

REQUEST FOR PROPOSALS

for

Public Outreach & Conceptual Design Services
for Retrofitting the Existing Skatepark and/
Evaluating Alternate Sites for New Skatepark Facilities



CITY OF PETALUMA
PUBLIC WORKS & UTILITIES DEPARTMENT

Issued: April 21, 2022

Proposal Deadline: 2:00 pm May 12, 2022

Ken Eichstaedt, Senior Traffic Engineer
keichstaedt@cityofpetaluma.org

**CITY OF PETALUMA
REQUEST FOR PROPOSALS**

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CITY OF PETALUMA REQUEST FOR PROPOSALS

The City of Petaluma (the “**City**”) requests proposals from qualified individuals or firms (individually, the “**Respondent**” and collectively, the “**Respondents**”) to conduct community outreach and provide conceptual design services for a new skate park or reconstruction of the existing skate park.

1. BACKGROUND

The City of Petaluma is a charter city located in Sonoma County, with an estimated population of 60,000. The existing skate park is 14,000 square-feet and is located adjacent to the Petaluma Swim Center at 900 East Washington Street. The skate park was originally constructed in 1997 and is one of the oldest skate parks in the state. While the skate park remains an active park serving a range of ages and abilities, the growth and evolution of the sport, combined with a growing number of local users, has been a challenge to accommodate given the parks current footprint and design. These challenges have resulted in participants seeking out alternate locations to skate or prevented members of the community from participating altogether.

2. THE SERVICES

A. Summary. The City is seeking a consultant to engage stakeholders, conduct community outreach and provide conceptual design services for either a new skatepark, and/or the reconstruction of the existing skatepark (the “**Services**”). Community outreach will obtain input from a wide array of community members that may be interested in the project. Conceptual design services will include evaluation of as many as five selected sites and incorporate input from the public into as many as three alternate design schematics. Conceptual design services will also incorporate input from the public to provide a recommendation regarding final site selection and a design schematic best suited for the site.

Additional information including the budget (\$150k) for this phase of work on the City’s proposed skatepark project is found under CIP-36 at: <https://cityofpetaluma.org/documents/fiscal-year-2022-adopted-budget/>

B. Form of Agreement. A copy of the City’s standard Professional Services Agreement (the “**Agreement**”) is attached hereto as **Attachment A** and incorporated herein. By submitting a proposal, the Respondent agrees to enter into the Agreement using the attached form with no exceptions to the form of the Agreement.

C. Scope of Services. The required Scope of Services is attached hereto as **Attachment E** and incorporated herein. By submitting a PROPOSAL, the Respondent represents that it is fully qualified and available to provide the Services as set forth in the Scope of Services, and that it agrees to provide those Services as

specified if it is awarded the Agreement, which will attach and incorporate the Scope of Services.

3. REQUEST FOR PROPOSAL PROCEDURES

A. Requests for Information. Questions or objections relating to the Request for Proposals (the “RFP”), the attachments hereto, the RFP procedures, or the required Services may only be submitted via email to Ken Eichstaedt at keichstaedt@cityofpetaluma.org by **4:00 pm May 5, 2022** (the “**Request for Information Deadline**”). Any questions or objections that are not submitted in the manner specified and by the Request for Information Deadline will be deemed waived. City will not be bound by the oral representations of any City officials, employees, or representatives.

B. Pre-Submittal Meeting. Will not be held.

C. Submittal Instructions. PROPOSALS must be **received** by the City by or before **2:00 pm May 12, 2022** (the “**PROPOSAL Deadline**”). The Respondent must submit one (1) electronic copy of the PROPOSAL attachment and a separate attachment of the COST PROPOSAL via email (both attachments in the same email is acceptable), with subject line “PROPOSAL for Public Outreach & Conceptual Design Services for New and Existing Skateparks” The email must plainly include the Respondent’s name, address and phone number and attach one electronic copy of the Proposal. Email PROPOSAL and COST PROPOSAL to:

Ken Eichstaedt, Senior Traffic Engineer at keichstaedt@cityofpetaluma.org

Note that the maximum receivable email size to the City servers is approximately **20 MB**. Proposals exceeding the maximum size shall be emailed via a downloadable link.

