



CITY OF PETALUMA

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PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

Brian Barnacle
D'Lynda Fischer
Mike Healy
Dave King
Kevin McDonnell
Dennis Pocekay
Councilmembers

February 3, 2022

REQUEST FOR PROPOSAL (RFP) FOR DESIGN SERVICES FOR THE ELLIS CREEK WATER RECYCLING FACILITY (ECWRF) OXIDATION POND TRANSFER STRUCTURE REHABILITATION PROJECT.

INTRODUCTION

The City of Petaluma's Department of Public Works & Utilities is requesting technical proposals from qualified consulting firms interested in providing design services for the Ellis Creek Water Recycling Facility (ECWRF) Oxidation Ponds Transfer Structure Rehabilitation Project.

The City will enter into a Professional Service Agreement (PSA) with the top qualified firm to provide design services.

SCOPE OF SERVICES

The ECWRF is located in Southeast Petaluma and is bound by Shollenberger Park to the northwest, Lakeville Hwy (Hwy 116) to the northeast, and farmland/open space to the southwest and southeast. The ECWRF was constructed in 2009 and provides tertiary level treatment for the City's wastewater. Included in the ECWRF's infrastructure are an Aeration Pond and ten (10) Oxidation Ponds (see Attachment E) which receive secondary treated wastewater and untreated wastewater overflows during high rainfall events. These series of ponds were constructed in the 1970's and were part of the previous wastewater treatment system prior to ECWRF operations.

The Aeration and Oxidation Ponds consist of unlined earthen dams, which act as vehicular pathways in between ponds; and concrete flow transfer structures which allow treated/untreated wastewater to flow in between ponds. The flow transfer structures are compromised of a reinforced concrete basin structure with a 48-inch cast iron gate valve to control flow, 24-inch corrugated metal pipe (CMP) inflow piping, and 48-inch CMP outflow piping. The flow structures are nearing the end of their useful life and are in need of rehabilitation.

In December of 2021, a sinkhole was discovered on the roadway between the flow transfer structure on the Aeration Pond and Oxidation Pond #4. The 48-inch discharge piping between of the flow transfer structure had experienced

Public Works & Utilities

City Engineer
11 English Street
Petaluma, CA 94952
Phone (707) 778-4303

Environmental Services
Ellis Creek –
Water Recycling Facility
3890 Cypress Drive
Petaluma, CA 94954
Phone (707) 776-3777
Fax (707) 656-4067

Parks & Facility Maintenance
840 Hopper St. Ext.
Petaluma, CA 94952
Phone (707) 778-4303
Fax (707) 206-6065

Transit Division
555 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4421

Utilities & Field Operations
202 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4546
Fax (707) 206-6034

E-Mail:
publicworks@cityofpetaluma.org

catastrophic failure as the entire top half of the pipe had corroded, causing undermining of roadway on the levee. The additional flow transfer structures are expected to be in similar condition as materials and construction date are identical. The City would prefer to have a complete design for all aspects of the project including repair of the failed flow transfer structure; replacement of all other flow structures in one construction project; and levee roadway rehabilitation. The City is requesting a qualified consultant and necessary subconsultants to partner with the City to provide design services for the rehabilitation of the ECWRF Oxidation Pond Flow Transfer Structure System. This may include investigation, recommendations for repair or redesign of the existing transfer system, as well as plans, specifications, and construction documents.

The Design Consultant and its team may need to perform the following tasks:

- Consultant may need to provide Survey and Mapping services or collect data as needed, if directed.
- Perform field investigations and/or studies to determine the cause(s) of failure and provide engineering reports, if directed.
- Provide detailed recommendations for repair and/or replacement for the oxidation pond flow control structures, if directed.
- Evaluate environmental constraints and assist in obtaining CEQA compliance, if directed.
- Assist in identifying and obtaining any regulatory permitting requirements for the project, if directed.
- Analyze impacts of raising levee height elevation to expand pond system capacity, if directed.
- Evaluate levee road conditions and provide a geotechnical report and recommendations for rehabilitation of roadways around levee system, if directed.
- Provide additional recommendations or analysis for completion of project not included in these tasks.
- Attend biweekly design meetings and design review meetings at 60% design, 90% design, and Final design, if directed
- Provide civil design documents which outline the design, construction method, identifying all obstacles and remedies, prepare construction documents, provide construction cost estimates for design alternatives which align with City goals and provide technical specifications for bidding of the project, as directed. The construction documents prepared by the consultant shall be bid ready. **Note:** Construction to be timely and coordinated with ECWRF staff.
- Provide Consulting during Construction. The selected Consultant would provide assistance during construction by approving of submittals, assistance during construction period for clarification or changes in the field, inspection of new drainage design and/or repairs for plan and design compliance, and assistance through successful completion of the project (**Optional Task**).

