



# PETALUMA PUBLIC ART COMMITTEE

Release Date: October 13, 2016



## **PUBLIC ART OPPORTUNITY REQUEST FOR QUALIFICATIONS (RFQ)**

**Water Street Riverfront  
City of Petaluma, California**



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## OVERVIEW

The City of Petaluma Public Art Committee (PPAC) is reissuing this Request for Qualifications (RFQ) and is seeking qualifications from artists or artist teams for the commission and installation of site-specific, original, outdoor art for the Water Street riverfront area in downtown Petaluma. The budget for the project is \$120,000 to \$150,000 and is all-inclusive. A Selection Panel will review complete RFQ applications, and subsequently invite up to five finalists to interview with the panel. Ultimately, one artist/artist team will be awarded the contract to enter into the Design Development Phase and develop one or more site-specific public art concept(s) for the Water Street riverfront area. Further details are provided in this RFQ.

The deadline for RFQ submissions is November 15, 2016, 5:00 p.m. (PST).

## INTRODUCTION AND BACKGROUND

As stated in the Public Art Mission Statement of the Petaluma Public Art Master Plan (<http://cityofpetaluma.net/cdd/pdf/PAMPlayayoutJuly2013.pdf>), adopted June 17, 2013 by the Petaluma City Council by Resolution 2103-064 N.C.S., the City's public art program is committed to enhancing the appearance and cultural richness of the City by incorporating works of art into public places and fostering art with public view. Using the Public Art Fund, the City may implement a variety of public art projects on public property. The Master Plan lists several zones in the City for future public art projects, including parks, plazas, municipal facilities, pedestrian and recreational pathways, gateways and roadways.

Over several public meetings, the PPAC evaluated public art locations using site categories identified in the Master Plan. The site proposed for this RFQ is Water Street between East Washington Street and Western Avenue. This location was identified under the plaza site category in the Master Plan.

The Master Plan notes that plazas provide outdoor open spaces within the built environment. They offer pedestrian-oriented areas of respite and gathering as well as visual focus, often within busy retail, commercial or mixed-use environments. Public art associated with plazas should accomplish the following:

### Guiding Principles

- Enliven public spaces by adding focal interest, whimsy, humor and/or beauty
- Help identify the plaza and its vicinity, creating a sense of place
- Strongly consider the range of the City's historical, physical attributes, and demographic and social characteristics
- Encourage enjoyment and celebration of the human spirit and artistic creativity

### Approach

- Sponsor artwork that is functional, decorative or iconic such as seating, landscaping, paving, clocks, water features or sculpture. Artworks shall be compatible with, and not impede, the programmatic function of the site



- Create orienting public artworks that lessen the visual clutter of the urban setting
- Ensure artwork is durable and physically accessible to a diverse audience
- Ensure ease of maintenance access for artwork
- When determining the artwork's scale, consider both the pedestrian perspective and vehicular perspective, if the plaza is also visible from nearby streets

In December of 2014, the PPAC originally issued the Water Street RFQ. This process originally included a Request for Proposals (RFP) stage where four final artists developed site-specific concepts for the project site. Two finalists were later selected to showcase their concepts to the community, however the PPAC ultimately found that neither of the final concepts sufficiently met or showcased the intent of the Water Street RFQ/RFP and ended the process without selection of a final artist. This RFQ is being re-issued to all those eligible to apply, and exhibits a modified site-specific concept development and contract award process, as outlined below.