The Respondent shall be responsible for ensuring that the City has received the PROPOSAL no later than the PROPOSAL Deadline.

D. Planned RFP Schedule. The following schedule is provided for planning purposes based on current information. However, all dates are subject to revision, including the PROPOSAL Deadline, and may be amended by addenda to this RFP:

ACTIVITY	PLANNED DATES/TIME
RFP Issued	April 22, 2022
Pre-Submittal Meeting	N/A
Request for Information Deadline	May 5, 2022—4:00 PM
PROPOSAL Deadline	May 12, 2022—2:00 PM
Interviews (if requested by City)	May 19, 2022
Notice of Selection	May 26, 2022
Council Approval and Award	TBD

Notice to Proceed	TBD
Conceptual Design Services	<u>July 2022—FEB 2023</u>

- E. Addenda.** City reserves the right to issue addenda to modify the terms and conditions of this PROPOSAL, including modifications to the PROPOSAL Deadline or to the Attachments to this PROPOSAL. Addenda will be posted on the City’s website at <https://cityofpetaluma.org/bid-opportunities-2/>. Each Respondent is responsible for checking the City’s website for addenda, and for reviewing all addenda before submitting its PROPOSAL.

4. PROPOSAL REQUIREMENTS

Each PROPOSAL must be submitted in compliance with the requirements of this RFP. Each PROPOSAL must respond to the items listed below. *Clarity and brevity are preferable to volume.* Do not attach brochures or promotional materials to the PROPOSAL. PROPOSAL should not exceed 10 one-sided pages, excluding any tabs or dividers. The COST PROPOSAL shall not exceed 3 one-sided pages. However, resumes may be included in an appendix and not counted in the total page count. By submitting a PROPOSAL, the Respondent agrees that the pricing and proposed approach to providing the Services, including staffing, constitutes a firm offer to enter into the Agreement with the City, and that the offer will remain open for 90 days following the PROPOSAL Deadline.

- A. Cover Letter.** Provide a brief cover letter that includes all the following information:

- (1) Respondent’s name, address, phone number, and website address;
- (2) type of organization (e.g., corporation, partnership, etc.);
- (3) a summary of general information about Respondent and the types of services it provides in relation to the Services required by the City;
- (4) contact information, including name, title, address, phone number, and email, of Respondent’s primary representative for purposes of this RFP; and
- (5) Respondent has read and understood the insurance requirements outlined in Attachment A, Section 14 and hereby affirms (1) the cost of providing such insurance has been incorporated in the Respondent’s Proposal, and (2) Respondent will be able to obtain the required insurance coverage if awarded the contract.

The cover letter must be signed by a representative that is authorized to bind Respondent by contract and must state his or her name, title, and email address.

- B. General Qualifications.** Provide a brief description of the Respondent’s business, including the number of years in business under the current name. Describe the size of the business, including the total number of employees and offices, and identify the local office that will provide the Services if awarded the Agreement. Describe how and why Respondent is qualified to provide the Services.

C. Experience. Provide up to five examples of work comparable to the services requested by this RFP, particularly with respect to services provided to other cities or public agencies. For each example provide (1) a brief description of the services provided, (2) the amount of the Respondents contract for the services, (3) time period in which the services were provided, and (4) the name and address of the contracting agency, including contact information for a reference check (name, title, phone number, and email address).

D. Staffing. Identify by name and title Respondent's key personnel who will be assigned to provide the Services and for each, include a resume with his or her education, training, and experience. Identify by name, address, and website, each subconsultant or subcontractor, if any, that will be involved with providing the Services, including the proposed role for each such subconsultant or subcontractor. Include all applicable license numbers for any license required to perform the Services.