RESPONSE TO RFP

Technical Proposals **must** be received by the City of Petaluma by **2:00 PM, Thursday February 24, 2022**. At or before the time mentioned above, Consultants shall send an email to **Dan Herrera, P.E. at the email: dherrera@cityofpetaluma.org**, which shall contain the following attachment:

1. Electronic (PDF) copy of the Consultant's Technical Proposal.

Technical Proposal PDFs for the project shall be limited to a **maximum** of **fifteen (15)** single-sided pages, **excluding** necessary Appendices and required Exhibits. Specific requirements are described as follows. All electronic attachments should be clearly labeled to make it easy for the City to identify the separate documents. The top candidate(s) will submit cost proposals after initial evaluation of proposals.

When notified, the Consultant to submit a detailed cost proposal for scope and budget for completion of the project. The submittal shall conform to Technical Proposal requirements.

Additional RFP Notes:

1. The maximum receivable email size is around 20 MB, for City servers. Therefore, proposals exceeding this size (**20 MB**) will need to be sent via a downloadable link. Alternatively, if size permits multiple emails (up to **two (2)**) can be sent and should be properly numbered with matching subjects. If multiple emails are sent the first email should outline the number of emails planned and their contents. The City will confirm receipt of any emails received at or before the specified due date and time.
2. The cost proposal is **not** part of the fifteen-page limit and should be submitted separately when requested from the City.
3. Front and back proposal covers can be included and will **not** count as part of the 15-page maximum. However, please note that proposal front and back covers will not be used as part of the RFP scoring.
4. Dividers can be used in the proposal and will **not** be counted as part of the fifteen-page limit. However, please note that any content on the divider pages will not be used as part of the RFP scoring.
5. 11x17 sheets are permitted to be used for proposed schedules **only** and will be counted as one (1) page.

For question or clarifications contact Dan Herrera, P.E. by phone (707) 778/4589 or by email at dherrera@cityofpetaluma.org.

1.0 TECHNICAL PROPOSAL REQUIREMENTS

1.1 COVER LETTER

Provide a cover letter signed by an official authorized to bind the firm, and the letter shall contain a statement that the firm is able to sign the City of Petaluma's standard PSA (**Attachment A**).

1.2 INTRODUCTION

Provide an overview of the firm's qualifications as they relate to providing similar investigation, design and construction services to municipal agencies. Include a brief description of your understanding of the project and services to be provided for the City of Petaluma. Identify your project management and technical approach to providing the services for the successful completion of this project.

1.3 PROJECT TEAM ORGANIZATION

Identify proposed team members and work on similar projects; include an organizational chart. List all subconsultants including contact information and areas of expertise. Briefly describe the roles of the prime Consultant and subconsultants. Provide information regarding the size and years in business of your firm and each subconsultant.

1.4 TECHNICAL APPROACH / SCOPE OF WORK

Describe your technical approach for completing the scope of services. Identify and detail specific tasks necessary to complete the work. Proposers are encouraged to amplify the scope of work, to identify any supplemental tasks necessary, and to recommend alternatives, to enhance the project or reduce costs.

1.5 REFERENCES

Provide three (3) project-related references with details including project description, name, company, address, email address and telephone number.

1.6 COST PROPOSAL

The Consultant will perform the services stated in the contract for an agreed amount as compensation. The cost proposal shall define the total lump sum contract price to satisfy the scope of services and complete the work as proposed. The Consultant shall provide a rate table for themselves as well as their subconsultants. The City will request cost proposals from selected Consultant(s) when appropriate. The cost proposal shall include:

- A listing of tasks required to accomplish the proposed scope of services;
- An estimate of the labor hours for each position classification and task including level of effort;
- The proposed hourly fee schedule for calendar year 2022;
- All other reimbursable fees and expenses (noting that the City does **not** pay for lodging, vehicles and travel time);
- Assumptions upon which the estimate is based; and
- Mark-up on other direct costs (ODC), not to exceed five (5) percent

2.0 SELECTION PROCESS

2.1 EVALUATION CRITERIA

The City's evaluation criteria for submitted proposals is detailed as follows, 100 points total:

- **Completeness of Response (Pass/Fail)**
 - a. Responses to this RFP must be complete. Responses that do not include the proposal content requirements identified within this RFP and subsequent addenda and do not address each of the items listed will be considered incomplete and will receive no further consideration.
- **Conflict of Interest Statement (Pass/Fail)**
 - a. Discloses any financial, business or other relationship with the City of Petaluma that may have an impact upon the outcome of the contract or construction project.
 - b. Lists current clients who may have a financial interest in the outcome of this contractor or the construction project that will follow.
 - c. Discloses any financial interest or relationship with any construction company that might submit a bid on the construction project.
- **Qualifications & Experience (25 points)**
 - a. Relevant experience, specific qualifications, and technical expertise of the firm and sub-consultants to conduct oxidation ponds flow control structure design, and construction services.
 - b. Recent flow control structures and recycled water facility design projects that have been completed.
 - c. Experience working on both federal and nonfederal-aid projects.
- **Team Organization (15 points)**
 - a. Describes familiarity of project and demonstrates understanding of work completed to date and project objectives moving forward
 - b. Roles and Organization of Proposed Team
 - i. Show adequate and appropriate disciplines of project team for services provided
 - ii. Identify where team members have previously worked together on similar project(s)
 - c. Project Management Approach
 - i. Show Team is managed by an individual with appropriate experience in similar projects. Provide the time this person is committed to the project
 - ii. Identify how Team will successfully address all aspects of the planning, design and construction of this project
 - iii. List all project constraints and Team's approach to addressing these constraints
 - iv. Show that the Team structure provides adequate capability to perform both volume and quality of needed work within project schedule milestones
 - d. Roles of Key Individuals on the Team
 - i. List all key positions needed to execute work

- ii. Show that the Team members, as demonstrated by enclosed resumes, have relevant experience for their role in the project. **Note: Resumes can be included as Appendices and therefore will not count towards the PDF page limits**
- e. Working Relationship with Public Works
 - i. Team and its leaders have experience working in the public sector and knowledge of public sector procurement process
 - ii. Team leadership understands the nature of public sector work and its decision-making process
 - iii. Proposal responds to the need to assist the City of Petaluma during the project
- **Technical Approach and Scope of Services to be Provided (35 points)**
 - a. Identify the technical approach to be followed by the Project Team and how the Project Team will be pro-active to mitigate anticipated project issues
 - b. Include a Detailed Scope of Services to be used
 - i. Proposed scope of services is appropriate for all phases of the work
 - ii. Provide a Scope that addresses all known project needs and appears achievable in the timeframes set forth in the project schedule
 - c. Project Deliverables
 - i. Deliverables are appropriate to the schedule and scope set forth in above requirements
 - ii. Identify key milestones in the project development
 - iii. Provide key personnel and level of effort
- **Project Schedule (20 points)**
 - a. Schedule shows work completion date
 - b. Identify the project timeline with all major milestones and required submittals for project management and permitting compliance
 - c. The schedule should address all knowable phases of the project, in accordance with the general requirements of this RFP.
 - d. Project schedule should include labor hours and team expected to complete each task.
- **References (5 points)**
 - a. Provide a minimum of three (3) references for similar projects.

3.0 GENERAL INFORMATION

3.1 NEGOTIATION OF CONTRACT

After selection of the Consultant, the City and the Consultant shall negotiate the contract under which the work shall be performed. All items submitted in the Consultant's proposal shall be subject to negotiation.

3.2 PROFESSIONAL SERVICES AGREEMENT

The successful firm will be required to execute the City of Petaluma's Standard Professional Services Agreement (**see Attachment A**). The Consultant should assume that no exceptions to this agreement will be accepted and that any Consultant submitting a proposal must be prepared to execute this agreement without modification.

3.3 ESTIMATED SCHEDULE

Advertisement Date	February 3, 2022
Proposal Due Date	2:00 PM on February 24, 2022
Consultant Interviews	Week of March 7, 2022
Proposal Selection by City of Petaluma	March 17, 2022
PSA Executed / Notice to Proceed Issued	April 7, 2022

If any further information is required, please contact me at (707) 778-4589. Your interest in this project is greatly appreciated.

Sincerely,

Dan Herrera, P.E.
Senior Civil Engineer
City of Petaluma

Enclosures:

- Attachment A: Standard Professional Services Agreement
- Attachment B: Insurance Information – Exhibit B
- Attachment C: Prevailing Wage Information – Exhibit C
- Attachment D: Living Wage Information – Exhibit D
- Attachment E: ECWRF As-Builts
- Attachment F: Aeration Pond-Oxidation Pond No. 4 Site Photos

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 \$ _____

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

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

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 _____ (“Contractor”) (collectively, the “Parties”).

WHEREAS, the Parties enter into this Agreement for the purpose of Contractor 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.** Contractor 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 Contractor in accordance with the rates specified in Exhibit A.
 - B. Contractor 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. Contractor shall be compensated for services in addition to those described in Exhibit A, only if Contractor 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, Contractor shall not be paid any compensation until such time as Contractor has on file with the City Finance Department a current W-9 form available from the IRS website (www.irs.gov) and has obtained a currently valid Petaluma business tax certificate.

- E. City's obligation to pay compensation to Contractor as provided herein is contingent upon Contractor'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 Contractor 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 Contractor or Contractor's bankruptcy or insolvency. Upon receipt of notice of termination or suspension for cause, Contractor shall immediately stop all work in progress under this Agreement. In the event of early termination of this Agreement by City, Contractor 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, Contractor shall be liable to City for any excess cost City incurs for completion of the Services.
 5. **Contractor's Representation; Independent Contractor.** Contractor represents that Contractor possesses distinct professional skills in performing the Services. City has relied upon said representation as a material inducement to enter into this Agreement. Contractor shall, therefore, provide properly skilled professional and technical personnel to perform all Services under this Agreement. It is expressly understood that Contractor 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.** Contractor 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 Contractor no facilities or equipment, unless the City otherwise agrees in writing to provide the same.
 7. **Licenses, Permits, Etc.** Contractor shall, at Contractor'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.** Contractor shall devote such time to the performance of the Services as may be reasonably necessary for satisfactory performance of Contractor's obligations pursuant to this Agreement.
 9. **Inspection.** Contractor 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 Contractor of any of its obligations pursuant to this Agreement.

10. **Progress Reports.** Upon the City's request, Contractor 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 Contractor's performance of the Services.
11. **Confidentiality.** In the course of Contractor's employment, Contractor may have access to trade secrets and confidential information, disclosure of which is protected or limited by law. Contractor 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.** Contractor 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. Contractor further covenants that, in the performance of this Agreement, it shall not employ any subcontractor or person having such a conflict of interest. Contractor 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, Contractor will immediately advise City and City may, at its sole discretion, immediately terminate this Agreement. Certain Contractors 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 Contractors 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. Contractor agrees to comply fully with all such requirements to the extent they apply to Contractor's performance of the Services.
13. **Contractor No Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.
14. **Standard of Performance.** Contractor shall perform all the Services in a manner consistent with the standards of Contractor's profession. All instruments of service of whatsoever nature, which Contractor delivers to City pursuant to this Agreement, shall be prepared in a substantial, workmanlike manner and conform to the standards of Contractor'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.** Contractor 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.** Contractor 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. Contractor'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, Contractor shall comply with all rules and regulations applicable to such fiscal assistance.
18. **Living Wage Ordinance.** Without limiting the foregoing Section 17, Contractor 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 Contractor shall promptly provide to the City documents and information verifying Contractor'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 Contractors 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. Contractor'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, Contractor 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: _____

Contractor: _____

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 Contractor 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.**

A. With respect to commercial general liability, to the maximum extent permitted by law, Contractor 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

Contractor's performance of the Services or Contractor's failure to comply with any of the terms of this Agreement, regardless of any fault or alleged fault of the Indemnitees.

- B. With respect to professional liability, notwithstanding the foregoing or any other provision in this Agreement, to the maximum extent permitted by law, Contractor shall indemnify defend and hold harmless the Indemnitees from Liability arising out of or in connection with the negligence, recklessness, or willful misconduct of Contractor.
 - C. The Contractor must respond within 30 calendar days to any tender of 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 Contractor fails to accept tender of defense and indemnity within 30 calendar days regarding a matter subject to tender pursuant to this Agreement, in addition any other remedies authorized by law, so much of the money due or that may become due the Contractor 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 Contractor accepts the tender, whichever occurs first. In the event that the City must file responsive documents in a matter tendered to Contractor prior to Contractor's acceptance of tender, where such matter is subject to tender pursuant to this Agreement, Contractor 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.
 - D. 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, Contractor'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.
 - E. 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, Contractor's duty to indemnify shall only be to the maximum extent permitted by California Civil Code Section 2782.8.
23. **Insurance.** Contractor shall comply with the "Insurance Requirements for Contractors" in Exhibit B, attached hereto and incorporated herein by reference.
- City reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. City's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or City's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.
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 Contractor's services hereunder, Contractor, 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. **Contractor's Books and Records.**
 - A. Contractor 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 Contractor pursuant to this Agreement.
 - B. Contractor 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 Contractor'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 Contractor'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 Contractor, Contractor's representatives, or Contractor'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 Contractor 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

CONTRACTOR

City Manager

By _____
Name

ATTEST:

Title

City Clerk

Address

APPROVED AS TO FORM:

City State Zip

City Attorney

Taxpayer I.D. Number

Petaluma Business Tax Certificate Number

file name:

EXHIBIT B
INSURANCE REQUIREMENTS
FOR ALL AGREEMENTS

Contractor's performance of the Services under this Agreement shall not commence until Contractor 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.

Contractor 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 Contractor, the Contractor's agents, representatives, employees and subcontractors.

A. Required Minimum Scope of Insurance

- Coverage shall be at least as broad as:
Insurance Services Office Commercial General Liability coverage:
 - a. Personal injury;
 - b. Contractual liability.
- Insurance Services Office form covering Automobile Liability (any auto), if no company owned autos, non-owned and hired auto applies.
- Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
- Professional Liability/Errors and Omissions
- Crime/Employee Blanket Fidelity Bond
- Property Insurance against all risks of loss to any tenant improvements or betterments.
- Pollution Liability Insurance
- Garage Liability
- Garagekeepers Insurance
- Technology Professional Liability Errors and Omissions Insurance (IT Consultant)/Cyber Liability
- Abuse or Molestation Liability Coverage

A.1 Required for All Contracts

- Policy Endorsements or Excerpts from the Policy Pursuant to Section D
- Copy of the Declarations and Policy Endorsements Page for the CGL Policy

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

- 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.
- Products/Completed Operations: \$1,000,000 per occurrence/aggregate.
- Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.
- 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.

- Professional Liability/Errors and Omissions: \$1,000,000 per occurrence or claim. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.
 - Crime/Employee Blanket Fidelity Bond - \$1,000,000: Contractor, at its own cost and expense, must maintain a Crime/Employee Blanket Fidelity Bond in the amount of \$1,000,000 per employee covering dishonesty, forgery, alteration, theft, disappearance, destruction (inside or outside).
 - All Risk Property Insurance: Full replacement cost.
 - Pollution legal liability with limits no less than \$1,000,000 per occurrence or claim and \$2,000,000 policy aggregate. If the policy provides coverage on a claims-made basis, the retroactive date must be shown and must be before the date of the Agreement or the beginning of the contract work.
 - Garage Liability: \$1,000,000 per occurrence.
 - Garagekeepers Insurance: \$1,000,000 per occurrence.
 - Technology Professional Liability Errors and Omissions Insurance appropriate to the Consultant's profession and work hereunder, with limits not less than \$1,000,000 per occurrence. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by the Vendor in this agreement and shall include, but not be limited to, claims involving infringement of intellectual property, copyright, trademark, invasion of privacy violations, information theft, release of private information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to these obligations.
1. The Policy shall include, or be endorsed to include, **property damage liability coverage** for damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City in the care, custody, or control of the Consultant. If not covered under the Consultant's liability policy, such "property" coverage of the City may be endorsed onto the Consultant's Cyber Liability as covered property as follows:
 2. **Cyber Liability coverage** in an amount sufficient to cover the full replacement value of damage to, alteration of, loss of, or destruction of electronic data and/or information "property" of the City that will be in the care, custody, or control of the Consultant.
 3. The Insurance obligations under this agreement shall be the greater of 1) all the Insurance coverage and limits carried by or available to the Consultant; or 2) the minimum Insurance requirements shown in this Agreement. Any insurance proceeds in excess of the specified limits and coverage required, which are applicable to a given loss, shall be available to the City. No representation is made that the minimum Insurance requirements of this Agreement are sufficient to cover the indemnity or other obligations of the Consultant under this agreement.
- Abuse or Molestation Liability Coverage: \$1,000,000 per occurrence; \$2,000,000 aggregate.

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. Policies containing any self-insured retention (SIR) provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named insured (Contractor) or the City.

City reserves the right to review any and all of the required insurance policies, declaration pages, and/or endorsements, but has no obligation to do so. City's failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or City's failure to identify any insurance deficiency shall not relieve Contractor from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

D. Other Insurance Provisions

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

1. **Additional Insured:** 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. **Primary and Non-Contributory:** 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. **Waiver of Subrogation:** Consultant agrees to waive subrogation rights for commercial general liability, automobile liability and worker's compensation 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

NOTE: The City of Petaluma is now using an online insurance program, PINS Advantage. Once you have been awarded a contract with the City of Petaluma, you will receive an e-mail from PINS Advantage/City of Petaluma requesting that you forward the e-mail to your insurance agent(s). Consultant shall furnish the City with Certificate of Insurance along with Declarations and 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.

