

June 28, 2018

Subject: Request for Proposal (RFP) for Consulting Services to prepare a
Local Hazard Mitigation Plan
City Project E16501828

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 describes the work element and specific scope of work requirements.

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

If you have any questions, please call 707-778-4546.

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

Sincerely,

Diane Ramirez
Project Manager

Enclosure: RFP

cc: Sanjay Mishra, P.E., Senior Civil Engineer
Dan St. John, Director of Public Works and Utilities
Project file/E16501828

CITY OF PETALUMA
PETALUMA, CALIFORNIA
REQUEST FOR PROPOSAL

**Consulting Services to prepare a
LOCAL HAZARD MITIGATION PLAN**

CITY PROJECT NO. E16501828

CITY OF PETALUMA - SONOMA COUNTY - CALIFORNIA

Direct all Questions concerning this RFP to :

*Department of Public Works and Utilities
202 N. McDowell Boulevard
Petaluma, CA. 94954*

Phone: (707) 778-4546 Fax: (707) 206-6034

Attention: Diane Ramirez

Office Hours: Monday thru Thursday - 8:00 to 5:00 p.m.
Friday – 8:00 to 4:00 p.m.

**REQUEST FOR PROPOSAL
FOR
CONSULTING SERVICES FOR THE
CITY OF PETALUMA**

The purpose of this Request for Proposal (RFP) is to define the City's minimum requirements, solicit proposals, and gain adequate information by which the City may evaluate the services offered by Proposers.

The City of Petaluma, hereinafter referred to as the "City", is seeking proposals with the intention of securing a contract with a Consultant who will perform all work required for the preparation, approval and adoption for a single jurisdiction, Local Hazard Mitigation Plan that will replace the City's current multi-jurisdictional hazard mitigation plan developed from the Association of Bay Area Governments (ABAG) template.

The City of Petaluma is dedicated to the development, establishment, and maintenance of programs and procedures which will provide for the protection of lives and property of City residents from the effects of natural or human caused disasters. Disasters to which the City is subject and for which we must make efforts to mitigate, train and properly respond to include, but may not be limited to floods, earthquakes, major fires, storms, radiological or hazardous material incidents, aircraft accidents, mass casualty incidents, civil unrest, severe drought and climate change.

The Public Work and Utilities Department, along with the Petaluma Fire and Police Departments, are working together to create a document that would satisfy the requirements of the Disaster Mitigation Act of 2000, as well as the Code of Federal Regulations Section 44 CFR 201.6, for a single jurisdiction local hazard mitigation plan.

By submittal of a proposal, the proposer acknowledges that they have not been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

1.0 PROPOSAL REQUIREMENTS

1.1 Cover Letter

The cover letter shall be signed by an official authorized to bind the firm and shall contain a statement that the proposal is valid for ninety (90) days.

1.2 Approach

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

The City is particularly interested in a description of your approach for completing the services in a timely fashion.

1.3 Experience and Qualifications

Describe the proposed personnel's qualifications for conducting the proposed work. For each proposed key person, provide a brief description of three projects where that person provided similar services. For each of the three projects referenced, provide the client name.

1.4 Estimated Fee Schedule and Deliverables

The proposal shall define the total estimated contract price on a time-and-expenses basis. 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 hours for each task and each phase;
- 3) The proposed hourly fee schedule for calendar year 2018-2019;
- 4) All other reimbursable fees and expenses (noting that the City will **not** pay for lodging, vehicles, travel time, and/or insurance related fees);
- 5) Assumptions upon which estimate is based; and
- 6) Mark-up on other direct costs (ODC), not to exceed 5 percent.

1.5 General

Maximum number of page count : 30 sheets (not including resumes/separators), printed on both sides acceptable. Maximum 10 number of sheets for resumes allowed.

Paper Sizes : Letter, Only one sheet of 11 x 17 folded to letter size is allowed

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
- The quality of the Consultant's response to the RFP and understanding of the scope of services.
- The ability to establish a local presence or to otherwise assure Consultant availability and familiarity with the environment in which the project will take place.
- Proven ability to perform in a timely fashion.

