



CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

Teresa Barrett
Mayor

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

July 8, 2022

Subject: Request for Proposal for Design and Engineering Services for the
Petaluma City Hall West Wing HVAC Retrofit / Replacement Project

To Whom It May Concern:

The City of Petaluma invites a proposal from your firm for the above project. The scope of services provided in Attachment "A" of the enclosed Request for Proposals describes the work elements and specific requirements for your proposal. Please note that the proposal is due in about four weeks.

Your proposal will be reviewed by City staff and you will be notified by letter of our determination.

Public Works & Utilities

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

A jobsite walk is scheduled for Wednesday July 27, 2022, at 9:00AM at Petaluma City Hall, 11 English Street, Petaluma.

If you have any questions, please contact me at (707) 975-5163 or
dramirez@cityofpetaluma.org.

Environmental Services

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

Your interest in the City of Petaluma and this project is greatly appreciated.

Sincerely,
Diane Ramirez

Diane Ramirez
Capital Improvements Project Manager

Parks & Facility Maintenance

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

Enclosure: Attachment A, Scope of Services
Attachment B, Standard Professional Services Agreement

Transit Division

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

cc: project file

Utilities & Field Operations

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

E-Mail: publicworks@cityofpetaluma.org

**REQUEST FOR PROPOSALS
FOR
DESIGN AND ENGINEERING SERVICES FOR
PETALUMA CITY HALL WEST WING HVAC
RETROFIT / REPLACEMENT PROJECT**

The City of Petaluma is soliciting proposals from firms with specific expertise in the assessment and design of energy efficient heating, ventilation and air conditioning mechanical systems to provide professional engineering and design services for the retrofit or replacement of the systems serving the west wing of City Hall. The awarded firm will provide assessment of existing conditions, recommendations for retrofit or replacement, budgetary cost estimates and ultimately produce design drawings and specifications suitable for construction bids. The work will be done with the objectives of:

- Reducing energy use and operational costs;
- Reducing or eliminating the use of natural gas;
- Ensuring compliance with applicable codes and requirements;
- Minimizing the initial project costs and also lifecycle and maintenance costs;

This project is funded by the American Rescue Plan Act (ARPA) of 2021 which was put in place to make facilities safer for employees to return to the workplace. The ARPA funds expire in three years.

The City may pursue funding from the Pacific Gas & Electric On-Bill Financing Program (PG&E OBF) for the energy efficiency project such that the cost of implementing the measures will be reimbursed through the energy savings created.

The scope of services provided in Attachment A describes the proposed tasks for the contract. Specific requirements for the proposal are described as follows.

1.0 PROPOSAL REQUIREMENTS

1.1 Cover Letter

Provide an introduction to your firm, an overview of the project, including a brief description of your understanding of the services to be provided, the project's objective, and your approach to accomplish the objectives.

The cover letter shall be signed by an official authorized to bind your firm and shall contain a statement that the proposal is valid for one hundred and twenty (120) days.

1.2 Project Management and Technical Approach

Describe your approach for managing projects, budgets, schedules, quality control, and maintaining communication with the City.

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

1.3 Experience and Qualifications

Describe the proposed project personnel's qualifications for conducting the proposed work and provide a brief description of three projects within the last three years where that person provided similar services. For each of the projects referenced, provide the date when the service was provided, the client name, contact name, address, and contact telephone number. These references will be contacted, so it is important that accurate and current phone numbers are provided.

1.4 Estimated Fee Schedule

The proposal shall define the total estimated contract price on a time-and-expenses basis not-to-exceed amount. The price shall be an estimate of the time and expenses needed to complete the work as proposed. The estimate shall include:

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

2.0 SELECTION CRITERIA

The City's selection criteria for this work include, but may not be limited to, the following:

- Responsiveness to requirements, terms and conditions of RFP;
- Understanding of the project and needs of the City;
- The quality and proven experience of the design team;
- Thoroughness of the proposal;
- Proven ability to commence work immediately after execution of the contract and complete the required work within the required contract time; and
- Experience in HVAC system design, application of equipment retrofit to aged systems to produce energy consumption reductions and applying Title 24 Code.

3.0 GENERAL INFORMATION

3.1 Proposal Requirements and Submittal Deadline

Proposals shall be submitted via email as a PDF.

The proposal shall be received by the City of Petaluma no later than 4:00 pm on Friday August 5, 2022, to dramirez@cityofpetaluma.org.

City of Petaluma is not responsible for proposals that are delinquent, lost, mismarked, sent to an address other than that given above, or sent by mail or courier service. The City of Petaluma reserves the right, after opening the requests for qualifications / proposals, to reject any or all proposals, or to accept the proposal(s) that is, in its sole judgment, in the best interest of the City of Petaluma.

3.2 Project Time Schedule

The following schedule is provided as a guide:

Job Site Review	Wednesday July 27, 2022
Proposal due date:	Friday August 5, 2022
Consultants Notified:	Friday August 19, 2022
Negotiation with Top Ranked Firm:	Monday August 22, 2022
Professional Services Agreement:	Monday September 6, 2022
Executed/Notice to Proceed (NTP) Issued:	Tentatively September 16, 2022

3.3 Attachments

Attachment A, Scope of Services

Attachment B, Standard Professional Services Agreement

4.0 Professional Services Agreement and Certificate of Insurance

The successful firm will be required to execute the City of Petaluma Standard Professional Services Agreement (see Attachment B). The firm understands 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. The firm will submit Certificates of Insurance in alignment with the Insurance Requirements (see Attachment C).

5.0 Negotiation of Contract

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

Thank you for your interest in this Request for Proposal.

ATTACHMENT A

SCOPE OF SERVICES FOR DESIGN AND ENGINEERING SERVICES FOR PETALUMA CITY HALL WEST WING HVAC

INTRODUCTION:

The City of Petaluma's City Hall is the main business center for the general business services of the City. City Hall has an East and West Wing. The East Wing is not included in the proposed scope of work. The West Wing is a shared space with offices for both the City and County services. The City departments have regularly staffed departments with standard and consistent operating hours and the County departments operate on a "by appointment" or intermittent scheduled basis. It is possible that the County occupancy will change in five years and some of their services will move out of City Hall.

City Hall West Wing was constructed in 1971. Many City facilities have aged and have not undergone any improvements, possibly since their construction, and available funding for improvements has been limited. The basement boiler has not been replaced since construction. The exterior chiller was replaced in 2012. The system serves the majority of the West Wing with thermostats in zones that operate pneumatic duct controls to heat or cool individual spaces. There is at least one package unit serving a limited area.

The City is looking to implement equipment and/or system retrofits or replacements which yield energy savings that also have the opportunity to comply with the Pacific Gas and Electric (PG&E) On-Bill Financing (OBF) loan program. PG&E, the utility providing natural gas and electricity to City facilities, offers a zero-percent (0%) loan program for energy efficiency measures that can be "paid back" on the monthly utility bill through the energy savings created at the associated meter. The City has the opportunity for reimbursement from the OBF program as long as the payback through energy savings remains less than one-hundred and twenty (120) months.

1.0 Project Review and Analysis

The consultant shall perform site review and investigations, evaluate existing conditions, review existing documentation on file with the City, and meet with City staff to define the final, detailed project scope and objectives, and further determine the appropriate course of action. The consultant shall design the retrofit in accordance with applicable codes.

The consultant shall propose project alternatives to include the retrofit of the existing system, partial replacement of the main system, targeted zones to meet operational needs or other alternatives. The City is interested in applying ionizing air sanitization technology within the ductwork. Project alternatives will include the possibility to electrify the system. Each alternative will include calculated energy savings, energy cost savings, simple payback and construction estimates in an effort to assist staff in making the most appropriate decision for this project.

The consultant may enhance the project, identify alternate measures or alternatives to the measures investigated enough to confirm which method is most appropriate in terms of capital, rebates available, ongoing costs and ongoing maintenance. The consultant will evaluate the cost of the proposed efficiency measures against the cost of conversion to a new system. For example, staff is aware that the current filtration system requires routine maintenance that reflects ongoing manhours.

2.0 Plans, Specifications, and Estimates (PS&E)

The ultimate goal of the consultant's work is to produce plans, specifications, and estimates for bidding and construction of the facilities described. The overall PS&E work shall be generally phased in 50%, 90%, and 100% levels of completion. Consultant shall provide submittals, including construction cost estimates, to the City corresponding to these phases and address the City's comments from the review of the submittal in the next phase, as appropriate.

Petaluma's boilerplate provisions will be supplied by the City for incorporating into bid documents package. Preliminary specifications and cost estimates shall be required with 50% and 90% levels of completion and finalized with the 100% PS&E and bid document package. The consultant shall submit both PDF and CAD electronic files for review at each phase.

The design shall include, but not be limited to, mechanical design, electrical design, plans and specifications, layouts, typical sections, and construction details necessary to construct the required work.

3.0 Bidding Phase Services

As necessary, Consultant shall provide responses to prospective bidders' questions during the bidding phase, prepare addenda, review and evaluation of contractor's bids and attend pre-bid meeting.

4.0 Project Construction Support Services

Services during construction shall be required as part of this contract. These services include, but not limited to:

- Pre-construction conference.
- Review of any equipment substitutions and work changes.
- Review of shop drawings.
- Responding to Request for Information (RFIs) and Contract Change Orders (CCO).
- Periodic field visits.
- Inspection of completed construction work.
- Review of O&M manuals.
- Record drawing corrections and preparation.
- Transfer of as-built drawings as both PDF and CAD at project completion.

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. 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.

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

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.