

CITY OF PETALUMA

POST OFFICE BOX 61
PETALUMA, CA 94953-0061

David Glass
Mayor

Chris Albertson
Teresa Barrett
Mike Harris
Mike Healy
Gabe Kearney
Tiffany Renée
Councilmembers

December 7, 2011

To Whom It May Concern:

Subject: Request for Proposal (RFP) for Surveying Services for the Rule
20A Bodega Phase II (from Court Street to North Webster Street)
Underground Utility District Project
City Project C03500104

Dear Consultant:

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 proposal describes the work element, and specific requirements are described in the proposal.

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

If you have any questions, please call me at (707) 776-3673.

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

Sincerely,

Erica Ahmann Smithies, P.E.
Senior Civil Engineer

Enclosure: RFP

xc: L. Zimmer project file/C03500104

Public Works

Administration
11 English Street
Petaluma, CA 94952

Phone (707) 778-4474
Fax (707) 776-3602
E-Mail: publicworks@ci.petaluma.ca.us

Airport
601 Sky Ranch Drive
Petaluma, CA 94954
Phone (707) 778-4404
Fax (707) 778-4405

Maintenance & Operations

Corporation Yard
840 Hopper St. Ext.
Petaluma, CA 94952
Phone (707) 778-4303
Fax (707) 778-4437

Parks & Landscape Maintenance

840 Hopper St. Ext.
Petaluma, CA 94952
Phone (707) 778-4321
Fax (707) 778-4535

Transit

555 N. McDowell Blvd.
Petaluma, CA 94954
Phone (707) 778-4421
Fax (707) 776-3799

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

The City of Petaluma is requesting proposals from qualified firms to provide land surveying services for the Rule 20A Bodega Phase II (from Court Street to North Webster Street) Underground Utility District Project-City Project C03500104. The City will need adequate survey data to generate a base map in order to underground overhead utilities within the utility district boundary. The City would like work to commence no later than March 2012.

The scope of work for the requested land surveying services shall generally include topographic survey, survey of physical features (i.e. buildings, trees, sidewalks, etc.), utilities, public utility easements, right-of-way limits, and property lines. The scope of services provided in Attachment A describes the proposed tasks and locations. Specific requirements for the proposal are described as follows.

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

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;
- 3) The proposed hourly fee schedule for calendar year 2012;
- 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.

2.0 SELECTION CRITERIA

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

- The quality of the Consultant's response to the RFP and understanding of the scope of services.
- Past performance on projects of similar scope and size.
- 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 2:00 p.m. on Thursday, January 12, 2012. Proposers shall send two (2) copies of their proposals to:

City of Petaluma
Public Works Department
Attn: Erica Ahmann Smithies, P.E.
11 English Street
Petaluma, CA 94952

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 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:

Proposal due date	2:00 p.m., Thursday, January 12, 2012
Consultant Selection:	January 19, 2012
Start Agreement Processing:	January 23-February 23, 2012
Executed/Notice to Proceed (NTP) Issued	March 5, 2012

3.3 Relevant Questions

Any relevant questions concerning the RFP or Scope of Services shall be directed to Erica Ahmann Smithies at (707) 776-3673.

3.4 Attachments

Attached are the following:

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

4.0 Professional Services Agreement

The successful firm will be required to execute the City of Petaluma Standard Professional Services Agreement (see Attachment B). The proposer should assure no exceptions to this agreement will be accepted and that any consultant submitting a proposal must be prepared to execute this agreement without modification. If a proposer believes that a modification of the Agreement will benefit the City, the proposer can describe such modification *in their proposal*, including a description of the perceived benefits. There is no obligation on the part of the City to accept such a 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.

6.0 Submittal Deadline

Two (2) copies of the proposal shall be received by the City of Petaluma no later than 2:00 pm on Thursday, January 12, 2012. Please address proposals to:

City of Petaluma
Public Works Department
11 English Street
Petaluma, CA 94952
Attention: Erica Ahmann Smithies, P.E., Senior Civil Engineer

Thank you for your interest in this RFP.