## PROJECT INTENT AND LOCATION

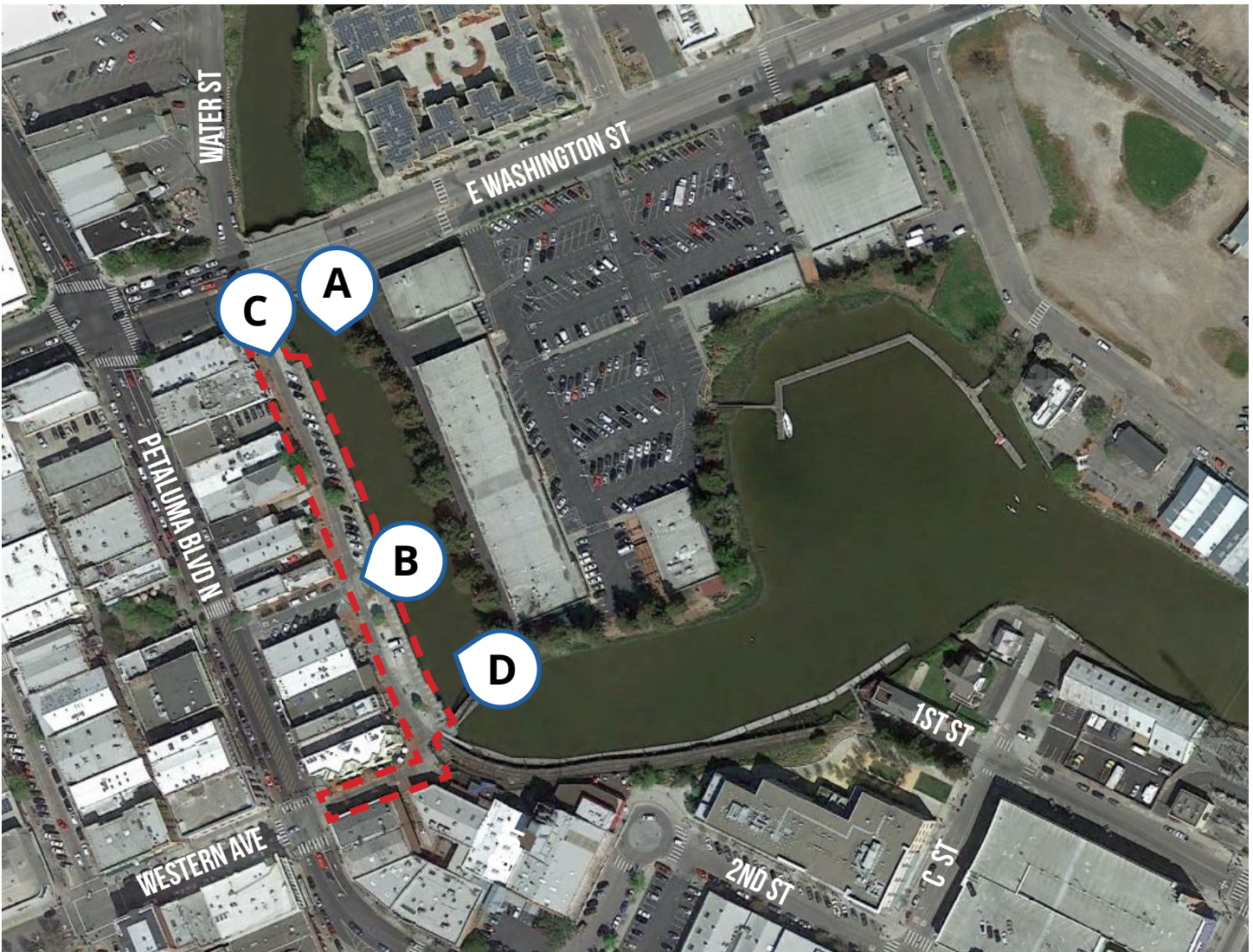
The mission of the City of Petaluma's public art program is to enhance the appearance and cultural richness of the City by incorporating works of art into public places. Specifically, this includes the acquisition and placement of public art on public property, as outlined in the General Plan, Public Art Master Plan, the enabling legislation of the PPAC, and Chapter 18 of the Petaluma Implementing Zoning Ordinance (IZO).

The City's public art fund is generated through payment of the required 1% public art in-lieu fee for non-residential projects with construction costs greater than \$500,000. As outlined in IZO Section 18.190, use of monies held in the public art fund are limited to:

- Cost of installing public art on public property, including the cost of commissioning or otherwise acquiring and providing and preparing sites for public art
- The cost of public art lighting
- The cost of public art identifying plaques
- The cost of maintaining public art
- The cost of supporting publicly accessible art exhibits
- The cost of documenting the City's public art program and promotion of the program through education, publicity and outreach
- The cost of conserving the City's public art collection
- The cost of planning and administering the City's public art program

In keeping with these criteria, the PPAC has developed this Request for Qualifications (RFQ) to commission and install public art within the Water Street riverfront area, located near the western terminus of the Balshaw Bridge. The primary area of focus is Water Street between East Washington Street and Western Avenue. The project site does not include the Petaluma River or Balshaw Bridge themselves. This is a pedestrian area along the riverfront in Petaluma's downtown commercial district, most of which is on the National Register of Historic Places. It is in the heart





**FOCUS AREA (IN RED)**  
Waterfront Plaza Area - Petaluma, CA

*NOTE: LETTERS CORRESPOND TO PHOTOGRAPHS*

of the City near the site of Petaluma’s first trading post and is bordered by a mosaic of businesses that have secondary access to the river. This is a highly visible location in the public right-of-way and the project offers the opportunity for the artist’s work to be integrated into a key historic district along the City’s riverfront.