E. Proposed Approach. A narrative description shall be prepared for each task identified in the scope of work. A description of the subtasks, which must be performed to complete the task, shall be included. All descriptions shall be of sufficient length to clearly convey that the proposer fully understands the scope of work.

F. Schedule. Schedule for delivery of each element including milestones. The schedule will include the following with start and completion dates:

- [Kickoff Meeting](#)
- [Document Review](#)
- [Presentation to:](#)
 - [Youths Commission](#)
 - [Recreation, Music & Parks Commission](#)
- [Site Evaluations](#)
- [Public Survey](#)
- [Design Charette](#)
- [Draft Conceptual Design Alternatives](#)
- [Presentations to:](#)
 - [Youth Commission](#)
 - [Recreation, Music, and Parks Commission](#)
 - [City Council](#)

G. Cost Proposal. The Consultant shall provide a Cost Proposal as a separate submittal (3 one-sided pages). After evaluation of the PROPOSALS, the City will review the cost proposal for the highest ranked candidate(s). The Cost Proposal shall provide a detailed schedule of charges that is fully inclusive of all costs to provide the Services, including hourly billing rates, all labor, materials, equipment, supplies, and the insurance required under the terms of the Agreement, all other reimbursable fees, and expenses (noting that the City does not pay for lodging, vehicles, or travel time.)

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5. EVALUATION

The factors that the City will consider in evaluating the Proposals are as follows:

Responsiveness to RFP	1-20 points
Understanding of Scope of Work to be Done	1-20 points
Experience with Similar Kinds of Work	1-20 points
Quality of Staff for Work to be Done	1-20 points
Proposed Approach	1-20 points
Interview (If requested)	1-100 points

6. SELECTION AND AWARD

A. Review. PROPOSALS will be reviewed for responsiveness and evaluated and ranked based on the factors listed in Section 5, above. When the evaluation is complete, the PROPOSALS will be ranked based on total scores to identify the PROPOSAL that is the most advantageous to the City. Acting in its sole discretion, the City may elect to conduct interviews, either in person or remotely, with shortlisted Respondents.

B. Award. The City will award the Agreement, if at all, to the Respondent(s) that are determined by the City, acting in its sole discretion, to offer the most advantageous PROPOSAL to the City based on the City's review, as outlined above. Citystaff will submit its recommendation to the City Council or the awarding officer, as applicable, for award of the Agreement to the Respondents that it determines to offer the most advantageous PROPOSAL. The Respondents will be notified of staff's intended recommendation by a Notice of Selection which will be posted on the City's website at <https://cityofpetaluma.org/bid-opportunities-2/> and which may also be emailed to each Respondent that submits a PROPOSAL.

C. Protest Procedures. Any protest challenging the City's intended selection, or the selection process must be submitted no later than 5:00 p.m., on the fifth business day following the date of the Notice of Selection. The protest must be submitted in writing via email to **Ken Eichstaedt** at keichstaedt@cityofpetaluma.org and must clearly specify the basis for the protest. The protest will be reviewed by the Public Works Director in consultation with the City Attorney's Office, and their determination on the protest is final. No public hearing will be held on the protest. Time being of the essence, the City reserves the right to proceed with award of the Agreement and commencement of the Services notwithstanding any pending protest or legal challenge.

7. MISCELLANEOUS

A. Disclaimers and Reservation of Rights. Upon receipt, each PROPOSAL becomes the sole property of City and will not be returned to the Respondent. Each Respondent is solely responsible for the costs it incurs to prepare and submit its PROPOSAL. The City reserves, in its sole discretion, the right to reject all PROPOSALS, including the right to cancel or postpone the RFP or the Services at any time, or to decline to award the Agreement to any of the Respondents. The City reserves the right to waive any immaterial irregularities in a PROPOSAL or submission of a PROPOSAL. The City reserves the right to reject any PROPOSAL that is determined to contain false or misleading information, or material omissions.