ATTACHMENT A

SCOPE OF SERVICES
FOR
SURVEYING SERVICES
RULE 20A BODEGA PHASE II
(FROM COURT STREET TO NORTH WEBSTER STREET)
UNDERGROUND UTILITY DISTRICT PROJECT-CITY PROJECT C03500104

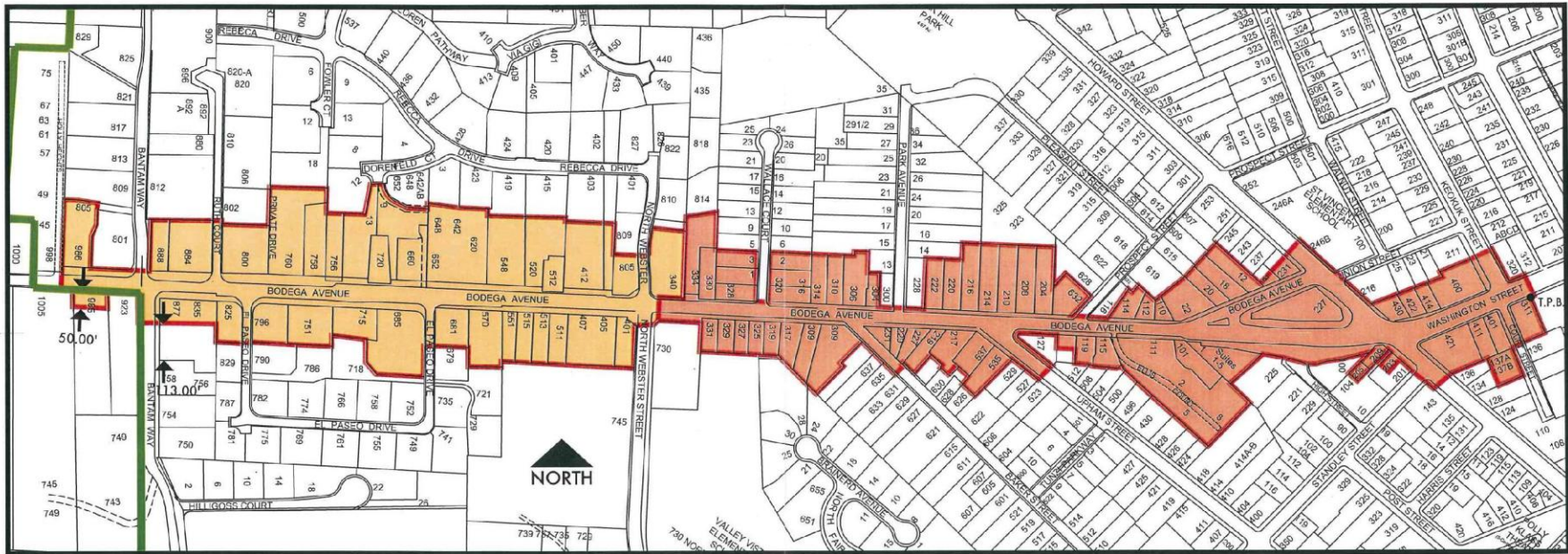
The City of Petaluma is requesting proposals from qualified firms to provide land surveying services for the Rule 20A Bodega Phase II (from Court Street to North Webster Street) Underground Utility District Project-City Project C03500104. The City will need adequate survey data to generate a base map in order to underground overhead utilities within the utility district boundary. The City would like work to commence no later than March of 2012.

The approximate project limits of the proposed survey work are annotated on the attached drawing. The scope of work for the requested land surveying services shall generally include topographic survey, survey of physical features (i.e. buildings, trees, sidewalks, etc.), utilities, public utility easements, right-of-way limits, and property lines as outlined below:

- A. Complete topographic survey including:
 - 1. Contours at an interval of one foot within project limits and intersecting streets and where possible to a distance of 20 ft. beyond project limits.
 - 2. Spot elevations shall be shown at all locations where contours are insufficient to show the complete vertical configuration of the site.
 - 3. Rim and invert elevations on all manholes. Grate and invert elevations on all catch basins and inlets. Rim elevations on water valve and survey monument boxes.

- B. All physical features on, under or above the site including but not limited to:
 - 1. Walls, fences and retaining walls including materials of construction.
 - 2. Paved areas including materials of construction and pavement markings.
 - 3. Concrete curbs, cobble curbs, planters, signs, bollards, columns, posts, steps, handrails and other physical features.
 - 4. Width of paving on adjacent and intersecting streets
 - 5. Paved and unpaved swales, ditches, streams, ponds, lakes, and other bodies of water within project limits and or immediately adjacent to the project.
 - 6. Utilities (water, storm and sanitary sewer, including pipe size, gas, electric, telephone, other) on site and in adjacent and intersecting rights-of-way.
 - a. Hydrants, valves, meters, manholes, catch basins, inlets, headwalls, light poles, power poles, guy wires and all other utility related features on grade.
 - b. Size, material, location and function of all lines underground. If location is approximate it shall be so noted.