Please see this URL for a set of location photographs on Flickr: <http://bit.ly/1mwbiZz>. The photographs show the site from many angles and times of day. Note that some physical constraints exist at the project site including in-ground trolley tracks (not currently in use; but have potential to operate in the future) and vehicular access needs, which will be disclosed prior to the development of site-specific concept(s).

The intent of the project is to add a signature art installation along the Water Street corridor that enhances a sense of place associated with the riverfront area. The public art installation may include either a single artwork piece or a combination of various sized pieced. A successful public art installation should:





- Integrate with existing landscape and structures,
- Allow for flexibility of development in the future, and work within the safety, traffic, and logistical constraints of the area,
- Remain durable and resistant to deterioration and vandalism,
- Be inviting to pedestrian traffic from the downtown area and withstand pedestrian contact,
- Be viewable day and night,
- Take into account the history of the area, its cultural importance to the City, as well as the natural elements of the river itself, and
- Introduce a flexible design that maintains public gathering space for community events and festivals.

## ELIGIBILITY

This opportunity is open to all artists and artist teams over the age of 18. The artist/artist team that is awarded the contract will be required to comply with the City of Petaluma's insurance and liability requirements.

## APPLICATION DEADLINE

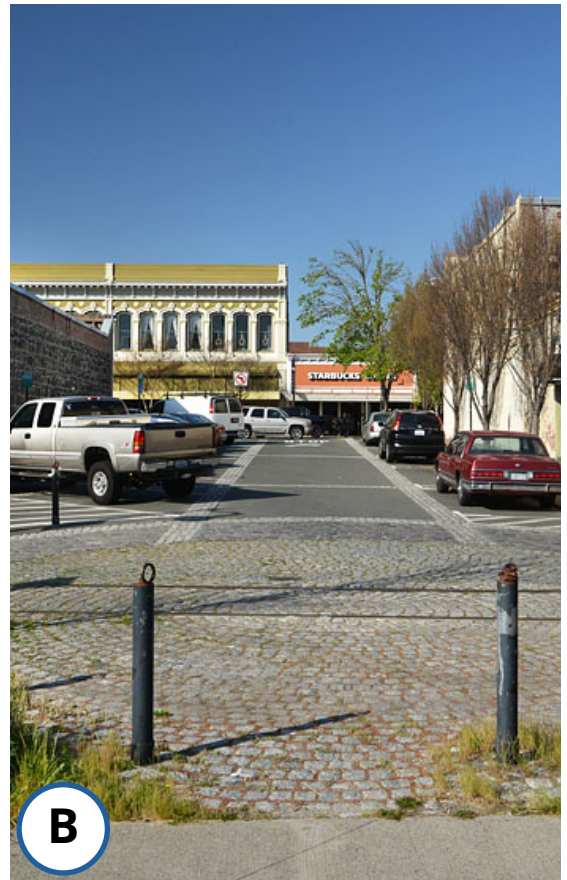
Applications are due no later than **Tuesday, November 15, 2015, 5:00 p.m PST**. Applications must be received by email to [joverzet@ci.petaluma.ca.us](mailto:joverzet@ci.petaluma.ca.us) no later than the above deadline. No exceptions will be granted. Refer to application procedures below for specific submittal requirements.



## RFQ SELECTION PROCESS AND CRITERIA

After the submission deadline, City staff will screen applications to ensure compliance with the minimum application requirements as stated in this RFQ. A Selection Panel established by the PPAC, comprised of various stakeholders and two PPAC representatives, will review all complete submissions and select up to five finalists who will be invited for an interview with the Selection Panel. Those finalists will then present their qualifications to the Selection Panel, who will review finalists based on the following set of criteria:

- Artistic Merit as evidenced by submitted materials
- Experience creating artworks in public spaces
- Demonstrated interest in and understanding of the project, including acknowledgement of the unique features and history of the Petaluma riverfront
- Experience working with architects, landscape architects, planners, engineers, etc. in designing for projects with complex and technical parameters
- Evidence of track record/ability of the artist or artist team to successfully work with a projected timeline and budget
- Written and visual communication skills
- Availability and ability to work for the term of the project



One final artist/artist team will be selected for recommendation to the PPAC and then to the Petaluma City Council for approval. Upon approval, the finalist will enter into contract with the City to begin the Design Development Phase (see below). The selected artist or artist team must be willing to:

- Enter into the City's Standard Professional Services Agreement, attached hereto as Attachment B, and prepare a scope of work for the Professional Services Agreement that provides for the services outlined in this RFQ,
- Preparation of an anticipated budget,
- Participation in approximately four in-person meetings/presentations (excluding the interview) and respond to feedback,
- Engagement of subcontractors if necessary,
- Creation and submittal of engineer-approved building permit ready construction drawings and documents if necessary,
- Site preparation if necessary,





- Fabrication, transportation, and installation of artwork(s) subject to the City of Petaluma Department of Public Works bidding requirements, and Prevailing Wage as necessary,
- Submittal of documentation images, specific media information, and a comprehensive maintenance/operations report,
- Participation in ribbon-cutting ceremony and/or outreach to press if requested, and
- Coordination with the PPAC and City staff as required.

