00</u>	\$ <u>3,750.00</u>
9.	Lump Sum	STD	Erosion/Water Pollution Control \$ <u>ONE THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (8-01) Per Estimate	L.S.	\$ <u>1,500.00</u>
10.	4,500 SF	STD	Seed, Fertilize, Mulch \$ <u>THIRTY FIVE CENTS</u> (Words) (8-01) Per Square Foot	\$ <u>.35</u>	\$ <u>1,575.00</u>

Item No.	Estimated Quantity	SP/STD	Description of Item	Unit Price	Amount
<b>EROSION CONTROL AND PLANTING (continued)</b>					
11.	Lump Sum	STD	Landscaping \$ <u>TEN THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (8-02) Per Lump Sum	L.S.	\$ <u>10,500.00</u>
<b>TRAFFIC</b>					
12.	Lump Sum	STD	Project Temporary Traffic Control \$ <u>THREE THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (1-10) Per Lump Sum	L.S.	\$ <u>3,500.00</u>
13.	20 SF	STD	Detectable Warning Surface \$ <u>FORTY DOLLARS</u> (Words) (8-14) Per Square Foot	\$ <u>40.00</u>	\$ <u>800.00</u>
14.	Lump Sum	STD	Permanent Signing \$ <u>TWO THOUSAND DOLLARS</u> (Words) (8-21) Per Lump Sum	L.S.	\$ <u>2,000.00</u>
<b>OTHER ITEMS</b>					
15.	CALC	STD	Minor Change \$ <u>Two Thousand Five Hundred Dollars</u> (Words) (1-04) Per Estimate	\$2,500.00	\$2,500.00
16.	Lump Sum	SP	Roadway Surveying \$ <u>THREE THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (1-05) Per Lump Sum	L.S.	\$ <u>3,500.00</u>
17.	Lump Sum	STD	SPCC Plan \$ <u>FIVE HUNDRED DOLLARS</u> (Words) (1-07) Per Lump Sum	L.S.	\$ <u>500.00</u>
18.	4 EA	SP	Adjust Utility \$ <u>SEVEN HUNDRED FIFTY DOLLARS</u> (Words) (7-05) Per Each	\$ <u>750.00</u>	\$ <u>3,000.00</u>
19.	1 EA	STD	Moving Existing Hydrant \$ <u>TWO THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (7-14) Per Each	\$ <u>2,500.00</u>	\$ <u>2,500.00</u>
20.	140 LF	SP	Irrigation Sleeve, 3" PVC \$ <u>TEN DOLLARS</u> (Words) (8-03) Per Linear Foot	\$ <u>10.00</u>	\$ <u>1,400.00</u>
21.	375 LF	SP	Chain Link Fence, Type 4 \$ <u>THIRTY FIVE DOLLARS</u> (Words) (8-12) Per Linear Foot	\$ <u>35.00</u>	\$ <u>13,125.00</u>
22.	1450 SY	SP	Filter Fabric \$ <u>TWO DOLLARS &amp; 50/100</u> (Words) (8-15) Per Square Yard	\$ <u>2.50</u>	\$ <u>3,625.00</u>
23.	1,625 SF	STD	Gravity Block Wall \$ <u>TWENTY SIX DOLLARS</u> (Words) (8-24) Per Square Foot	\$ <u>26.00</u>	\$ <u>42,250.00</u>

Item No.	Estimated Quantity	SP/STD	Description of Item	Unit Price	Amount
24.	1 LS	SP	Concrete Barrier <u>\$ FIVE THOUSAND FIVE HUNDRED DOLLARS</u> (Words) (8-26) Per Lump Sum	\$ 5,500.00	\$ 5,500.00
25.	7 EA	SP	Bollards <u>\$ SIX HUNDRED SEVENTY FIVE DOLLARS</u> (Words) (8-27) Per Each	\$ 675.00	\$ 4,725.00

**TOTAL BID:** \$ 188,825.00

**SALES TAX**

In accordance with Section 1-07.2(1) State Sales Tax: Work performed on City, County, or Federally-owned land, **the Contractor shall include Washington State retail sales taxes in the various unit bid prices** or other amounts. These retail sales taxes shall include those the Contractor pays on purchases of materials, equipment, and supplies used or consumed in doing the work.

The undersigned Bidder hereby agrees to start construction on this project, if awarded, no later than fourteen (14) calendar days after Notice to Proceed and to complete the project within the time stipulated in the Contract. By signing below, Bidder acknowledges receipt of the following Addenda to the Bid Documents:

CITY OF PACIFIC

STEWART ROAD MULTI-PURPOSE TRAIL PROJECT  
CONTRACT NO. PR0901

<u>1</u>	<u>9-29-15</u>		
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt
Addendum No.	Date of Receipt	Addendum No.	Date of Receipt

NOTE: Failure to acknowledge receipt of Addenda may be considered as an irregularity in the Bid Proposal and Owner reserves the right to determine whether the bid will be disqualified.

By signing below, Bidder certifies that he/she has reviewed the insurance provisions of the Bid Documents and will provide the required coverage.

Bidder: Fenix Earthworks, LLC

Address: 21207 127<sup>th</sup> AVE E Graham, WA 98338

Phone Number: 360-893-9103

Signature of Authorized Official: Adams

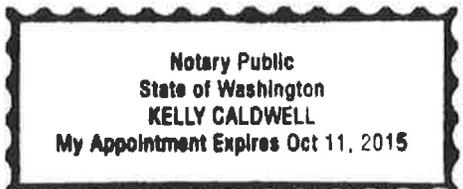
Printed Name and Title: Catherine Adams, member

NOTES: If the Bidder is a co-partnership, give firm name under which business is transacted; proposal must be executed by a partner. If the Bidder is a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign).

STATE OF Washington )  
 )ss.  
COUNTY OF Pierce )

I certify that I know or have satisfactory evidence that Catherine Adams signed this proposal, on oath stated that he/she was authorized to execute the proposal and acknowledged it as the MEMBER (title) of Fenix Earthworks LLC (name of party on behalf of whom proposal was executed) and acknowledged it to be his/her free and voluntary act for the uses and purposes mentioned in this proposal.

Dated this 29 day of September, 20 15.



Kelly Caldwell  
Notary Public  
Kelly Caldwell  
Printed Name

My Commission Expires: Oct 11, 2015

STATE OF WASHINGTON )

) ss.

COUNTY OF PIERCE )

I certify that I know or have satisfactory evidence that Catherine Adams is the person who appeared before me, and said person acknowledged that she signed this proposal and attached contract documents, on oath stated that she was authorized to execute the instrument and acknowledged it as the member of Fenix Earthworks, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the proposal and attached contract documents, and that such party has no managing member.

Dated: 10/15/2015

Brenda Daniels White

Brenda Daniels White

(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing at: Pierce Co

My Commission expires: 10-19-15



Attachement to Contract PR 0901  
9/2015

**BIDDER'S QUALIFICATION FORM  
CITY OF PACIFIC  
STEWART ROAD MULTI-PURPOSE TRAIL PROJECT  
CONTRACT NO. PR0901**

1. Firm Name: Fenix Earthworks LLC  
 Firm Address: 21207 127<sup>th</sup> Ave E  
Graham, wa 98338

2. Telephone No. (360) 893-9103 Fax No.: (360) 893-2093

3. Washington State License No. FENIXEL854M9 Expires: 07-29-2017

4. Number of years engaged in contracting business under above name: Less than 1

5. Particular types of construction performed by your company: Excavation and underground utilities

6. Gross amount of contracts now on hand: \$ 0

7. List similar recent construction projects that your firm has done in the last 5 years (i.e., water and storm and sanitary sewer main construction, road reconstruction, excavations, extensive dewatering, etc.):

Amount	Type	Owner's Name	Phone
\$19,341.40	Storm	PS Business Parks	Kent Inspector 253 261 5048
\$378,442.05	water-storm-sewer	Town of Wilkeson	Inspector 360 261 3732
\$131,481.00	New Construction	EM Precision	253 740 0794

8. What is the construction experience of the principal individuals to be assigned to this project?

Name	Title	Years of Construction Experience	Availability
Gordon Juhl	Superintendent	22	onsite
Bryan Rapp	foreman	25	onsite

9. List equipment available for anticipated work:

Quantity	Item	General Description, Size, Capacity, Title	Ownership (Own, Rent, Lease)
1	John Deere 310	Backhoe	own
1	John Deere 50	Excavator	own
1	Hitachi 120	Excavator	own
1	International	Dump Truck	own

10. Bank Reference:

Name, Account Type	Address
Key Bank - checking	Oeting Branch

By: Adams  
(Authorized Signature)

Title: owner/member

- (1) Any bidder having current outstanding litigation with the City will not be considered responsible and will be rejected by the City.