- c. Wires and other overhead lines including their height above grade.
 - d. Surveyor shall make an inquiry in writing to all utility companies serving the locality to determine the existence and location of any underground utilities. This inquiry shall request a written response and copies of same shall be provided with the survey.
 - e. The following note shall appear on the drawing: "No other utilities are evident on this site at time of survey."
7. Vegetation
- a. For wooded areas show edge of woods and predominate type of tree.
 - b. For individual trees standing alone, show size, type and location of each tree.
 - c. Show shrubbery of any significant nature within project limits including other physical features.
- C. Right-of-Way, Public Utility Easements and Assessor Parcel Property Lines
- 1. Existing Right-of-Way
 - 2. Adjacent property owners along all assessor parcel property lines and on the other side of all streets that are adjacent to property lines. Provide name, lot and block numbers and/or tax parcel numbers for each parcel.
 - 3. Public Utility and any other easements within the project limits.
 - 4. Any municipal, county, or other political boundaries within the project limits or coincident with any parcel boundary.
 - 5. Research and confirm, per the available records, the public right of way within the project limits. Notify the City of any discrepancies immediately.
- D. Deliverables
- 1. Drawing scale shall be 1"=20', 1"=30', or 1"=40'.
 - 2. Sheet size shall be no larger than 30" X42".
 - 3. Drawing shall be at the largest scale possible to fit the maximum sheet size. Match lines and multiple sheets may be used if necessary.
 - 4. Survey shall be produced by computer having software which is compatible with AutoCAD Release 2007 or newer.
 - 5. Provide one mylar reproducible, two paper prints and one computer disk of the survey drawing. Drawing shall bear the signature of a licensed land surveyor in the State where the project is located. Paper prints shall bear his embossed seal.
 - 6. Computer files shall be submitted on CD in the .DWG for use by AutoCAD. A point file in ASCII format containing point number, description, N and E coordinates and elevation for all points surveyed shall be included with the data. Also provide the following items:
 - a. A plot of the computer points showing location and number of each.
 - b. A printout of all points with data included in the point file.
 - 7. A schedule of layers defining color, line type, pen width and description of each layer.



Scale: 1" = 300.00'
 Printing Date: 032707

LEGEND

- Proposed Underground District Boundary
- Current City Limits
- Phase I
- Phase II

EXHIBIT
Bodega Avenue Underground
District Boundary Phases I and II

ATTACHMENT B

**PROFESSIONAL SERVICES AGREEMENT
SURVEYING SERVICES
FOR THE**

**RULE 20A BODEGA PHASE II (FROM COURT STREET TO NORTH WEBSTER STREET)
UNDERGROUND UTILITY DISTRICT PROJECT
(Title of Project)**

FY 11-12 Fund # 30300 Exp. Acct. # 54110 Project # C03500104 Amount \$ _____

For multi-year contracts or contracts with multiple accounts:

FY _____ Fund # _____ Exp. Acct. # _____ Project # _____ Amount \$ _____
FY _____ Fund # _____ Exp. Acct. # _____ Project # _____ Amount \$ _____
FY _____ Fund # _____ Exp. Acct. # _____ Project # _____ Amount \$ _____
FY _____ Fund # _____ Exp. Acct. # _____ Project # _____ Amount \$ _____
FY _____ Fund # _____ Exp. Acct. # _____ 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 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 current information requested on the “Vendor Information” form

available from City, 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. **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 C, 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 D, 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 D 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:

 Phone: _____
 Fax: _____
 Email: _____

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.
- 23. **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.

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.

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

City Attorney

Taxpayer I.D. Number

APPROVED:

Petaluma Business Tax Certificate Number

Department Director

APPROVED:

Risk Manager

APPROVED:

Finance Director

file name:

INSURANCE REQUIREMENTS

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

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

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

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

B. Minimum Limits of Insurance

Consultant shall maintain limits no less than:

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

C. Deductibles and Self-Insured Retentions

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

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

D. Other Insurance Provisions

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

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

E. Acceptability of Insurers

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

F. Verification of Coverage

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

EXHIBIT C

HOURS OF WORK:

- A. In accordance with California Labor Code Section 1810, eight (8) hours of labor in performance of the Services shall constitute a legal day's work under this Agreement.
- B. In accordance with California Labor Code Section 1811, the time of service of any worker employed in performance of the Services is limited to eight hours during any one calendar day, and forty hours during any one calendar week, except in accordance with California Labor Code Section 1815; which provides that work in excess of eight hours during any one calendar day and forty hours during any one calendar week is permitted upon compensation for all hours worked in excess of eight hours during any one calendar day and forty hours during any one calendar week at not less than one-and-one-half times the basic rate of pay.
- C. The Consultant and its subconsultants shall forfeit as a penalty to the City \$25 for each worker employed in the performance of the Services for each calendar day during which the worker is required or permitted to work more than eight (8) hours in any one calendar day, or more than forty (40) hours in any one calendar week, in violation of the provisions of California Labor Code Section 1810 and following.