Some meetings may be conducted remotely, as necessary and as solely determined by the City.

## Design Development Phase

The Design Development Phase will provide the finalist with a platform to develop the project with support of the PPAC and City representatives. This phase will include:

- Research/Outreach/Concept Development. The final artist/artist team will attend a walking tour of the project site with the PPAC, City representatives, and stakeholders to discuss any site-specific proposal development limitations (e.g. materials, placement, size) and to ask any questions related to the site or project prior to developing the site-specific concept(s).
- Develop Draft Site Specific Concept(s). The artist/artist team will develop one or more site-specific draft concept(s) to vet with the Committee, City, and the community.
- Community Open House. The artist/artist team will present their draft concept(s) to the community during an open house event to gain community input and insight prior to finalizing the concept.
- Develop Final Concept and Approval. The artist/artist team will develop the final site-specific concept for approval by the PPAC.
- Design Development/Construction/Permitting. The artist/artist team will finalize artwork design, provide to-scale construction documents accompanied by either a 3D rendering or model (if applicable), and obtain any necessary permits (e.g. encroachment permit).



Waterfront Plaza Area - Petaluma, CA





- Fabrication/Installation/Completion. The artist/artist team will fabricate the public art and install the art piece(s) on Water Street within the agreed-upon time frame. The PPAC may choose to hold a ceremony to unveil the public art piece upon installation, at which the artist/artist team would be expected to attend.

The selected artist will receive a contract for design services, fabrication, and installation services. An all-inclusive award amount of \$120,000 to \$150,000 for the artwork is projected. This budget includes artist fees, design fees, travel expenses, all materials and fabrication cost, lighting, insurance costs, site-preparation costs, traffic control costs, engineering expenses, shipping and transportation to the site, installation, any applicable permit fees and taxes, any costs associated with the development of site-specific concept(s), and any other expenses related to the design including fabrication and installation. The artwork and all rights to it shall be owned by the City.

No Request for Proposals (RFP) will be issued as part of this process.

## HOW TO APPLY

A complete submission must include **all** of the information and materials described below:

1. RFQ Cover Sheet. Please complete and submit the RFQ Cover Sheet, as provided in Attachment A of this RFQ. The form **must be signed** to be acceptable.
2. Letter/Statement of Interest. Describe in one page your interest in the project and preliminary ideas for how you would approach this project. The letter should demonstrate your understanding of the project site, and any historical or otherwise unique features of the riverfront area you wish to highlight that could be incorporated into a site-specific concept. You do not need to submit a site-specific concept as part of your RFQ application.
3. Current Resume(s). If submitted as a team, please identify the team leader and include resumes for each team member, with each resume being no longer than three pages. Resume(s) should reflect artist experience designing, fabricating, and installing artwork in outdoor public settings. Resume(s) should include information regarding past public art commissions, design team experience, exhibitions, awards, grants, and education.
4. Images of Past Work & Annotated Image List. Artists/artist teams must submit up to ten images of relevant work samples. Please submit pdf or jpeg files with a minimum 72 DPI resolution. Every image file must be titled first with the number of the image in the order to be viewed, followed by the artist's last name (for example: 01\_Smith; 02\_Smith). Number must correspond to an annotated image list. Images should be labeled with the title of the piece, the specific medium, the dates, and the dimension of the art. Artists applying as a team may only include examples of existing collaborative work.
5. Three Professional References. References should have an intimate knowledge of your work and working methods in public settings. Please include name, affiliated organization (if appropriate), address, phone number, and email address for each individual. Please indicate relationship to each reference.