**SELECTION OF RETAINAGE OPTION  
CITY OF PACIFIC  
STEWART ROAD MULTI-PURPOSE TRAIL PROJECT  
CONTRACT NO. PR0901**

Contract/Purchase Order Number: \_\_\_\_\_

Pursuant to RCW 60.28.011, five percent (5%) of all monies earned by the Contractor on estimates during the progress of the work shall be retained by the City for the purposes mentioned in said statute. The Contractor elects to have these monies (check one):

- Retained in a fund by the Owner until sixty (60) days following the final acceptance of said improvement or work is completed;
- Deposited by the Owner in an interest bearing account in a bank, mutual savings bank, or savings and loan association, not subject to withdrawal until after the final acceptance of said improvement or work is completed, or until agreed to by both parties: Provided that interest on such account shall be paid to the Contractor; or
- Placed in escrow with a bank or trust company by the Owner until sixty (60) days following the final acceptance of said improvement or work is completed. When the monies reserved are to be placed in escrow, the Owner shall issue a check representing the sum of the monies reserved payable to the bank or trust company and the Contractor jointly. Such check shall be converted into bonds and securities chosen by the Contractor and approved by the Owner and such bonds and securities shall be held in escrow. Interest on such bonds and securities shall be paid to the Contractor as the said interest accrues. Contractor hereby further agrees to be fully responsible for payment of all costs or fees incurred as a result of placing said retained percentage in escrow and investing it as authorized by statute. The City of Port Orchard shall not be liable in any way for any cost or fees in connection therewith.

\_\_\_\_\_  
Name of Financial Institution

\_\_\_\_\_  
Address of Financial Institution

\_\_\_\_\_  
City, State, Zip Code of Financial Institution

\_\_\_\_\_  
Escrow Account Number

Adams  
Contractor's Signature

9-30-15  
Date

**Failure to return this Declaration as part of the bid proposal package will make the bid nonresponsive and ineligible for award.**

## **NON-COLLUSION DECLARATION**

**I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statements are true and correct:**

- 1. That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.**
- 2. That by signing the signature page of this proposal, I am deemed to have signed and to have agreed to the provisions of this declaration.**

## **NOTICE TO ALL BIDDERS**

To report rigging activities call:

**1-800-424-9071**

The U.S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction contract fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially and caller anonymity will be respected.

DOT Form 272-255H EF  
Revised 5/05

**BID SECURITY  
CITY OF PACIFIC  
STEWART ROAD MULTI-PURPOSE TRAIL PROJECT  
CONTRACT NO. PR0901**

**Bid Deposit:**

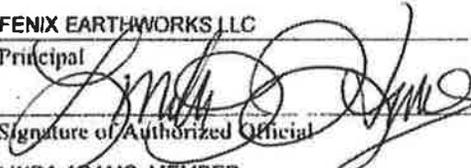
The undersigned Principal hereby submits a Bid Deposit with the City of PACIFIC in the form of a cash deposit, certified or cashier's check, or postal money order in the amount of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_).

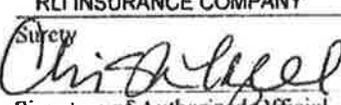
**Bid Bond:**

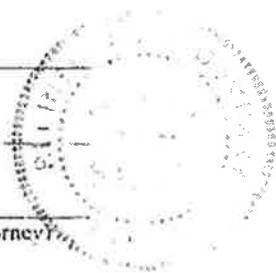
KNOW ALL MEN BY THESE PRESENTS: That we, FENIX EARTHWORKS LLC, as Principal and RLI INSURANCE COMPANY, as Surety, are held firmly bound unto the City of PACIFIC, Washington, as Obligeo, in the penal sum of Five Percent (5%) of the Amount Bid Dollars, for the payment of which the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally by these presents.

The conditions of this obligation are such that if the Obligeo shall make any award to the Principal for CONTRACT NO. PR0901, PACIFIC, Washington, according to the terms of the Proposal or Bid made by the Principal therefore, and the Principal shall duly make and enter into a contract with the Obligeo in accordance with the terms of said Proposal or Bid and award and shall give bond for the faithful performance thereof, with Surety or Sureties approved by the Obligeo, or if the Principal shall, in case of failure to do so, pay and forfeit to the Obligeo the penal amount of the deposit specified in the call for bids, then this obligation shall be null and void; otherwise it shall be and remain in full force and effect and the Surety shall forthwith pay and forfeit to the Obligeo, as penalty and liquidated damages, the amount of this Bond. Principle and Surety agree that if the Obligeo is required to engage the services of an attorney in connection with enforcement of this bond each shall pay the Obligeo reasonable attorney's fees, whether or not suit is commenced, in addition to the penal sum.