WAGES:

- A. In accordance with California Labor Code Section 1773.2, the City has determined the general prevailing wages in the locality in which the Services are to be performed for each craft or type of work needed to be as published by the State of California Department of Industrial Relations, Division of Labor Statistics and Research, a copy of which is on file with the City and shall be made available on request. The Consultant and subconsultants engaged in the performance of the Services shall pay no less than these rates to all persons engaged in performance of the Services.
- B. In accordance with Labor Code Section 1775, the Consultant and any subconsultants engaged in performance of the Services shall comply Labor Code Section 1775 which establishes a penalty of up to \$50 per day for each worker engaged in the performance of the Services that the Consultant or any subconsultant pays less than the specified prevailing wage. The amount of such penalty shall be determined by the Labor Commissioner and shall be based on consideration of the mistake, inadvertence, or neglect of the Consultant or subconsultant in failing to pay the correct rate of prevailing wages, or the previous record of the Consultant or subconsultant in meeting applicable prevailing wage obligations, or the willful failure by the Consultant or subconsultant to pay the correct rates of prevailing wages. A mistake, inadvertence, or neglect in failing to pay the correct rate of prevailing wages is not excusable if the Consultant or subconsultant had knowledge of their obligations under the California Labor Code. The

Consultant or subconsultant shall pay the difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate. If a subconsultant worker engaged in performance of the Services is not paid the general prevailing per diem wages by the subconsultant, the Consultant is not liable for any penalties therefore unless the Consultant had knowledge of that failure or unless the Consultant fails to comply with all of the following requirements:

1. The Agreement executed between the Consultant and the subconsultant for the performance of part of the Services shall include a copy of the provisions of California Labor Code Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.
2. The Consultant shall monitor payment of the specified general prevailing rate of per diem wages by the subconsultant by periodic review of the subconsultant's certified payroll records.
3. Upon becoming aware of a subconsultant's failure to pay the specified prevailing rate of wages, the Consultant shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds due the subconsultant for performance of the Services.
4. Prior to making final payment to the subconsultant, the Consultant shall obtain an affidavit signed under penalty of perjury from the subconsultant that the subconsultant has paid the specified general prevailing rate of per diem wages employees engaged in the performance of the Services and any amounts due pursuant to California Labor Code Section 1813.

C. In accordance with California Labor Code Section 1776, the Consultant and each subconsultant engaged in performance of the Services, shall keep accurate payroll records showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed in performance of the Services. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:

1. The information contained in the payroll record is true and correct.
2. The employer has complied with the requirements of Sections 1771, 1811, and 1815 for any Services performed by the employer's employees on the public works project.

The payroll records required pursuant to California Labor Code Section 1776 shall be certified and shall be available for inspection by the Owner and its authorized representatives, the Division of Labor Standards Enforcement, the Division of Apprenticeship Standards of the Department of Industrial Relations and shall otherwise be available for inspection in accordance with California Labor Code Section 1776.

- D. In accordance with California Labor Code Section 1777.5, the Consultant, on behalf of the Consultant and any subconsultants engaged in performance of the Services, shall be responsible for ensuring compliance with California Labor Code Section 1777.5 governing employment and payment of apprentices on public works contracts.

- E. In case it becomes necessary for the Consultant or any subconsultant engaged in performance of the Services to employ on the Services any person in a trade or occupation (except executive, supervisory, administrative, clerical, or other non manual workers as such) for which no minimum wage rate has been determined by the Director of the Department of Industrial Relations, the Consultant shall pay the minimum rate of wages specified therein for the classification which most nearly corresponds to Services to be performed by that person. The minimum rate thus furnished shall be applicable as a minimum for such trade or occupation from the time of the initial employment of the person affected and during the continuance of such employment.

file name:
#778238

EXHIBIT D

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 edgment and Certification.

SO ACKNOWLEDGED and CERTIFIED:

Project or Contract I.D: _____

(Print Name of Covered Entity/Business Capacity)

Date: _____

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: _____