The proposal must be submitted via email. Emails including all attachments shall not be larger than 25 MB in size. If you wish to submit materials over this size, other arrangements may be accommodated in advance of the deadline with City staff. Hardcopy and/or handwritten materials will not be reviewed. Application materials must be received by **November 15, 2016, 5:00 p.m. PST** and be addressed to:

**Petaluma Public Art Committee  
City of Petaluma, Planning Division  
Attention: Jacqueline Overzet  
joverzet@ci.petaluma.ca.us**

## WORKING SCHEDULE

The following is an estimated schedule for key project milestones:

RFQ Release	October 13, 2016
RFQ Application Deadline	November 15, 2016 at 5 p.m. (PST)
City Review for Completeness	November to December 2016
Selection Panel Review	January 2017
Finalist Interviews	February 2017
Finalist Selection & Contract Reward	Spring 2017
Concept Development	Summer to Fall 2017
Community Open House	Fall 2017
Develop Final Concept & Approval	Fall to Winter 2017
Design/Construction/Permitting	Winter 2017
Fabrication and Installation	Winter 2017 to Spring 2018
Completion	Summer 2018

## ADDITIONAL INFORMATION

The artist/artist team selected through this RFQ process must agree to maintain liability insurance as set forth in Exhibit B of the City's Standard Professional Services Agreement (attached as Attachment B to this RFQ) which will insure and indemnify the artist(s) and the City of Petaluma during the term of the contract and for one year after acceptance of the project, unless the requirement is waived by the City of Petaluma.

- The City of Petaluma is not obligated to select a finalist from the submitted RFQs.
- Submitting an application to this RFQ does not constitute an expressed or implied contract.
- Artist submitting qualifications will receive written notification of the results of the selection process.
- Application materials will not be returned.



If you have questions or need any additional information, please contact Jacqueline Overzet, Associate City Planner, at (707)778-4387 or [joverzet@ci.petaluma.ca.us](mailto:joverzet@ci.petaluma.ca.us).

## RFQ ATTACHMENTS

- Attachment A.** RFQ Cover Sheet
- Attachment B.** City's Standard Professional Services Agreement





# CITY OF PETALUMA REQUEST FOR QUALIFICATIONS WATER STREET RIVERFRONT PUBLIC ART INSTALLATION APPLICATION COVER SHEET

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

### Artist/Artist Team Contact Information

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone(s): \_\_\_\_\_

E-mail: \_\_\_\_\_

Website: \_\_\_\_\_

If an artist team, please list all other members:

_____	_____
_____	_____
_____	_____
_____	_____

### Please check the following items to indicate they are attached:

- Letter/Statement of Interest
- Current Resume(s)
- Images of Past Work & Annotated Image List
- Three Professional References

*(please sign on reverse side)*



By signing this form, you confirm that:

- all information provided within this application is true and correct,
- you have reviewed the City's Standard Professional Services Agreement provided as Attachment B to the Water Street RFQ, and if selected as the final artist/artist team, you agree to enter into such agreement with the City without modifications, and
- if selected as the final artist/artist team, you agree to maintain liability insurance as set forth in Exhibit B of the City's Standard Professional Services Agreement (attached as Attachment B to the Water Street RFQ).

Artist or Head of Organization Signature: \_\_\_\_\_

Type or Print Name: \_\_\_\_\_

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

**PROFESSIONAL SERVICES AGREEMENT**

\_\_\_\_\_  
(Title of Project)

FY \_\_\_\_\_ Fund # \_\_\_\_\_ Cost Center \_\_\_\_\_ Object Code \_\_\_\_\_ Project # \_\_\_\_\_ Amount \$ \_\_\_\_\_

For multi-year contracts or contracts with multiple accounts:

FY \_\_\_\_\_ Fund # \_\_\_\_\_ Cost Center \_\_\_\_\_ Object Code \_\_\_\_\_ Project # \_\_\_\_\_ Amount \$ \_\_\_\_\_

FY \_\_\_\_\_ Fund # \_\_\_\_\_ Cost Center \_\_\_\_\_ Object Code \_\_\_\_\_ Project # \_\_\_\_\_ Amount \$ \_\_\_\_\_

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FY \_\_\_\_\_ Fund # \_\_\_\_\_ Cost Center \_\_\_\_\_ Object Code \_\_\_\_\_ Project # \_\_\_\_\_ Amount \$ \_\_\_\_\_

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into and effective as of \_\_\_\_\_, 20\_\_\_\_ (“Effective Date”), by and between the City of Petaluma, a  
(city use only)

municipal corporation and a charter city (“City”) and \_\_\_\_\_, a \_\_\_\_\_ (“Consultant”) (collectively, the “Parties”).

WHEREAS, the Parties enter into this Agreement for the purpose of Consultant providing professional services to City under the terms and conditions set forth herein.