B. Conflict of Interest. Respondents must disclose to the City any actual, apparent, direct, or indirect, or potential conflicts of interest that may exist with respect to Respondent, any employees of Respondent, or any other person relative to the Services to be provided pursuant to this RFP. This RFP process will be conducted in compliance with all laws regarding political contributions, conflicts of interest, or unlawful activities. City employees are prohibited from participating in the selection process for this RFP if they have any financial or business relationship with any Respondent.

C. Public Records. The City is subject to the provisions of the California Public Records Act (Govt. Code § 6250 et seq.) (the “Act”), and each PROPOSAL submitted to the City is subject to disclosure as a public record, unless the PROPOSAL or any portion thereof is exempt under the Act. If a Respondent believes that any portion of its PROPOSAL is exempt from disclosure under the Act, it must clearly identify the portion(s) it believes to be exempt and identify the basis for the exemption. Each Respondent bears the burden of proving any claimed exemption under the Act, and by submitting a PROPOSAL, a Respondent agrees to indemnify, defend, and hold harmless the City against any third-party claim seeking disclosure of the PROPOSAL or any portions thereof.

Attachments:

Attachment A: Form of Agreement

Attachment B: Insurance Requirements –Exhibit B

Attachment C: Prevailing Wage Information—Exhibit C

Attachment E: Scope of Services—Exhibit A

Attachment A: Form of Agreement

PROFESSIONAL SERVICES AGREEMENT

Public Outreach & Conceptual Design Services
for Retrofitting the Existing Skatepark and/
Evaluating Alternate Sites for New Skatepark Facilities
(Title of Project)

FY 21/22 Fund # _____ Cost Center _____ Object Code _____ Project # _____ Amount \$ _____

For multi-year contracts or contracts with multiple accounts:

FY 22/23 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 Engineering Design Consultant (“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 \$250,000 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) 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 June 30, 2023, 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. **Prevailing Wages.** This Agreement is subject to the requirements of the California Prevailing Wage Law, California Labor Code Section 1720 et seq., and the Services as described in Exhibit A will be performed in accordance with all applicable requirements of the California Prevailing Wage Law, including, but not limited to, all applicable requirements contained in Exhibit A, which is attached to and made a part of this Agreement.
19. **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 at Exhibit C, 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 C 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.
20. **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.
21. **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:
Ken Eichstaedt P.E T.E.
City of Petaluma Public Works and Utilities
202 N McDowell Blvd
Petaluma CA 94954
Phone: 707-776-3672
Fax: _____
Email: keichstaedt@cityofpetaluma.org

Consultant: _____

Phone: _____
Fax: _____
Email: _____

22. **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. Notwithstanding this provision or any other provision in this Agreement to the contrary, the City and the Contractor shall each own all right, title and interest in and to any intellectual property authored by or on behalf of the City or the Contractor related to the Services. The City shall have an irrevocable, royalty-free, world-wide, fully-paid-up, non-exclusive license to use and authorize others to use any intellectual property of the Contractor included in the work products produced as part of the performance of the Services pursuant to this Agreement.
23. **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.

24. **Insurance.** Consultant shall comply with the "Insurance Requirements for Consultants" 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.

25. **Amendment.** This Agreement may be amended only by a written instrument executed by both Parties.

26. **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.

27. **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.

28. **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.

29. **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.

30. **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.

31. **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.

32. **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.

33. **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.

- 34. **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.
- 35. **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.
- 36. **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 Attorney

City State Zip

Taxpayer I.D. Number

Petaluma Business Tax Certificate Number

Attachment B: Insurance Requirements—Exhibit B

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

Attachment C: Prevailing Wage Information—Exhibit C

EXHIBIT C

ACKNOWLEDGEMENT AND CERTIFICATION PURSUANT TO CITY OF PETALUMA LIVING WAGE ORDINANCE PETALUMA MUNICIPAL CODE CHAPTER 8.36

The City of Petaluma Living Wage Ordinance (“Ordinance”), Petaluma Municipal Code Chapter 8.36, applies to certain service contracts, leases, franchises and other agreements or funding mechanisms providing financial assistance (referred to hereafter as an “Agreement”) between the City of Petaluma (“City”) and/or the Petaluma Community Development Commission (“PCDC”) and contractors, lessees, franchisees, and/or recipients of City and/or PCDC funding or financial benefits (“covered entities”).

