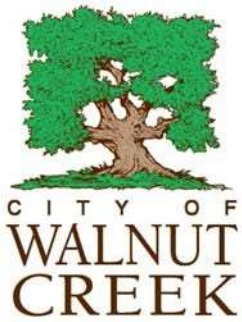
July 22, 2019



REQUEST FOR STATEMENT OF QUALIFICATIONS #2019-311-02-PW

for

Commercial Real Estate Broker/Leasing Agent

Due Date/Time: August 5, 2019 at 2:00pm (PDT)

A. Introduction

The City of Walnut Creek (City), through the Public Works Engineering Department, requests a Statement of Qualifications (SOQ) from qualified and experienced commercial real estate brokers/leasing agents ("Respondent") to list and market commercial restaurant space ("Subject Property") available for lease located at 1352 Locust Street, Walnut Creek, CA 94596.

B. Property Description

The Subject Property is approximately 4,250 square feet of restaurant space on the ground floor of the South Locust Parking Garage. The Subject Property is located in historic downtown Walnut Creek and within walking distance to several other commercial and retail establishments. The Subject Property is served by a public parking structure located above the restaurant, with additional parking spaces located along Locust Street.

C. Scope of Services

The selected broker/leasing agent will provide the City with a range of leasing and marketing services for the Subject Property as follows:

- Advertising, marketing, placing signage on the property, providing tours of the property, and online marketing to include a virtual tour, photo gallery, and promotional video;
- Listing the Subject Property in available Multiple Listing Service (MLS) databases;
- Advising prospective Subject Property tenants on proposal submissions to the City;
- Advising the City on negotiations and lease terms as appropriate;
- Advising the City about tenant improvements that the City should consider providing;
- Delivering lease proposals for consideration by the City;
- Negotiating leases with prospective tenants;
- Conducting tenancy suitability screenings, including checks on credit reports, criminal history, and references;
- Handling all other customary activities and services associated with real estate leasing transactions; and
- If necessary, attending and presenting at meetings of the City Council and Advisory Boards/Committees of the City of Walnut Creek.

D. Terms and Conditions

The selected Respondent will work under a Consultant Services Agreement or a listing agreement for work over a period of six (6) months from execution. The terms and conditions of the agreement will include a not to exceed fee or commission fee structure which may also include reimbursement of sub-consultants costs at a not to exceed fee. The Respondent as the prime consultant will be responsible for any sub-consulting as required. The Respondent's attention is directed to the attached sample Consultant Services Agreement. Please pay close attention to the insurance and indemnification requirements stated therein. A Consulting Services Agreement or any listing agreement entered into with the City shall contain these

requirements listed in the attached sample Agreement (Attachment A).

The City acknowledges that the selected Respondent may represent other prospective tenants who seek to lease the Subject Property. The City agrees that the selected Respondent's associates may, during the term of this agreement and after it ends, represent such other prospects, provided that one broker/leasing agent as designated by the City shall serve as the exclusive agent of the City and not a dual agent also representing any prospective tenant in any and all transactions involving the Subject Property.

E. Necessary qualifications of the Broker/Leasing Agent
Respondents to this SOQ shall have the following qualifications:

a. Licensed and in good standing with the California Bureau of Real Estate.

b. Knowledgeable in the local real estate market, with demonstrated experience in leasing commercial properties.

c. Able to conduct financing scenarios and comparative lease rate scenario analyses.

d. Knowledgeable in the use of all public real estate records.

e. Excellent reputation in the real estate community.

f. Familiarity with commercial restaurant space leases is desirable.

g. Office location in Northern California.

F. Selection Criteria

a. Overall Experience
b. Local Experience
c. Ability to respond in a timely manner
d. Experience in real estate and leasing services
e. Ability to meet contract and insurance requirements

G. Time Frame and deadlines for submitting SOQ

SOQs meeting the above stated requirements are due no later than 2:00pm (PDT) on August 5, 2019. Three (3) copies of the document should be enclosed in a sealed envelope identified clearly with the words "Statement of Qualifications – Commercial Real Estate Broker/Leasing Agent" addressed to:

City of Walnut Creek, Public Works
Attn: Heather Ballenger
1666 North Main Street
Walnut Creek, CA 94596.

H. Format of SOQ

The submittal is to be prepared in a bound 8 ½" x 11" format limited to 15 pages, including brochures. Covers and dividers are not included in the page count.
In addition, any information that needs to be returned should not be submitted. The Respondent is requested to include the following information in the SOQ. It is expected that the SOQs will follow the order listed below:

a. Cover Letter introducing Respondent and describing the basis for seeking consideration.

b. Statement of Qualifications for experiences in commercial real estate transactions and providing leasing services.

c. A list of proposed key-personnel to be used in providing services to the City, and a description of their proposed services.

d. List of contracts/agreements terminated for convenience or default within the past three years, if any.

e. List any litigation, outstanding judgments and liens, that now affect or may affect in the future Respondent's ability to perform.

f. Provide three references, along with contact information, attesting to the Respondent's previous experience in representing landlords in commercial real estate transactions and providing leasing services.

g. Confirm Respondent's ability to meet contract & insurance requirements as stated in the City's Consulting Services Agreement attached hereto.

I. Selection Process

a. A selection team from the City will evaluate the submitted SOQs and may contact persons involved in former or current projects done by the Respondents, including but not limited to reference contacts. Following evaluation of the submitted SOQs, the top Respondents will be invited for presentations and interviews. At the conclusion of the interviews, the most qualified candidate will be identified.

J. Anticipated Selection Schedule

July 22, 2019	Distribution of SOQ
August 5, 2019	Statement of Qualifications Due
August 15, 2019	Notification of Short List of Candidates and schedule interviews
Week of August 19, 2019	Approximate date for interviews

K. Conclusion

The City reserves the right to accept or reject any or all Statements of Qualifications, or to alter the selection process in any way, to postpone the selection process for its own convenience at any time, and to waive any defects in the Statements of Qualifications. The City also reserves the right to accept or reject any individual sub-consultant that a candidate proposes to use.

This request for SOQs and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the City and the Consultant. By submitting a response to this request for SOQs, the successful Consultant agrees to execute an agreement with the City in the form attached to this request for SOQs as Attachment "A". The City reserves the right to negotiate any and all terms of the agreement, including the Term, Scope of Service and Compensation.

Each candidate submitting a Statement of Qualifications in response to this request for SOQs acknowledges and agrees that the preparation of all materials for submittal to the City and all presentations, related costs and travel expenses are the candidate's sole expense and the City shall not, under any circumstances, be responsible for any cost or expense incurred by the candidate. In addition, each candidate acknowledges and agrees that all documentation and/or materials submitted with the SOQ shall remain the property of the City.

Each candidate should be aware that although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City might not be in a position to establish that the information, which a candidate submits, is a trade secret. If a request is made for information marked "confidential", the City will provide the candidate who submitted such information with reasonable notice to allow the candidate to seek protection from disclosure by a court of competent jurisdiction.

The selected Respondent shall procure at its own expense, and keep in effect at all times during the term of any agreement with the City, the types and amounts of insurance as specified in Attachment "A" to this request for SOQs.

ATTACHMENT A

City of Walnut Creek
CONSULTANT SERVICES AGREEMENT
(for Commercial Real Estate Broker/Leasing Services)

THIS AGREEMENT is entered into on_____, 201 between the City of Walnut Creek, a California municipal corporation ("City"), and _____ ("Consultant").

RECITALS

A. The City wishes to contract for the provision of professional commercial real estate leasing services, as described by the Scope of Services attached to this Agreement.

B. Consultant has the skill, experience, ability, background, certification and knowledge to provide the services as a professional real estate broker/leasing agent. Consultant qualifications have been reviewed and accepted by the City. Consultant desires to perform such professional services under agreement with the City.

NOW, THEREFORE, in consideration of the terms and conditions contained in this Agreement, the City and Consultant agree as follows:

AGREEMENT

1. **Services.**

a. Scope of Services. Subject to the terms and conditions set forth in this Agreement ("Agreement"), Consultant shall provide the professional commercial real estate leasing services as described in the Scope of Services, attached hereto as Exhibit A and incorporated by reference ("Scope of Services"). As part of the Consultant's Scope of Services, the Consultant shall identify all subcontractors performing work, if any, and shall provide an explanation as to the scope of work and costs of such work to be performed by the subcontractor(s).

Consultant shall not be compensated for any additional services rendered in connection with its performance of this Agreement or listed in the Scope of Services unless, such additional services are authorized in advance and in writing by the City. Consultant shall be compensated for any such additional services in amounts and in the manner agreed to in writing by the City and such additional services shall be identified and incorporated into this Agreement.

b. Performance. Consultant shall perform the services described in the Scope of Services. The time of performance of the services under this Agreement is important to the City, and all time deadlines identified in the Scope of Services shall

be strictly construed.

2. **Compensation and Payment**.

a. Compensation. As consideration for services, City agrees to pay Consultant, and Consultant agrees to accept from City as full compensation for the services, the amount outlined in the Fee Schedule attached hereto as Exhibit B and incorporated by reference ("Fee Schedule"). The total amount of compensation paid to Consultant pursuant to this Agreement shall not exceed XXXXX dollars ($XXXX) unless otherwise amended by the parties in writing.

If Consultant uses subconsultants, those services shall be invoiced at cost as indicated in the Fee Schedule. Consultant shall submit monthly invoices indicating for each item of the work, the task performed, hours of work expended, hourly rate or rates of persons performing the task, and copies of receipts for reimbursable materials or expenses.

b. Payment. City agrees to pay the invoice within 30 days of receipt (with no retention withheld). Each payment shall be for the invoiced amount, with no retention.

3. **Term; Termination.**

a. Term. This Agreement shall begin upon execution by both parties and remain in effect until terminated by either party, under subsection b.

b. Termination. Either party may terminate the Agreement by giving 30 days written notice to the other party. If City sends a termination notice, Consultant shall stop work at the stage directed by the City, and shall deliver all records, analyses, and documentation developed as of that time. Consultant shall be paid under the terms and rates as set forth in the Fee Schedule for the portion of work actually performed as of the termination date.

4. **Professional Efforts; Responsible Personnel.** Consultant shall perform all services required under this Agreement in the manner and according to the standards observed by a competent Bay Area practitioner of the profession in which Consultant is engaged. All products that Consultant delivers to City shall be prepared in a substantial, worker-like manner, and conform to the standards of quality normally observed by a person practicing in Consultant's profession. The City shall be the sole judge as to whether the product of the Consultant is satisfactory. Consultant shall be liable and, upon demand, shall reimburse City for additional costs incurred by the City as a result of Consultant's errors or omissions. Consultant makes no other warranty, express or implied.

Consultant represents that it and its employees are fully qualified to perform the services under this Agreement. Consultant represents and warrants to the City that Consultant has, and at all times during the performance of this Agreement shall, maintain all licenses, permits, qualifications, and approvals that are required for Consultant to practice Consultant's profession. Consultant shall assign only competent personnel to perform services under this Agreement. If the City, in its sole discretion, at any time, desires the removal of any person or persons assigned by Consultant to perform services under this Agreement, Consultant shall remove any such person immediately upon receiving notice from the City.

Consultant shall, at its sole cost, expense, and liability, furnish all facilities and equipment that may be required for furnishing services under this Agreement.

5. **Independent Contractor**. Consultant, its agents, employees and independent contractors are and shall at all times remain as to the City wholly independent contractors. Neither the City nor any of its officers or employees shall have any control over the manner by which the Consultant performs this Agreement and shall only dictate the results of the performance. Consultant shall not represent that Consultant or its agents, employees or independent contractors are agents or employees of the City. Consultant is responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Consultant shall obtain no rights to retirement benefits or other benefits that accrue to City's employees, and Consultant hereby waives any claim it may have to any such rights.

Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City or to bind the City to any obligation.

6. **Interest of Consultant.** Consultant (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the geographical areas likely to be covered by this Agreement, or any other source of income, interest in real property or investment that would be affected in any manner or degree by the performance of Consultant's services under this Agreement. Consultant further covenants and represents that, in the performance of its duties; no person having any such interest shall perform any services under this Agreement.

If Consultant is determined to be a "Consultant" or a "designated employee" within the meaning of the Political Reform Act, Consultant will comply with the requirements of that Act by submitting a Statement of Economic Interest Form 700. (2 Cal. Code of Regs.§18701(a)(2).)

7 **Accounting Records**. The Consultant agrees to maintain all records and other evidence pertaining to costs incurred and work performed under this Agreement, and shall make them available at the Consultant's office during the Agreement period and thereafter for a period of three (3) years from the date of receipt of final payment.

8. **Ownership of Documents and Data**. All data, maps, photographs, and other material collected or prepared under this Agreement, and all documents of any type developed or obtained by Consultant in the performance of this Agreement, shall become the property of the City.

9. **Indemnification**. Consultant shall, to the fullest extent permitted by law, indemnify, defend (with independent counsel approved by the City), and hold harmless the City from and against any claims arising out of Consultant's performance or failure to comply with obligations under this Agreement, except to the extent caused by the active negligence or willful misconduct of the City.

   In this section, "City" means the City, its officials, officers, agents, employees and volunteers; "Consultant" means the Consultant, its employees, agents and subcontractors; "Claims" includes claims, demands, actions, losses, damages, injuries, and liability, direct or indirect (including any and all related costs and expenses in connection therein) and any allegations of these; and "Arising out of" includes "pertaining to" and "relating to".

   The provisions of this section survive completion of the services or the termination of this contract, and are not limited by the provisions of Section 10 relating to insurance.

10. **Insurance.** Consultant shall procure and maintain at its sole cost for the duration of this Agreement the following insurance:

    a. Minimum Scope of Insurance. Coverage shall be at least as broad as:

       1. Insurance Services Office Commercial General Liability coverage ("occurrence" form CG 0001).

       2. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 (any auto).

       3. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

    b. Minimum Limits of Insurance. Consultant shall maintain policy limits of no less than:

       1. General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, the general aggregate limit shall be double the aggregate, with completed operations coverage.

2. Automobile Liability: $1,000,000 combined single limit per accident for bodily injury and property damage.

3. Worker's Compensation and Employers Liability: Worker's Compensation limits as required by the Labor Code and Employers Liability limits of $1,000,000 per accident.

c. Deductibles and Self-Insured Retention. Any deductibles or self-insured retention 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 retention as respects the City, its officers, officials, employees and volunteers; or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

d. Other Insurance Provisions. The policies shall contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability Coverage.

a. The City, its officers, officials, employees, agents and volunteers are to be covered as additional insured as respects: liability arising out of activities performed by or on behalf of Consultant; products and completed operations of Consultant; premises owned, occupied or used by Consultant; or automobiles owned, leased or borrowed by Consultant. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

b. Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of Consultant's insurance and shall not contribute with it.

c. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

d. 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.

2. Worker's Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its officers, officials, employees and volunteers for losses arising from work performed by Consultant for the City.

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

4. Verification of Coverage. Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require complete certified copies of all required insurance policies, at any time.

11. Miscellaneous provisions.

a. Notice. Any notice to be given under this Agreement shall be given by enclosing it in a sealed envelope, first-class postage prepaid, and depositing it in the United States mail, addressed to the party at the following address. Notice shall be deemed received three business days after mailing, or upon personal delivery.

CITY: City of Walnut Creek
Attn: Heather Ballenger, Public Works Director
1666 North Main Street
Walnut Creek, CA 94596-8039

CONSULTANT: _____
_____
_____

b. Assignment. This Agreement contemplates the personal services of Consultant and its employees and it is understood by both parties that a substantial inducement to City for entering into this Agreement was, and is, the professional reputation and competence of Consultant. Consultant shall not assign or otherwise transfer any rights or obligations under this Agreement without the prior written consent of the City.

c. Business license. Consultant shall obtain a City business license before beginning work under this Agreement.

d. Prohibited Interests. No officer or employee of the City shall have any direct financial interest in this Agreement. This Agreement shall be voidable at the option of the City if this provision is violated.

e. Governing Law; Litigation Expenses. California law shall govern this Agreement. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in the County of Contra Costa, California.

f. Incorporation. The Preamble, the Recitals, Exhibits and all defined terms set forth in both are incorporated into this Agreement by this reference. If there is a conflict between the body of this Agreement and an exhibit prepared by Consultant, the body of the Agreement shall control.

g. Severability. Should any part of this Agreement be declared unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of this Agreement, which shall continue in full force and effect; provided that, the remainder of this Agreement can, absent the excised portion, be reasonably interpreted to give effect to the intentions of the parties.

h. Authority. All parties executing this Agreement represent and warrant that they are authorized to do so.

i. Entire Agreement; Amendments. This Agreement is the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, whether written or oral. This Agreement may be amended only by written agreement signed by both parties.

j. Non-waiver. A party's waiver of any term shall not be deemed a continuing waiver or a waiver of any other term.

k. Counterparts. This Agreement may be executed in counterparts.

a. Signatures:

CITY OF WALNUT CREEK	CONSULTANT
By: _____ City Manager	By: _____
	Name: _____
By: _____ Public Works Director	Title: _____
	Date: _____
Reviewed by:	
_____ City Attorney	City business license # _____

EXHIBIT A

Scope of Services

The scope of work (the "Work") shall include the following and any ancillary associated tasks within the generalized scope hereof as shall be agreed upon between Consultant and the City:

EXHIBIT B

Fee Schedule

Compensation for leasing services shall be paid subject to the terms below:

2851600.1