3.0 GENERAL INFORMATION

3.1 Proposal Due Date

Proposals will be received by the City of Petaluma **until 4:00 p.m. on Monday, July 23, 2018**. City is requesting two (2) hardcopies of the proposal and one (1) electronic version of the proposal in pdf format. Proposers shall send two (2) copies of their proposals to:

City of Petaluma
Attn: Diane Ramirez, Public Works & Utilities Department
11 English Street, Petaluma, CA 94952

City of Petaluma is not responsible for proposals that are delinquent, lost, mismatched, 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 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 is the schedule for consultant selection and project initiation:

Proposal due date	4:00 p.m., Monday, July 23, 2018
Consultant Selection:	July 30, 2018
Award and Notice to Proceed (NTP)	September 10, 2018

3.3 Relevant Questions

Any relevant questions concerning the RFP or Scope of Services shall be directed to Diane Ramirez at dramirez@ci.petaluma.ca.us or (707) 776 3658 / Sanjay Mishra at smishra@ci.petaluma.ca.us or (707) 776 3672. All communications should be in writing. Any oral communications will generally be considered nonbinding on the City. The City will respond in writing to written communications. If, in the City's opinion, any such response changes the intent of the RFP, or otherwise would provide an advantage to one proposer over another, an addendum to the RFP will be issued to all invited proposers.

3.4 Attachments

Attached are the following:

Attachment A	Scope of Services
Attachment B	Milestone Schedule
Attachment C	Standard Professional Services Agreement (PSA)

4.0 PROFESSIONAL DESIGN SERVICES AGREEMENT

The successful firm will be required to execute the City of Petaluma Standard Professional Design Services Agreement (see Attachment C). No exceptions to this agreement will be accepted and that any consultant submitting a proposal must be prepared to execute this agreement without modification.

5.0 NEGOTIATION OF CONTRACT

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

Thank you for your interest in this RFP.

ATTACHMENT A

SCOPE OF SERVICES FOR CONSULTING SERVICES FOR THE CITY OF PETALUMA

PROJECT OBJECTIVES

The requirement of the Consultant under this scope of work is to manage, coordinate, prepare, and administer the development of a single jurisdiction Local Hazard Mitigation Plan (LHMP) for the City of Petaluma (City). This scope and contract is intended to be inclusive of the entire LHMP process from initial planning through final approval by FEMA and adoption by the City. The Consultant shall perform all necessary planning, administration, professional analysis, supporting documentation, and work required for the preparation and adoption of the City of Petaluma Local Hazard Mitigation Plan in full conformance with the requirements of the Disaster Mitigation Act of 2000, 44 CFR 201.6 and the FEMA Local Mitigation Plan Guidelines.

TASK ELEMENT #1 – PLANNING, RESOURCE ASSESSMENT & OUTREACH

The Consultant's primary objective for this task element is to develop the plan strategy, define the planning area, assemble the Planning Team, identify all participating jurisdictions, and develop a public outreach strategy that will be utilized throughout the facilitated planning effort. Under this task the Consultant will:

- Identify a City Planning Team consisting of key personnel from certain departments within the City of Petaluma.
- Identify Planning Team members from partner jurisdictions/organizations as necessary.
- Facilitate an initial meeting to confirm and seek concurrence on the purpose of the LHMP, to refine the scope and schedule to complete the LHMP.
- Facilitate the City with developing and organizing personnel resources within Departments and partner organizations to serve on the LHMP Planning Team.
- Prepare, organize and maintain documentation that memorializes the entire planning process, informs the public and stakeholders of the overall approach, and serves as permanent record as to the plans development, public involvement, and decisions made.
- Develop and implement a public outreach strategy:
 - Conform to the statutory requirements of the Code of Federal Regulations 44 CFR 201.6, and also the requirements of FEMA Local Mitigation Plan Guidelines and Community Rating System (CRS) program.
 - Document, evaluate and incorporate input received from outreach efforts.
- Organize, notice and facilitate a minimum of two (2) public outreach workshops. The workshops should provide the public with an opportunity to interact with the LHMP Planning Team, introduce the public to the progress and outcomes of the LHMP planning process, review the outcomes of the hazard identification and risk assessment, and act as a public

commenting tool for the Public Review Draft LHMP.