Pursuant to Petaluma Municipal Code Section 8.36.120, as part of any bid, application or proposal for any Agreement subject to the Ordinance, the covered entity shall:

- Acknowledge that the covered entity is aware of the Ordinance and intends to comply with its provisions.
- Complete the Report of Charges, Complaints, Citations and/or Findings contained in this Acknowledgement and Certification by providing information, including the date, subject matter and manner of resolution, if any, of all wage, hour, collective bargaining, workplace safety, environmental or consumer protection charges, complaints, citations, and/or findings of violation of law or regulation by any regulatory agency or court including but not limited to the California Department of Fair Employment and Housing, Division of Occupational Safety and Health (OSHA), California Department of Industrial Relations (Labor Commissioner), Environmental Protection Agency and/or National Labor Relations Board, which have been filed or presented to the covered entity within the ten years immediately prior to the bid, proposal, submission or request.

Pursuant to Petaluma Municipal Code Section 8.36.120, before the beginning of the term of any covered Agreement, or prior to the execution of said Agreement by the City or the PCDC, each covered entity shall certify that its employees are paid a living wage that is consistent with Petaluma Municipal Code Chapter 8.36.

By executing this Acknowledgement and Certification, the covered entity (i) acknowledges that it is aware of the Ordinance and intends to comply with its provisions, (ii) attests to the accuracy and completeness of information provided in the Report of Charges, Complaints, Citations and/or Findings contained herein, (iii) certifies that it pays its covered employees a Living Wage as defined in Petaluma Municipal Code Chapter 8.36 and (iv) attests that the person executing this Acknowledgement and Certification is authorized to bind the covered entity as to the matters covered in this Acknowledgment and Certification.

SO ACKNOWLEDGED and CERTIFIED:

Project or Contract I.D: _____

_____ Date: _____
(Print Name of Covered Entity/Business Capacity)

By _____
(Print Name)

/s/ _____
(Signature)

Its _____
(Title /Capacity of Authorized Signer)

**REPORT OF CHARGES, COMPLAINTS, CITATIONS AND/OR FINDINGS
PURSUANT TO PETALUMA MUNICIPAL CODE SECTION 8.36.120**

FOR EACH WAGE, HOUR, COLLECTIVE BARGAINING, WORKPLACE SAFETY, ENVIRONMENTAL OR CONSUMER PROTECTION CHARGE, COMPLAINT, CITATION, AND/OR FINDING OF VIOLATION OF LAW OR REGULATION BY ANY REGULATORY AGENCY OR COURT, INCLUDING BUT NOT LIMITED TO THE CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, DIVISION OF OCCUPATIONAL SAFETY AND HEALTH (OSHA), CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (LABOR COMMISSIONER), ENVIRONMENTAL PROTECTION AGENCY AND/OR NATIONAL LABOR RELATIONS BOARD, WHICH:

- AFFECTS YOU AS A PROSPECTIVE CONTRACTOR, SUBCONTRACTOR, LESSEE, FRANCHISEE AND/OR PARTY TO ANY CITY OF PETALUMA AND/OR PETALUMA COMMUNITY DEVELOPMENT COMMISSION-FUNDED AGREEMENT OR BENEFIT SUBJECT TO PETALUMA MUNICIPAL CODE CHAPTER 8.36 (LIVING WAGE ORDINANCE), AND
- HAS BEEN FILED OR PRESENTED TO YOU WITHIN THE TEN YEARS IMMEDIATELY PRIOR TO THE BID, PROPOSAL, SUBMISSION OR REQUEST FOR WHICH THIS ACKNOWLEDGEMENT AND CERTIFICATION IS MADE.

PLEASE PROVIDE THE DATE, THE REGULATORY AGENCY OR COURT MAKING THE CHARGE COMPLAINT, CITATION OR FINDING, THE SUBJECT MATTER AND THE MANNER OF RESOLUTION, IF ANY, FOR EACH SUCH CHARGE COMPLAINT, CITATION OR FINDING.

IF NONE, PLEASE STATE "NONE": _____

ATTACH ADDITIONAL PAGES IF NEEDED.

Date: _____

Regulatory Agency or Court: _____

Subject Matter: _____

Resolution, if any: _____

Expected resolution, if known: _____

Attachment E – Scope of Services—Exhibit A

SCOPE OF SERVICES

I. PROJECT DESCRIPTION

Engage stakeholders, conduct community outreach, and provide conceptual design services for the reconstruction of the existing skatepark to meet future demands and evaluate alternate sites for additional skating facilities in other locations within city limits (the “Project”). The Project will consist of public input and design surveys, site analysis, schematic design, and cost projections to make a recommendation of the most appropriate site. The Project will include conceptual design of all amenities that would be required to support the skate park (lighting, paving, parking, shade, furnishings, landscape, etc.). In addition, the Project must incorporate the safety and standards for the latest skate park design principles for skateboarders and scooters to ensure varying ages and abilities have opportunities to develop their skills. The Project should draw and engage local users to the skate park and challenge both beginners and experienced users alike. The Project will include evaluation of as many as five selected sites and incorporate public input into as many as three alternate design schematics. The Project will provide a recommendation regarding final site selection and a design schematic best suited for the site.

II. SCOPE OF SERVICES

The following list includes a brief description of the tasks to be performed by the consultant. **This list is not intended to be all-inclusive or limiting.**

TASKS:

1. Prepare a detailed work plan and strategy which includes how consultant will present ideas to the public and collect their feedback, their strategy for community presentation, evaluation of City-selected sites, conceptual planning, design development, and a schedule of meetings. The Recreation, Music, and Parks Commission will serve as the advisory group for the skatepark project with input from the Youth Commission and other community stakeholders, members and groups, and ultimate approval by City Council.
2. Evaluate City-selected sites (5) plus the existing skate park site to determine most suitable location/s for a new skate park.
3. Review record drawings and all other planning and policy documents pertaining to the Project. This will include, but not be limited to, review of the Draft 2025 General Plan (when available), and the Parks, Recreation and Public Facilities Existing Conditions Report.
4. Conduct the public outreach and community engagement process in coordination with City staff. The Recreation, Music, and Parks Commission (RMPC) will be the primary guiding Commission, and a representative(s) from the chosen firm is expected to attend these meetings, which may occur virtually, and include presentation preparation and delivery. The Consultant should account for 4 public meetings or events. Two meetings shall be virtual and two in person. Consultant shall provide a cost per meeting for each type (virtual and in-person). It is also expected that the consultant will conduct a survey, and a design charette or public workshop.
5. Create conceptual design alternatives that are compatible with feedback received through the community engagement process, incorporate input from staff and members of the Parks and Recreation Commission and ultimate approval by City Council. The design shall incorporate the public outreach input and existing planning and policy documents. The

Project should:

- a. Summarize the public input that we receive, including identification of the goals and objectives for development of a new skate park and/or reconstruction of the existing skate park.
- b. Include research and lessons learned from other skateparks.
- c. Evaluate up to 5 sites provided by the City and provide pros/cons of each site in a table matrix.
- d. Provide 2-3 conceptual plan alternatives identifying the plan with the specific site as chosen by the City.
- e. Identify probable design, construction, and maintenance costs.

SCHEDULE

Time is of the essence for this project. The City intends to contract with the consultant in **mid-summer**, or soon thereafter. The consultant shall begin the work as soon as the Agreement with the City is executed.

Planned Project Schedule:

Milestone/Deliverable	Due Date
Workplan	JUN 28, 2022
Public Survey Results	AUG 2, 2022
Design Charette Outline	AUG 17, 2022
Results of Design Charette	SEP 13, 2022
Draft 1 Conceptual Design & Evaluation of Sites	OCT 25, 2022
Draft 2 Conceptual Design	NOV 29, 2022
Final Conceptual Design	JAN 18, 2023

III. EXHIBITS

Figure 3.3-1 Parks and Open Space Map from the
Draft Environmental Impact Report—General Plan 2025

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.

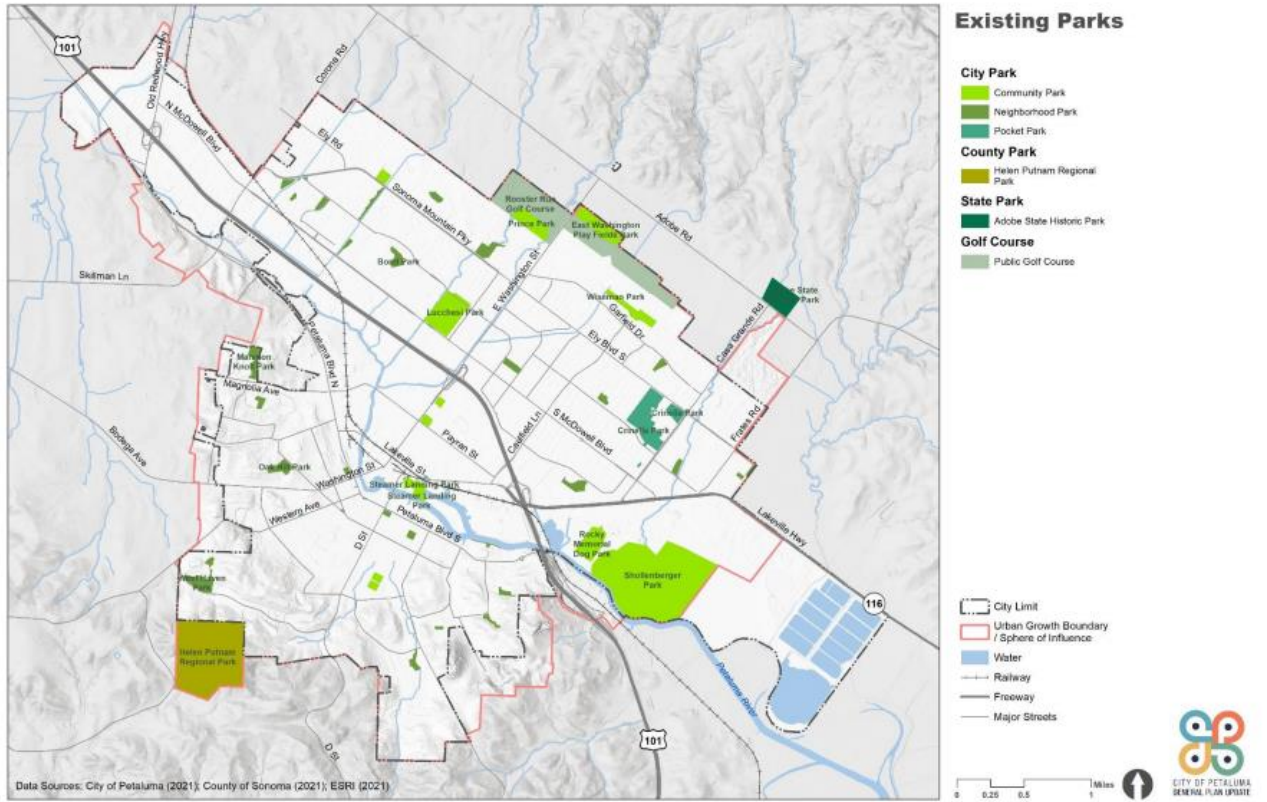
E. Acceptability of Insurers

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.

Figure 1. Existing Parks Map



[END OF RFP]