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the Parties agree as follows:

1. **Services.** Consultant shall provide the services as described in and in accordance with the schedule set forth in Exhibit “A” attached hereto and incorporated herein (“Services”).
2. **Compensation; Business Tax Certificate.**
  - A. For the full performance of the Services as described herein, City shall compensate Consultant in accordance with the rates specified in Exhibit A.
  - B. Consultant shall submit detailed monthly invoices reflecting all services performed during the preceding month, and including a revised schedule for performance and additional documentation requested by City, as applicable.
  - C. Consultant shall be compensated for services in addition to those described in Exhibit A, only if Consultant and City execute a written amendment to this Agreement describing the additional services to be performed and the compensation to be paid for such services. In no case shall the total compensation under this Agreement exceed \$\_\_\_\_\_ without prior written authorization of the City Manager. Further, no compensation for a section or work program component attached with a specific budget shall be exceeded without prior written authorization of the City Manager.
  - D. Notwithstanding any provision herein, Consultant shall not be paid any compensation until such time as Consultant has on file with the City Finance Department a current W-9 form available from the IRS website ([www.irs.gov](http://www.irs.gov)) and has obtained a currently valid Petaluma business tax certificate.



- E. City's obligation to pay compensation to Consultant as provided herein is contingent upon Consultant's performance of the Services pursuant to the terms and conditions of this Agreement and any amendments thereto.
3. **Term.** The term of this Agreement commences on the Effective Date, and terminates on \_\_\_\_\_, unless sooner terminated in accordance with Section 4. Upon termination, any and all of City's documents or materials provided to Consultant and any and all of the documents or materials prepared for City or relating to the performance of the Services, shall be delivered to the City as soon as possible, but not later than fourteen (14) days after termination of the Agreement.
  4. **Termination.** City may terminate this Agreement without cause upon ten (10) days' written notice. City may immediately terminate or suspend this Agreement for cause. Cause for immediate termination or suspension shall include, but not be limited to, any breach of this Agreement by Consultant or Consultant's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Consultant shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by City, Consultant shall be entitled to payment for all Services performed to the date of termination to the extent such Services were performed to the satisfaction of City in accordance with the terms and conditions of this Agreement. If City terminates this Agreement for cause, Consultant shall be liable to City for any excess cost City incurs for completion of the Services.
  5. **Consultant's Representation; Independent Contractor.** Consultant represents that Consultant possesses distinct professional skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Consultant shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Consultant and its agents and employees, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of City. This Agreement shall not be construed as an agreement for employment.
  6. **Facilities and Equipment.** Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing Services pursuant to this Agreement. City shall furnish to Consultant no facilities or equipment, unless the City otherwise agrees in writing to provide the same.
  7. **Licenses, Permits, Etc.** Consultant shall, at Consultant's sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits or other such approvals which are legally required for performing the Services.
  8. **Time.** Consultant shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Consultant's obligations pursuant to this Agreement.
  9. **Inspection.** Consultant shall provide the City every reasonable opportunity to ascertain that the Services are being performed in accordance with the requirements and intentions of this Agreement. All work done and materials furnished, if any, shall be subject to

inspection and approval by the City. The inspection of such work shall not relieve Consultant of any of its obligations pursuant to this Agreement.

10. **Progress Reports.** Upon the City's request, Consultant shall provide, in a form acceptable to City, written progress reports of all oral and written observations, opinions, recommendations, analyses, progress and conclusions related to Consultant's performance of the Services.
11. **Confidentiality.** In the course of Consultant's employment, Consultant may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Consultant shall not directly or indirectly disclose or use any such confidential information, except as required for the performance of the Services.
12. **Conflict of Interest.** Consultant represents that it presently has no interest, and covenants that it shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the Services hereunder. Consultant further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Consultant represents that no one who has or will have any financial interest under the Agreement is an officer or employee of City. If such conflict of interest arises during this Agreement or any extension, Consultant will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement. Certain Consultants are subject to the requirements, including the disclosure and reporting requirements, of the City's Conflict of Interest Code adopted pursuant to the Political Reform Act. Such Consultants subject to the City's Conflict of Interest Code include those whose work may involve: making government decisions regarding approval or adoption of rates, rules, or regulations, action on permits or other applications, authorization to enter into or modify contracts, or approval of plans, designs, reports, or studies. Consultant agrees to comply fully with all such requirements to the extent they apply to Consultant's performance of the Services.
13. **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
14. **Standard of Performance.** Consultant shall perform all the Services in a manner consistent with the standards of Consultant's profession. All instruments of service of whatsoever nature, which Consultant delivers to City pursuant to this Agreement, shall be prepared in a substantial, workmanlike manner and conform to the standards of Consultant's profession. All such instruments of service shall become the sole and exclusive property of City upon delivery of the same.
15. **Assignment/Transfer.** No assignment or transfer in whole or in part of this Agreement shall be made without the prior written consent of City.
16. **Subcontractors.** Consultant shall directly perform all Services, and shall not subcontract any portion of performance of the Services without the prior written consent of City. Any such subcontractors shall be required to comply, to the full extent applicable, with

the terms and conditions of this Agreement, including but not limited to, procuring and maintaining insurance coverage as required herein and which shall name City as an additional insured.

17. **Compliance With All Laws.** Consultant shall fully comply with all applicable local, state and federal rules, laws, regulations and ordinances pertaining to the performance of the Services required hereunder, including but not limited to, the California Building Standards Code as in effect in the City, the Americans with Disabilities Act, and any laws and regulations related to any copyright, patent, trademark or other intellectual property right involved in performance of the Services. Consultant's failure to comply with any law(s) or regulation(s) applicable to the performance of the Services hereunder shall constitute a material breach of this Agreement. To the extent that any other government agency or entity provides compensation for any Services, Consultant shall comply with all rules and regulations applicable to such fiscal assistance.
18. **Living Wage Ordinance.** Without limiting the foregoing Section 17, Consultant shall comply fully with all applicable requirements of Petaluma Municipal Code, Chapter 8.36, Living Wage (the "Living Wage Ordinance"), as the same may be amended from time to time. Upon the City's request Consultant shall promptly provide to the City documents and information verifying Consultant's compliance with the requirements of the Living Wage Ordinance, and shall within fifteen (15) calendar days of the Effective Date of this Agreement, notify each of its affected employees as to the amount of wages and time off that are required to be provided to them pursuant to the Living Wage Ordinance. The Acknowledgement and Certification Pursuant to City of Petaluma Living Wage Ordinance, attached to this Agreement as Exhibit \_\_\_\_\_, shall be a part of this Agreement for all purposes, and Consultants that are subject to Living Wage Ordinance requirements, as determined by the City, must provide a properly completed Exhibit \_\_\_\_\_ in accordance with the requirements of the Living Wage Ordinance. Consultant's noncompliance with the applicable requirements of the Living Wage Ordinance shall constitute cause for City's termination of this Agreement pursuant to Section 4 hereof.
19. **Discrimination.** During the performance of this Agreement, Consultant shall not discriminate against any employee or applicant for employment because of race, religion, creed, color, national origin, ancestry, gender, sexual orientation, age or physical or mental disability in violation of any applicable law.
20. **Notice.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:
  - (i) personal delivery, in which case notice is effective upon delivery;
  - (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
  - (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service; or



- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

City: City Clerk  
City of Petaluma  
Post Office Box 61  
Petaluma, California 94953  
Phone: (707) 778-4360  
Fax: (707) 778-4554  
Email: cityclerk@ci.petaluma.ca.us

And:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

Consultant: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

21. **Ownership of Documents.** All original papers, documents or computer material on disk or microfilm, and copies thereof, produced as a result of this Agreement, shall be the property of City and may not be used by Consultant without the written consent of City. Copies of such documents or papers shall not be disclosed to others without the written consent of the City Manager or his or her designated representative.
22. **Indemnification.** To the maximum extent permitted by law, Consultant shall, at its own expense, indemnify, defend with counsel acceptable to the City, (which acceptance will not be unreasonably withheld), and hold harmless City and its officers, officials, employees, agents and volunteers ("Indemnitees") from and against any and all liability, loss, damage, claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, civil penalties and fines, expenses and costs (including, without limitation, claims expenses, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature, whether actual, alleged or threatened, arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

The Consultant's obligation to indemnify, defend and hold harmless under this provision shall not be excused because of the Consultant's inability to evaluate Liability, or because the Consultant evaluates Liability and determines that the Consultant is not or may not be liable. The Consultant must respond within 30 calendar days to any tender for defense and indemnity by the City, unless the time for responding has been extended by an authorized representative of the City in writing. If the Consultant fails to accept tender of defense and indemnity within 30 calendar days, in addition to any other remedies authorized by law, so much of the money due or that may become due the Consultant under this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the matter subject to tender, or until the Consultant accepts the tender, whichever occurs first. In the event that the City must file responsive documents in a matter tendered to Consultant prior to Consultant's acceptance of tender, Consultant agrees to fully reimburse all costs, including but not limited to attorney's fees and costs and fees of litigation, incurred by the City in filing such responsive documents.

The Consultant waives any and all rights to express or implied indemnity against the Indemnitees concerning any Liability of the Consultant arising out of or in connection with the Services or Consultant's failure to comply with any of the terms of this Agreement. The defense and indemnification obligations of this Agreement shall no way be limited by, the insurance obligations that apply to this Agreement pursuant to Section 23.

Notwithstanding the foregoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2783, as may be amended from time to time, Consultant's duty to indemnify under this provision shall not apply when to do so would be prohibited by California Civil Code Section 2782, as may be amended from time to time.

Notwithstanding the foregoing, to the extent that the Services include design professional services subject to California Civil Code Section 2782.8, as may be amended from time to time, Consultant's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.

23. **Insurance.** Consultant shall comply with the "Insurance Requirements for Consultants" in Exhibit B-\_\_\_\_\_, attached hereto and incorporated herein by reference. [*Indicate attached exhibit, e.g., "B-1," "B-2," "B-3," or "B-4."*]
24. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.
25. **Litigation.** If litigation ensues which pertains to the subject matter of Consultant's services hereunder, Consultant, upon request from City, agrees to testify therein at a reasonable and customary fee.
26. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.

27. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Petaluma. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.
28. **Non-Waiver.** The City's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.
29. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
30. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.
31. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.
32. **Consultant's Books and Records.**
- A. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.
  - B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.
  - C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at Petaluma City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.
  - D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in Petaluma City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.



- 33. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.
- 34. **Survival.** All obligations arising prior to the termination or expiration of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination or expiration of this Agreement.
- 35. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

IN WITNESS WHEREOF, the parties hereto have executed this document the day, month and year first above written.

CITY OF PETALUMA

CONSULTANT

\_\_\_\_\_  
City Manager

By \_\_\_\_\_  
Name

ATTEST:

\_\_\_\_\_  
Title

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

\_\_\_\_\_  
Address

APPROVED AS TO FORM:

\_\_\_\_\_  
City State Zip

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

\_\_\_\_\_  
Taxpayer I.D. Number

APPROVED:

\_\_\_\_\_  
Petaluma Business Tax Certificate Number

\_\_\_\_\_  
Department Director

APPROVED:

\_\_\_\_\_  
Risk Manager

APPROVED:

\_\_\_\_\_  
Finance Director

file name:

# **INSURANCE REQUIREMENTS**

## EXHIBIT B-2

Consultant's performance of the Services under this Agreement shall not commence until Consultant shall have obtained all insurance required under this paragraph and such insurance shall have been approved by the City Attorney as to form and the Risk Manager as to carrier and sufficiency. All requirements herein provided shall appear either in the body of the insurance policies or as endorsements and shall specifically bind the insurance carrier.

Consultant shall procure and maintain for the duration of the contract all necessary insurance against claims now and in the future for injuries to persons or damages to property which may arise from or in connection with the performance of the Services by the Consultant, the Consultant's agents, representatives, employees and subcontractors. Required professional liability insurance shall be maintained at the level specified herein for the duration of this Agreement and any extension thereof and for twelve additional months following the Agreement termination or expiration.

### **A. Minimum Scope of Insurance**

Coverage shall be at least as broad as:

1. Insurance Services Office Commercial General Liability coverage:
  - a. Personal injury;
  - b. Contractual liability.
2. Insurance Services Office form covering Automobile Liability, code 1 (any auto).
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability insurance.
5. Such other insurance coverages and limits as may be required by the City.

### **B. Minimum Limits of Insurance**

Consultant shall maintain limits no less than:

1. General Liability: \$1,000,000 per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate liability is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
3. Employer's Liability: Bodily Injury by Accident - \$1,000,000 each accident.  
Bodily Injury by Disease - \$1,000,000 policy limit.  
Bodily Injury by Disease - \$1,000,000 each employee.
4. Professional Liability insurance: \$1,000,000.
5. Such other insurance coverages and limits as may be required by the City.

### **C. Deductibles and Self-Insured Retentions**

Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or

self-insured retentions as respects the City, its officers, officials, employees, and volunteers; or the Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

#### **D. Other Insurance Provisions**

The required general liability and automobile policies are to contain, or be endorsed to contain the following provisions:

1. The City, its officers, officials, employees, agents and volunteers are to be covered as Additional Insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, occupied or used by the Consultant; or automobiles owned, leased, hired or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.
2. For any claims related to this project, the Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought except, with respect to the limits of the insurer's liability.
5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.
6. Consultant agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors, subcontractors or others involved in any way with the Services to do likewise.
7. It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirement and/or limits shall be available to the additional insured. Furthermore, the requirement for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured; whichever is greater.
8. The limits of insurance required in this Agreement 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 the City of Petaluma before the City of Petaluma's own insurance or self-insurance shall be called upon to protect it as a named insured.

**E. Acceptability of Insurers**

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII.

**F. Verification of Coverage**

Consultant shall furnish the City with original endorsements effecting coverage required by this clause. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by the City before the Services commence.