Signed, Sealed and Dated this 28th day of SEPTEMBER, 2015.

FENIX EARTHWORKS LLC  
Principal  
  
Signature of Authorized Official  
LINDA ADAMS, MEMBER  
Printed Name and Title

RLI INSURANCE COMPANY  
Surety  
  
Signature of Authorized Official  
By CHRISTINA L. BOZELL  
Attorney-in-Fact (Attach Power of Attorney)



Name and address of local office of Agent and/or Surety Company:

RLI INSURANCE COMPANY  
P.O. Box 3967 Peoria, IL 61612  
Pollock Insurance Inc. 654 S. 152nd St Seattle, WA 98148

Surety companies executing bonds must appear on the current Authorized Insurance List in the State of Washington per Section 1-02.7 of the Standard Specification.



RLI Insurance Company  
 P.O. Box 3967 Peoria IL 61612-3967  
 Phone: (309)692-1000 Fax: (309)683-1610

**POWER OF ATTORNEY**  
**RLI Insurance Company**

Bond No. LSM0628882

**Know All Men by These Presents:**

That the RLI Insurance Company, a corporation organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: Christina L. Bozell in the City of Seattle, State of Washington, as Attorney In Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million and 00/100 Dollars (\$10,000,000.00) for any single obligation, and specifically for the following described bond.

Principal: Fenix Earthworks, LLC  
 Obligee: City of Pacific  
 Bond Amount: 5% of Total Amount Bid

The RLI Insurance Company further certifies that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, the RLI Insurance Company has caused these presents to be executed by its Vice President with its corporate seal affixed this 28th day of September, 2015.

ATTEST:

Cherie L. Montgomery  
 Cherie L. Montgomery Assistant Secretary



RLI Insurance Company  
B. W. Davis  
 Barton W. Davis Vice President

On this 28th day of September, 2015 before me, a Notary Public, personally appeared Barton W. Davis and Cherie L. Montgomery, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said RLI Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler  
 Jacqueline M. Bockler Notary Public



**CONTRACT  
CITY OF PACIFIC  
STEWART ROAD MULTI-PURPOSE TRAIL PROJECT  
CONTRACT NO. PR0901**

THIS AGREEMENT made and entered into this thirteenth day October, 2015, by and between the City of Pacific, a municipality incorporated and existing under the laws of the State of Washington, by its City Council and Mayor, hereinafter called the "City," and Fenix Earthworks, LLC, hereinafter called the "Contractor."

WITNESSETH:

That the Contractor, in consideration of the covenants, agreements and payments to be performed and made by the City, hereby covenants and agrees to furnish all labor, tools, materials, equipment and supplies required for, and to execute, construct and finish in full compliance with the Contract Documents, **STEWART ROAD MULTI-PURPOSE TRAIL PROJECT**. The Contractor further agrees to perform all such work for the Contract Price stated in the Contractor's Bid Proposal dated September 30, 2015, attached hereto and incorporated herein by this reference as if set forth in full.

The Contract Documents, duly identified, together with the Instructions to Bidders, a confirmed copy of the Proposal made by the Contractor on September 30, 2015, and the 2015 WSDOT Standard Specifications for Road, Bridge, and Municipal Construction, as modified by Amendments and Special Provisions, The WSDOT Standard Plans, and the City of Pacific Development Guidelines and Standard Details are hereby made a part of this Contract and are mutually cooperative therewith. Time is of the essence of this Contract. It is agreed that the work covered by this Contract shall start within 14 calendar days after Notice to Proceed is issued and that all construction shall be complete within **20 working days** after the Notice to Proceed Date.

It is further agreed that the City will suffer damage and be put to additional expense in the event that the Contractor shall not have the specified portions of the work completed in all its parts in the time specified, and as it may be difficult to accurately compute the amount of such damage, the Contractor expressly consents and agrees to pay to the City liquidated damages, the sum as calculated by the equation shown in Section 1-08.9 of the WSDOT specification, for each and every working day said work is not complete beyond the time shown in the Proposal.

Contractor understands that his bid response documents and any contract documents may be subject to release under the Public Records Act Chapter 42.56 RCW and the City may be required to be disclosed upon a request. Contractor acknowledges that he has advised to mark any records believed to be trade secrets or confidential in nature as "confidential." If records marked as "confidential" are found to be responsive to the request for records, the City as a courtesy to the Contractor, may elect to give notice to Contractor of the request so as to allow Contractor to seek a protective order from a Court. Contractor acknowledges and agrees that any records deemed responsive to a public records request may be released at the sole discretion and without notice by the City.

With this Contract, Contractor is furnishing a Corporate Surety Bond in the amount of

One Hundred Eighty Eight Thousand, Eight Hundred Twenty Five Dollars (\$188,825.00) with \_\_\_\_\_ as Surety, to insure full compliance, execution and performance of this Contract by the Contractor in accordance with all its terms and provisions.

In the event of litigation, venue shall be within King County, Washington.

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed.

**CITY OF PACIFIC**

By: \_\_\_\_\_  
Leanne Guier  
Mayor

**CONTRACTOR**

By: Adams  
Title: member - Catherine Adams  
Address: 21207 127<sup>th</sup> Ave E  
Graham, Wa 98338

**ATTEST:**

\_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Carol Morris  
City Attorney

CITY OF PACIFIC  
PUBLIC WORKS PROJECT  
PERFORMANCE BOND

CITY PROJECT #: PR0901  
SURETY BOND #: LSM0628894  
DATE POSTED: October 6th, 2015  
PROJECT COMPLETION DATE: 11/23/15

RE: Project Name: Stewart Road Multi-Purpose Trail  
Owner/Developer/Contractor: Fenix Earthworks, LLC  
Project Address: the northerly side of Stewart Road between northbound SR 167 and Valentine Avenue SE.

KNOW ALL PERSONS BY THESE PRESENTS: That we, Fenix Earthworks, LLC (hereinafter called the "Principal"), and RLI INSURANCE COMPANY a corporation organized under the laws of the State of ILLINOIS, and authorized to transact surety business in the State of Washington (hereinafter called the "Surety"), are held and firmly bound unto the City of Pacific, Washington, in the sum of One Hundred Eighty Eight Thousand, Eight Hundred Twenty Five and 00/00 Dollars (\$188,825.00), lawful money of the United States of America, for the payment of which sum we and each of us bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, by these presents. THE CONDITIONS of the above obligation are such that:

WHEREAS, the above named Principal has entered into a certain agreement with the City, to perform the following public works project within the City: Stewart Road Multi-Purpose Trail; and

WHEREAS, the agreement with the City requires that certain improvements be made as part of the public works project; and that such improvements be constructed in full compliance with City standards, and the plans and specifications as required by the City; and

WHEREAS, the agreement with the City requires that the improvements are to be made or constructed within a certain period of time, unless an extension is granted in writing by the City; and

NOW, THEREFORE, it is understood and agreed that this obligation shall continue in effect until released in writing by the City of Pacific, but only after the Principal has performed and satisfied the following conditions:

A. Conditions.

1. The improvements to be constructed by the Principal include: (insert complete description here)  
Approximately 1,300 Linear feet of 10-foot wide porous asphalt trail; fence and asphalt demolition; concrete block retaining wall; bollards; landscaping, and surface restoration.
2. The Principal must construct the improvements to conform to the design, location, materials and other specifications for the indicated site improvements, as required by the City in the above-referenced project. In addition, the Principal must construct the improvements according to the applicable ordinances and standards of the City and/or state statutes, as the same now exist or are hereafter amended.
3. The Principal must have completed all improvements required by the above referenced conditions, plans and City file within 20 working days after the notice to proceed which time period shall begin to run from October 26, 2015 unless an extension is granted by the City.
4. The Principal must have paid all sums owing to laborers, contractors, mechanics, subcontractors, material-men and suppliers or others as a result of such work for which a lien against any City property has arisen or may arise. The Principal shall indemnify and hold harmless the City of Pacific, its officers, officials and agents from any claim for such payment.
5. The Principal must obtain acceptance by the City of the work completed, all on or before thirty (30) days after the completion date set forth in Section A(3) above.
6. The Principal shall indemnify and hold harmless the City of Pacific, its officers, officials and agents from any claims relating to defect(s) in any of the workmanship entering into any part of the work or designated equipment covered by the contract between the Principal and the City. Once the work has been completed and accepted by the City, and all other conditions of this Bond have been satisfied, this Performance bond will be released and replaced with a two (2) year Maintenance Bond, not to exceed the sum of \$ 283,237.50, which is not less than one hundred-fifty per cent (150%) of the total contract amount. This hold harmless and indemnification agreement shall survive the expiration of this Bond.

B. Default.

1. If the Principal defaults and does not perform the above conditions within the time specified, then the Surety shall, within twenty (20) days of demand of the City, make a written commitment to the City that it will either:
  - a). remedy the default itself with reasonable diligence pursuant to a time schedule acceptable to the City; or

- b). tender to the City within an additional ten (10) days the amount necessary, as determined by the City, for the City to remedy the default, up to the total bond amount.

Upon completion of the Surety's duties under either of the options above, the Surety shall then have fulfilled its obligations under this bond. If the Surety elects to fulfill its obligation pursuant to the requirements of subsection B(1)(b), the City shall notify the Surety of the actual cost of the remedy, upon completion of the remedy. The City shall return, without interest, any overpayment made by the Surety, and the Surety shall pay to the City any actual costs, which exceeded the City's estimate, limited to the bond amount.

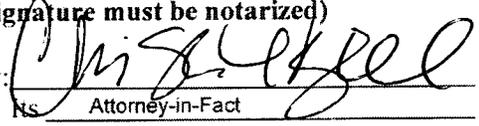
2. In the event the Principal fails to complete all of the above referenced improvements within the time period specified by the City, then the City, its employees and agents shall have the right at the City's sole election to enter onto said property described above for the purpose of completing the improvements. This provision shall not be construed as creating an obligation on the part of the City or its representatives to complete such improvements.
- C. **Corrections.** Any corrections required by the City shall be commenced within seven (7) days of notification by the City and completed within thirty (30) days of the date of notification. If the work is not performed in a timely manner, the City shall have the right, without recourse to legal action, to take such action under this Bond as described in Section B above.
  - D. **Extensions and Changes.** No change, extension of time, alteration or addition to the terms of the contract or to the work to be performed by the Principal or the specifications accompanying the same shall in any way affect the obligation of the Principal or Surety on this bond, unless the City specifically agrees, in writing, to such alteration, addition, extension or change. The Surety waives notice of any such change, extension, alteration or addition thereunder. The Surety hereby agrees that modifications and changes may be made in the terms and provisions of the aforesaid contract without notice to Surety and any such modifications or changes increasing the total amount to be paid the Principal shall automatically increase the obligation on this Performance Bond in a like amount.
  - E. **Enforcement.** It is specifically agreed by and between the parties that in the event any legal action must be taken to enforce the provisions of this bond or to collect said bond, the prevailing party shall be entitled to collect its costs and reasonable attorney fees as a part of the reasonable costs of securing the obligation hereunder. In the event of settlement or resolution of these issues prior to the filing of any suit, the actual costs incurred by the City, including reasonable attorney fees, shall be considered a part of the obligation hereunder secured. Said costs and reasonable legal fees shall be recoverable by the prevailing party, not only from the proceeds of this bond, but also over and above said bond as a part of any recovery (including recovery on the bond) in any judicial proceeding. The Surety hereby agrees that this Agreement shall be governed by the laws

of the State of Washington. Venue of any litigation arising out of this Agreement shall be in King County Superior Court.

- F. Bond Expiration. This bond shall remain in full force and effect until the obligations secured hereby have been fully performed and a Maintenance Bond as described in Section A(6) of this Bond has been submitted to the City, in a form suitable to the City and until released in writing by the City.

DATED this 6th day of October, 2015.

SURETY COMPANY  
(Signature must be notarized)

By:   
Its Attorney-in-Fact

Print Name: Christina L. Bozell

Business Name: RLI Insurance Company

Business Address: P.O. Box 3967

City/State/Zip Code: Peoria, IL 61612

Telephone Number: (309) 692-1000

DEVELOPER/OWNER  
(Signature must be notarized)

By: \_\_\_\_\_  
Its Member

Print Name: Catherine Adams

Business Name: Fenix Earthworks, LLC

Business Address: 21027 127<sup>th</sup> Avenue E

City/State/Zip Code: Graham, WA 98338

Telephone Number: (360) 893-9103

CITY OF PACIFIC

By: \_\_\_\_\_  
Its: Mayor

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Carol Morris, City Attorney

CHECK FOR ATTACHED NOTARY SIGNATURE  
\_\_\_\_ Individual (Form P-1)  
\_\_\_\_ Corporation (Form P-2)

**FORM P-2 / NOTARY BLOCK - (Use For Partnership or Corporation Only)**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

I certify that I know or have satisfactory evidence that Catherine Adams is the person who appeared before me, and said person acknowledged as the Member of FENIX EARTHWORKS, LLC that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: \_\_\_\_\_

\_\_\_\_\_  
(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing

at: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

**(For Surety Company)**

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF )

I certify that I know or have satisfactory evidence that Christina L. Bozell is the person who appeared before me, and said person acknowledged as the Attorney-in-Fact of RLI INSURANCE COMPANY that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated: 10/14/15

Sarah C. Szczepanski

(print or type name)

NOTARY PUBLIC in and for the State of Washington, residing

at: Auburn

My Commission expires: 8.1.18





RLI Insurance Company  
 9025 N. Lindbergh Dr. Peoria IL 61615  
 Phone: (309)692-1000 Fax: (309)683-1610

**POWER OF ATTORNEY**  
**RLI Insurance Company**

Bond No. LSM0628894

**Know All Men by These Presents:**

That RLI Insurance Company, corporations organized and existing under the laws of the State of Illinois, and authorized and licensed to do business in all states and the District of Columbia does hereby make, constitute and appoint: Christina L. Bozell in the City of Seattle, State of Washington, as Attorney In Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000) for any single obligation, and specifically for the following described bond.

Principal: Fenix Earthworks, LLC  
 Obligee: City of Pacific  
 Type Bond: Stewart Road Multi Purpose Trail Project - Contract No. PR0901  
 Bond Amount: \$188,825.00  
 Effective Date: October 6, 2015

RLI Insurance Company further certify that the following is a true and exact copy of a Resolution adopted by the Board of Directors of RLI Insurance Company, and now in force to-wit:

"All bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation shall be executed in the corporate name of the Company by the President, Secretary, and Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies, or undertakings in the name of the Company. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney, or other obligations of the corporation. The signature of any such officer and the corporate seal may be printed by facsimile."

IN WITNESS WHEREOF, RLI Insurance Company have caused these presents to be executed by their Vice President with their corporate seal affixed this 6th day of October, 2015.

ATTEST:

Cherie L. Montgomery  
 Cherie L. Montgomery Assistant Secretary



RLI Insurance Company  
B. W. Davis  
 Barton W. Davis Vice President

On this 6th day of October, 2015 before me, a Notary Public, personally appeared Barton W. Davis and Cherie L. Montgomery, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as Vice President and Assistant Secretary, respectively, of the said RLI Insurance Company, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler  
 Jacqueline M. Bockler Notary Public





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/14/2015

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> Pollock Insurance Inc. P.O. Box 68189 Seattle, WA 98168 Pollock Insurance, Inc	<b>CONTACT NAME:</b> Pollock Insurance, Inc <b>PHONE (A/C, No, Ext):</b> 206-244-3566 <b>E-MAIL ADDRESS:</b>	<b>FAX (A/C, No):</b> 206-246-3606
	<b>INSURER(S) AFFORDING COVERAGE</b>	
<b>INSURED</b> Fenix Earthworks LLC 21207 127th Ave E Graham, WA 98338	<b>INSURER A:</b> Ohio Security Insurance Co.	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

**COVERAGES**                      **CERTIFICATE NUMBER:**                      **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			BKS56739815	07/01/2015	07/01/2016	EACH OCCURRENCE \$ <b>1,000,000</b> DAMAGE TO RENTED PREMISES (Ea occurrence) \$ <b>1,000,000</b> MED EXP (Any one person) \$ <b>15,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COM/OP AGG \$ <b>2,000,000</b> \$
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> <b>UMBRELLA LIAB</b> <input type="checkbox"/> <b>EXCESS LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
**City of Pacific is named Additional Insured as respects work performed by Named Insured.**  
**Re: Stewart Road Multi-Purpose Trail Project; Contract No. Pr0901**

<b>CERTIFICATE HOLDER</b>  City of Pacific 100 3rd Ave SE Pacific, WA 98047	<b>CITYOFF</b>	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
		AUTHORIZED REPRESENTATIVE 