- Ensure neighboring communities, local and regional agencies involved in hazard mitigation activities, agencies that have the authority to regulate development, as well as other to be determined interests are involved in the planning process as required by 44 CFR 201.6 (b)(2).

TASK ELEMENT #2 – COMMUNITY CAPABILITIES & RISK ASSESSMENT

1. Community Capabilities

The Consultant will compile and review available existing plans, policies, reports, studies, and data available from local, state and federal sources, interview local departments and agencies and work with the LHMP Planning Team to identify and document all capabilities currently in place within the City that reduce disaster losses, or that could be utilized to reduce losses in the future. Under this task we are looking for the Consultant to:

- Identify and document any current authorities, programs, staffing, funding and other resources currently in place or available to accomplish mitigation and reduce vulnerability.
- Identify and document current infrastructure in place, such as flood controls, that either positively or negatively impact the City's vulnerability to disaster.
- Review and describe the City's participation in the NFIP and its floodplain management program, and if and how it complies with the NFIP requirements.
- Develop strategies to expand upon and/or improve existing policies and programs.

2. Risk Assessment and Vulnerability Analysis

The objective of this task is to identify and prioritize potential hazards and risks to the people, economy, as well as both built and natural environments of the City; and to develop an overall assessment of the City's vulnerability to and potential impacts of each identified hazard. Using various planning documents within the City and/or Sonoma County, appropriate FEMA hazard software and other resources, and local staff, compile an accurate inventory of the types and numbers of buildings, infrastructure, and critical facilities that may be vulnerable to each of the identified potential hazards. Results from this task element will form the foundation for the subsequent identification of the appropriate mitigation actions for reducing losses. Under this task the Consultant will:

- Identify and evaluate vulnerable assets, and estimate loss potential of those assets.
- Describe natural, technological, and/or human caused hazards that have potential to affect the City's assets.
- For each hazard affecting the planning area, prepare a description of geographic location, extent, previous occurrences, and probability of future events.
- Prepare and provide an overall summary of each hazard profile and its impact on the community in accordance with 44 CFR 201.6 (c)(2)(ii).
- Identify addresses of NFIP insured structures that have been repetitively damaged by floods.
- Review existing studies, reports and plans related to historical disasters, and document disaster declaration history.
- Utilize FEMA's Hazus, RiskMAP products (and/or other appropriate software) to generate

level 2 vulnerability assessments for earthquake and flood hazards.

- Develop a parcel-level inventory of vulnerable structures.
- Document the analysis and findings from this task element in a manner and format that planners, policy makers and community members can easily decipher. Technical data and output relevant to the risk assessment may be included in appendices.
- Include graphics and generate Geographic Information System (GIS) based maps that will illustrate the extent and location of each hazard, as well as other available information, within the defined planning area. All GIS based data and mapping shall be tied to the City of Petaluma coordinate control network.

TASK ELEMENT #3 – DEVELOP MITIGATION ACTIONS & STRATEGY

The objective of this task is to develop a mitigation strategy, and specific mitigation actions to address each of the identified hazards with the goal of reducing or avoiding long-term vulnerabilities to the identified hazards. Under this task, the Consultant will identify mitigation goals, mitigation actions, and develop a mitigation action plan. Mitigation actions will be evaluated and prioritized based on, amongst other criteria, a planning level Benefit-Cost assessment. Other criteria may include life safety, preservation of property, environmental, legal, and political. Under this task the Consultant will:

- Identify Mitigation Goals that define what long-term outcomes the City wants to achieve with the plan.
- Identify specific mitigation actions, projects, activities, policies & processes, or programs recommended to reduce or eliminate the impacts of the hazards identified in the risk assessment task element.
- To the extent that appropriate data and information is available, prepare a cost estimate on a defined comparative cost scale as a basis to compare and prioritize mitigation actions.
- Identify how each mitigation action will be implemented, including who is responsible for various actions, funding mechanisms, timeframe for implementation, and implementation priority.
- Identify those mitigation actions for which there is no current or planned funding mechanism.
- Describe the status of any mitigation actions defined in the City's current Multi-Jurisdictional Hazard Mitigation Plan as "completed" or "not completed". For "not completed" actions, indicate if those are included in the new LHMP.
- Prepare a matrix that summarizes mitigation actions, priority, responsible party(ies), funding mechanisms, benefit/cost, and technical feasibility similar to the example given on Page 6-14 of the FEMA Local Mitigation Planning Handbook (March 2013).

TASK ELEMENT #4 – PREPARE DRAFT HAZARD MITIGATION PLAN

The principal objective of this entire scope, and specifically this task, is to compile and submit updated comprehensive Single Jurisdiction Local Hazard Mitigation Plan to California Emergency Management Agency (Cal EMA) and FEMA Region IX to meet FEMA's criteria for such plans.

Under this task, the Consultant, working with the Planning Team will assemble the plan utilizing all data generated in Task Elements 1 through 3.

The Consultant will ensure that each required component is included in the plan in accordance with the FEMA Local Mitigation Plan Review Guide, 44 CFR 201.6, including plan maintenance procedures for scheduled monitoring, evaluating, and updating the plan. Specifically, the plan will identify and analyze a comprehensive range of specific mitigation actions and projects to reduce hazards, with emphasis on existing buildings and infrastructure. The plan will also identify the process for incorporating the plan's requirements into other planning mechanisms, such as the City's Emergency Procedures Manual.

The anticipated plan review and adoption process is as follows:

- Submit an administrative draft of the LHMP to the Planning Team for review and comment.
- Collaborate and incorporate comments from the Planning Team, and prepare a Public Review Draft and circulate as appropriate for public review and comment. Public Review comments shall be incorporated into an Appendix of the final LHMP.
- Incorporate public review comments, and submit a draft LHMP to Cal OES State Hazard mitigation Officer (SHMO) for review and comment.
- Collaborate and incorporate comments from Cal OES/SHMO, and submit a final draft LHMP through Cal OES to FEMA for review and comment.
- Collaborate and incorporate comments from FEMA, and prepare a final LHMP for adoption by the City of Petaluma.
- Assist the Planning Team with final adoption procedures by the City of Petaluma City Council, and incorporate documentation of local adoption into the final LHMP.
- Assist the Planning Team to secure final approval letter and plan review tool from FEMA.

Under this task, the Consultant is responsible to insure the plan and the planning process is completed to the satisfaction of, and in accordance with the criteria establish by FEMA. Should the LHMP not receive approval after Cal EMA and FEMA review, the Consultant is responsible to review FEMA "required revision" comments provided and perform all necessary follow-on tasks to finalize the LHMP to the satisfaction of FEMA.

TASK ELEMENT #5 – PROJECT MANAGEMENT

Consultant shall identify a Project Manager to be used on this project at the time of their proposal. This individual shall coordinate with the City's Project Manager and oversee the management of the entire project, administer all instructions from the Planning Team, Cal OES and/or FEMA and answer or obtain answers to all questions from the Planning Team, Cal OES and/or FEMA during and after the work. Specific Project Management Tasks will include:

- Develop and maintain a critical path method schedule for the project. Update project schedule at least monthly.
- Prepare monthly progress reports to be submitted with payment invoices describing work progress and indicating the percentage of work completed, and percentage of budget expended by task element.

- Assist the City's Project Manager to prepare monthly progress reports and quarterly reports to be submitted to Cal OES.
- Anticipate planning and facilitating the following meetings:
 - a. Kick Off meeting
 - b. Monthly project management team meetings – on site or via phone
 - c. Monthly planning team meetings – on site or via phone
 - d. Public workshop meetings – (2 meetings: 1 during the planning process, 1 during public review period)
 - e. City Council adoption
- Project management closeout meeting
- Prepare agendas and reference information, and keep/prepare minutes for all conference calls or meetings. Conference notes shall be prepared in typed form and furnished electronically to the City within five (5) days after date of conference/meeting.

ATTACHMENT B

MILESTONE SCHEDULE

The proposal submitted shall include a detailed project schedule from planning through approval and adoption of the LHMP; however, following is the anticipated milestone schedule (in calendar days):

- Begin All Work Date Immediately Upon Contract Effective Date
- Provide Project Schedule Within 10 Days of Award Date
- Kick-Off Meeting Within 10 days of Contract Effective Date
- Complete Primary Objectives of Task Element #1 Within 45 Days of Contract Effective Date
- Submit Draft LHMP to Cal OES December 2018
- Correct and Resubmit Any Correction to Cal OES January 2019
- Submit Final Draft LHMP to FEMA February 2019
- Correct and Resubmit Any Corrections to FEMA Date TBD
- City Council Adoption of LHMP Following FEMA Approval
- Activity Completion Deadline February 13, 2019
- Closeout and Finalize Required FEMA Documentation 90 Days Following Completion Deadline

ATTACHMENT C

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 _____ ("Consultant") (collectively, the "Parties").

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

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

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

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

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

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

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

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

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

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

And:

Phone: _____
Fax: _____
Email: _____

Consultant: _____

Phone: _____
Fax: _____
Email: _____

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

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

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

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

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

23. **Insurance.** Consultant shall comply with the "Insurance Requirements for Consultants" in Exhibit B-_____, attached hereto and incorporated herein by reference. [Indicate attached exhibit, e.g., "B-1," "B-2," "B-3," or "B-4."]

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 Consultant's services hereunder, Consultant, upon request from City, agrees to testify therein at a reasonable and customary fee.
26. **Construction.** This Agreement is the product of negotiation and compromise on the part of both Parties and that the Parties agree that, notwithstanding Civil Code Section 1654, any uncertainty in the Agreement shall not be construed against the drafter of the Agreement.
27. **Governing Law; Venue.** This Agreement shall be enforced and interpreted under the laws of the State of California and the City of Petaluma. Any action arising from or brought in connection with this Agreement shall be venued in a court of competent jurisdiction in the County of Sonoma, State of California.
28. **Non-Waiver.** The City's failure to enforce any provision of this Agreement or the waiver thereof in a particular instance shall not be construed as a general waiver of any part of such provision. The provision shall remain in full force and effect.
29. **Severability.** If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.
30. **No Third Party Beneficiaries.** The Parties do not intend to create, and nothing in this Agreement shall be construed to create any benefit or right in any third party.
31. **Mediation.** The Parties agree to make a good faith attempt to resolve any dispute arising out of this Agreement through mediation prior to commencing litigation. The Parties shall mutually agree upon the mediator and shall divide the costs of mediation equally.
32. **Consultant's Books and Records.**
 - A. Consultant shall maintain any and all ledgers, books of accounts, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to the City for a minimum period of three (3) years or for any longer period required by law, from the date of final payment to Consultant pursuant to this Agreement.
 - B. Consultant shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years or for any longer period required by law, from the date of termination or completion of this Agreement.
 - C. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Finance Director, or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at Petaluma City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Consultant's address indicated for receipt of notices in this Agreement.

D. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Consultant's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in Petaluma City Hall. Access to such records and documents shall be granted to any party authorized by Consultant, Consultant's representatives, or Consultant's successor in interest.

33. **Headings.** The headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of any provisions herein.

34. **Survival.** All obligations arising prior to the termination or expiration of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination or expiration of this Agreement.

35. **Entire Agreement.** This Agreement, including the exhibits attached hereto and incorporated herein, constitutes the entire agreement between the Parties with respect to the Services, and supersedes all prior agreements or understandings, oral or written, between the Parties in this regard.

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

CITY OF PETALUMA

CONSULTANT

City Manager

By _____
Name

ATTEST:

Title

City Clerk

Address

APPROVED AS TO FORM:

City State Zip

City Attorney

Taxpayer I.D. Number

Petaluma Business Tax Certificate Number

file name: