
Request For Qualifications

Building Plan Review & Inspection Services

City of Walnut Creek – Community
Development Department

Issued: Monday, January 13, 2025

Proposal Deadline: Wednesday, February 12, 2025

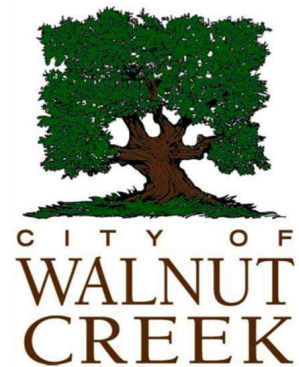


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Invitation

The City of Walnut Creek (City), through the Community Development Department, requests proposals from consulting plan review and inspection services firms (each a “Consultant”) desiring to provide consulting services on an “on-call”, “as needed” basis. The City desires to utilize one or more consulting firms to provide plan check and/or inspection services during heavy workloads, staff vacations, and staff training.

The purpose of this request for qualifications is to obtain a price proposal to provide plan review services and building inspection services described herein and to obtain qualifications of each firm.

Contact Person

Inquiries related to this Request for Qualifications should be directed to:

Frank Kong, Chief Building Official

T: 925-943-5899 ext. 5828

E: kong@walnut-creek.org

City Setting

The City of Walnut Creek is a California general law city incorporated on October 21, 1914. The City is located in central Contra Costa County, about 30 miles east of San Francisco and is neighbor to the cities of Concord, Pleasant Hill, Lafayette, and Alamo. Walnut Creek contains approximately 20 square miles and has a population of approximately 70,000 residents. The City is a regional destination for entertainment, shopping, and recreation.

The City places a high value on the visual quality of its built environment, while also maintaining a competitive edge in the business world.

Background

The Building Division consists of three primary sections - Plan Check, Building Inspection, and Permit Administration.

The Plan Check section performs residential and commercial plan checks for fire and life-safety, structural, electrical, mechanical, plumbing, CALGreen, Title-24 energy, Title-24 disabled access, and pertinent municipal code and state regulations governing the design and construction of buildings and other structures.

The Inspection section inspects buildings during construction for building, electrical, plumbing, and mechanical code compliance and responds to complaints concerning alleged building code violations.

The Permit Administration section is responsible for all aspects of the building permit process, including processing and routing of applications and revisions, issuing permits, maintaining

applied, issued, expired and canceled permits, and for providing timely reporting of permit information to the public.

In FY24, the Building Division received 4,822 permit applications and conducted 30,023 inspections. With the volume of permit activity and development in the City of Walnut Creek, the Building Division requires additional professional expertise to meet the demands of development activity.

Project Description

Scope of Plan Review Services

The Consultant's scope of plan review services will be as follows:

- a. Perform plan review of structural, non-structural, CALGreen, Title 24 accessibility, and Title 24 energy per local, State and federal regulations using qualified staff.
- b. Perform plan reviews and back checks within the City's published turn-around schedules (Exhibit A). In addition, the consultant is expected to communicate directly with the design professionals so that majority of residential alteration projects, ADUs, commercial alterations and tenant improvement projects are approved within two rounds of plan review.
- c. Perform plan review of OSHPD-3 projects. Upon completion of plan review of an OSHPD-3 project, provide written certification to the City that Consultant's approved plans meets all the requirements for OSHPD-3 facilities. Such certification shall be submitted to the City upon delivery of the Consultant's approved plans to the City.
- d. Consultant must be able to perform electronic plan review by using DigEplan software.

Scope of Building Inspection Services

The Consultant's scope of building inspection services will be as follows:

- a. Perform building inspections in all phases of construction using inspectors with at least 3 years of experience in all phases of construction inspection and possessing ICC Certifications in the subject area of inspection.
- b. Perform inspection of OSHPD-3 projects using certified inspectors. Upon completion of the final inspection of an OSHPD-3 project, provide written certification to the City that the work inspected meets all the requirements for OSHPD-3 approved plans. Such certification shall be submitted to the Building Inspection Supervisor within 7 calendar days upon final inspection of the project.
- c. Consultant must be able to supply inspectors on relatively short notice.

Compensation for Services Rendered

Compensation to the Consultant for services rendered shall be as follows:

- Consultant's plan review fee shall be specified to be a percentage of the City's plan review fee as calculated by the Council's adopted fees and charges. The plan review fee shall provide for up to three rounds of plan check and back check. Consultant's proposal shall specify the proposed percentage. Consultant's compensation for any subsequent plan review will be in accordance with the Consultant's Fees and Charges Schedule in the proposal. Consultant shall invoice the City following or upon submittal of the Consultant's approved plans to the City.
- Consultant's Inspection Fee shall be in accordance with the Consultant's Fees and Charges. Invoices for inspection services rendered will be invoiced to the City on a monthly basis. Consultants will be expected to provide their own transportation and tools for performing the inspections and to perform the inspections during the City's normal business hours, 7:30 a.m. to 4:30 p.m.

Contract Term

- The Consultant shall be prepared to provide requested services for a period of three (3) years with possible two (2)-year extension. Staff anticipates the requested services will be needed on a regular, ongoing basis.

Desired Qualifications

A firm may propose to do all or part of the requested services. Eligible firms shall be those with appropriate, recent experience and demonstrated knowledge of building inspection and plan checking associated with residential and commercial construction projects. Eligible firms must have a principal office located in the San Francisco Bay Area. Firm personnel providing Building Inspection services shall have ICC certificates as residential and commercial building inspectors, and firm personnel providing Plan Review services shall have ICC certificates as residential and commercial plan examiner. Eligible plan review firms must have a California registered Civil Engineer (Structural Engineer preferred), or California licensed architect in responsible charge of the services to be performed. Firms with staff certified as CASp are desirable.

Proposal Content

While the City is interested in gaining a comprehensive and relevant understanding of the Consultant through information gained by the points below, concise responses are encouraged. At a minimum, responses shall include the following information, organized as separate sections of the proposal. Proposal submittals of three (3) hard copies (on 8½" x 11" paper) and an electronic PDF copy are required (i.e., link, flash drive etc.). The proposal shall be limited to 15 pages, double-sided (for a total of 30 pages), excluding table of contents, cover letter, and biographies of staff proposed for the project.

Failure to follow the specified format, to label the responses correctly, or to address all the subsections may, at the City's sole discretion, result in the rejection of the Proposal. Proposals should not contain extraneous information. All information presented in a Proposal must be relevant in response to a requirement of this RFQ, must be clearly labeled, and, if not incorporated

into the body of the Proposal itself, must reference to the appropriate place within the body of the Proposal. Any information not meeting these criteria will be deemed extraneous and will not factor into the evaluation.

In an effort to promote waste reduction and resource conservation, submittal shall not contain plastic bindings, plastic pages, or laminated pages. Double-sided proposals are preferred; copies should be printed on recycled and/or FSC certified paper. Please avoid superfluous use of paper (such as separate title sheets, or chapter dividers and unnecessary attachments or documents not specifically requested).

- a. Name the firm and describe the work in which the firm is engaged. Provide the locations of the office(s) that will be performing the work.
- b. Reference related work which best illustrates your qualifications in performing plan review and/or building inspection service.
- c. List the project manager and personnel who will provide services to the City. Resume should demonstrate experience in building inspection and/or plan checking.
- d. Confirm your firm's ability to meet contract & insurance requirements.
- e. Confirm your firm's ability to meet the plan review turn-around schedule, including the ability to approve majority of residential alteration projects, ADUs, commercial alterations and tenant improvement projects within two rounds of plan review.
- e. Clarify your firm's ability to provide a staff member working at City's permit counter to review residential addition and alteration projects, up to 2 days a week, as needed. The staff shall have ICC certificate as residential or commercial plan examiner.
- f. Confirm your firm's ability to perform plan review and/or inspection of OSHPD-3 projects and to provide the necessary certifications to the City within the stated time limits.
- g. Describe why you want to be considered and provide any other information you feel necessary.
- h. Provide a detailed breakdown of the proposed fees and charges.
- i. Provide lead times required for requesting services.

Proposal Deadline

Proposals are due by 5:00 p.m. on Wednesday, February 12, 2025. Proposals may be mailed or delivered to:

Frank Kong, Chief Building Official
City of Walnut Creek – Building Division
1666 N. Main Street
Walnut Creek, CA 94596

Late, emailed, or faxed submittals will not be considered. Submittals not actually received by the date and time above will not be considered regardless of when they were sent. Proposals shall contain a statement that it will remain in effect for 90 days after the closing of the RFP period. Proposers are solely responsible for ensuring the proposal is received by the City contact prior to the deadline.

Project Schedule

The following schedule is subject to change at the discretion of the City. The City will provide sufficient advance notice to Consultants in the event of schedule changes.

Milestone	Date
Request for Qualifications Issued	January 13, 2025
Final Date to Submit Questions about this RFQ by 5:00 PM	January 22, 2025
City Issues Responses to Written Questions	January 29, 2025
Proposals Due by 5:00 PM	February 12, 2025
Interviews (tentative, as needed)	March 5, 2025
Selection of Consultant	March 14, 2025
Completion of Contract Negotiations	March 31, 2025
Successful Consultant Begins Work	July 1, 2025

Selection Criteria and Selection Process

The Consultants of plan review services will be evaluated based upon the following criteria:

- A. Ability to perform plan review on residential and commercial projects of any complexity. (maximum points available: 60)
- B. Proposed plan review fees. (maximum points available: 80)
- C. Having a California registered Civil Engineer (Structural Engineer preferred), or California licensed architect in responsible charge of the services to be performed. Firms with staff certified as CASp are desirable. (maximum points available: 50)
- D. Ability to perform OSHPD-3 plan review and provide required certifications. (maximum points available: 40)
- E. Ability to meet plan review turn-around schedules and to respond in a timely manner. (maximum points available: 50)
- F. Past experience with City of Walnut Creek and other cities. (maximum points available: 50)
- G. Ability to meet contract and insurance requirements. (maximum points available: 20)
- H. Timeframe and deadlines for submitting RFQ.

The Consultants of building inspection services will be evaluated based upon the following criteria:

- A. Overall experience in residential and commercial construction inspection. (maximum points available: 60)
- B. Proposed inspection service fees. (maximum points available: 80)
- C. Ability to perform combination inspections. (maximum points available: 60)
- D. Ability to perform OSHPD-3 inspection and provide required certifications. (maximum points available: 20)
- E. Ability to provide own transportation and tools during inspections. (maximum points available: 40)
- F. Past experience with City of Walnut Creek and other cities. (maximum points available: 40)
- G. Ability to meet contract and insurance requirements. (maximum points available: 20)

H. Timeframe and deadlines for submitting RFQ.

Selection Process

The City anticipates multiple proposals from reputable consulting firms providing building inspection and plan check services. The Chief Building Official will evaluate all responses to the RFQ that meet the submittal requirements and the submittal deadline. Those submittals that do not meet the submittal requirements or the deadline will not be considered. The consultant firms will be evaluated based upon their overall qualifications and proposed fees and charges. The City may require an interview to further assess the firm's qualifications, or may proceed with or without interviews. Consultant(s) may be asked to provide additional documents prior to or after interviews if conducted. If the City and the Consultant cannot reach agreement during the negotiation, the City will terminate the negotiation and, at its option, negotiate with the next highest-ranking Consultant. Final selection of Consultant(s) shall be at the sole discretion of the City Council. Any contract resulting from this RFQ shall not be effective unless and until approved by the appropriate City officials.

Payment

The Consultant shall prepare and submit one invoice per month to the City for all the completed tasks/deliverables in a calendar month. The invoice should include a narrative describing tasks and deliverables completed, and show costs and budget by Task. The payment shall be approved once the City approves of the task completion and/or deliverable. Mail invoices to the Chief Building Official and reference the contract number.

Frank Kong, Chief Building Official
City of Walnut Creek – Building Division
1666 N. Main Street
Walnut Creek, CA 94596

Contract Information

City staff will negotiate a contract between the City and the successful Consultant(s), specifying the overall budget, fees and charges schedules, target dates for completion of specific tasks, frequency and amount of progress payments, public presentation obligations, and level of staff review for draft. Attached to this RFQ is a copy of the City's standard Consultant Services Agreement (Attachment B). Please review the contract and confirm your willingness to sign the standard Consultant Services Agreement.

Addenda and Interpretation

The City shall not be responsible for, nor be bound by any oral instructions or interpretations or explanations issued by the City or its representatives. Should discrepancies or omissions be found in this RFQ or should there be a need to clarify the RFQ, you may request clarification in writing and email your request to:

Frank Kong, Chief Building Official
City of Walnut Creek – Building Division

1666 N. Main Street
Walnut Creek, CA 94596
Email: kong@walnut-creek.org

Such requests for clarification shall be delivered to the City by 5:00 p.m. on Wednesday, January 22, 2025. Please note that City Hall is closed to the public on Fridays. Any City response for clarification will be made in the form of an addendum to this RFQ and will be sent to all parties to whom this RFQ has been issued by 5:00 p.m. on Wednesday, January 29, 2025. All addenda shall become part of this RFQ.

Insurance Requirements

The selected Consultants, at Consultant's sole cost and expense and for the full term of the Agreement or any extension thereof, shall obtain and maintain at least all the insurance requirements outlined in the City's standard Consultant Services Agreement (Exhibit B). All policies, endorsements, certificates, and/or binders shall be subject to approval by the City of Walnut Creek as to form and content. The selected Consultant agrees to provide the City with a copy of said policies, certificates, and/or endorsements. The selected Consultant shall satisfy these insurance requirements prior to approval of the Agreement.

General Requirements

Collusion

By submitting a response to the RFQ, each Consultant represents and warrants that its response is genuine and is not made in the interest of or on behalf of any person not named therein; that the Consultant has not directly induced or solicited any other person to submit a sham response or any other person to refrain from submitting a response; and that the Consultant has not in any manner colluded to secure any improper advantage over any other person submitting a response.

Gratuities

No person will offer, give or agree to give any City employee or its representatives any gratuity, discount, offer of employment, or other financial advantage in connection with the award of contract by the City. No City employee or its representatives will solicit, demand, accept or agree to accept from any other person a gratuity, discount, offer of employment, or other financial advantage in connection with a City contract.

Required Review and Waiver of Objections by Vendor

Consultants should carefully review this RFQ and all attachments, including but not limited to the Standard Consultant Services Agreement, for comments, questions, defects, objections, or any other matter requiring clarification or correction (collectively called "comments"). Protests based on any objection will be considered waived and invalid if these faults have not been brought to the attention of the City.

Proposal Withdrawal

To withdraw a proposal, the Consultant must submit a written request, signed by an authorized representative, to the RFQ Contact Person. After withdrawing a previously submitted proposal, the Consultant may submit another proposal at any time up to the deadline for submitting proposals.

Proposal Errors

Consultants are liable for all errors or omissions contained in their proposals. Consultants will not be allowed to alter proposal documents after the deadline for submitting a proposal.

Incorrect Proposal Information

If the City determines that a Consultant has provided, for consideration in the evaluation process or contract negotiations, incorrect information which the vendor knew or reasonably should have known was materially incorrect, that proposal may be determined non-responsive, and the proposal may be rejected at the City's sole discretion.

Right to Refuse Personnel

The City reserves the right to refuse, at its sole discretion, any subcontractors or any personnel provided by the prime contractor or its subcontractors. The City reserves the right to interview and approve Consultant's key staff. Consultant's staff may be subject to the City's background and drug testing processes at any time.

Proposal of Additional Services

If a Consultant indicates an offer of services in addition to those required by and described in this RFQ, these additional services may be added to the contract before contract signing at the sole discretion of the City.

Licensure

Before a contract pursuant to this RFQ is signed, the Consultant must hold all necessary, applicable business and professional licenses, including, but not limited to, a City of Walnut Creek Business License. The City may require any or all Consultants to submit evidence of proper licensure.

Conflict of Interest and Proposal Restrictions

By submitting a response to the RFQ, the Consultant certifies that no amount will be paid directly or indirectly to an employee or official of the City as wages, compensation, gifts, or other compensation in exchange for acting as an officer, agent, employee, subcontractor, or Consultant to the vendor in connection with the procurement under this RFQ.

Notwithstanding this restriction, nothing in this RFQ will be construed to prohibit another governmental entity from making a proposal, being considered for award, or being awarded a contract under this RFQ. Any individual, company, or other entity involved in assisting the City in the development, formulation, or drafting of this RFQ or its scope of services will be considered to have been given information that would afford an unfair advantage over other vendors, and said individual, company, or other entity may not submit a proposal in response to this RFQ.

Contract Negotiations

After a review of the proposals and completion of the reference checks, interviews, and demonstration, the City intends to enter into contract negotiations with the selected Consultants. These negotiations could include all aspects of services and fees. If a contract is not finalized in a reasonable period of time, the City may open negotiations with the next ranked Consultant or reject all proposals and reissue the RFQ.

Right of Rejection

The City reserves the right, at its sole discretion, to reject any and all proposals or to cancel this RFQ in its entirety. Any proposal received which does not meet the requirements of this RFQ may be considered to be nonresponsive, and the proposal may be rejected. Vendors must comply with all of the terms of this RFQ and all applicable State laws and regulations. Consultants may not

restrict the rights of the City or otherwise qualify their proposals. If a Consultant does so, the City may determine the proposal to be a nonresponsive counteroffer, and the proposal may be rejected. The City reserves the right, at its sole discretion, to waive variances in technical proposals provided such action is in the best interest of the City. Where the City waives minor variances in proposals, such waiver does not modify the RFQ requirements or excuse the vendor from full compliance with the RFQ. Notwithstanding any minor variance, the City may hold any vendor to strict compliance with the RFQ.

Disclosure of Proposal Contents

All documentation and/or materials submitted with a proposal shall remain the property of the City, treated as a public record, and will not be deemed confidential or proprietary. In the event that a proposer desires to claim portions of its proposal as exempt from disclosure as proprietary material or trade secret, it is incumbent upon the proposer to clearly identify those portions as proprietary or trade secret by marking the top of each sheet of the submittal with the following legend:

“CONFIDENTIAL INFORMATION”

If a request is made for information marked “confidential”, the City will provide the respondent who submitted such information with reasonable notice to allow the respondent to seek protection from disclosure by a court of competent jurisdiction.

Please note that although the California Public Records Act recognizes certain confidential proprietary/trade secret information may be protected from disclosure, the City may not be in a position to establish that the information that a proposer submits is a trade secret or proprietary. If a request is made for information marked trade secret or proprietary, and a requester takes legal action seeking release of the materials it believes does not constitute proprietary or trade secret information, by submitting a proposal in response to this RFP, a proposer agrees to indemnify, defend and hold harmless the City, its officials, representatives, agents, and employees, from any judgment, fines, penalties, and award of attorneys’ fees awarded against the City in favor of the party requesting the information, and any and all costs connected with that defense. This obligation to indemnify survives the conclusion of the RFP or City’s award of a contract if any.

Severability

If any provision of this RFQ is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected; and, the rights and obligations of the City and Consultants will be construed and enforced as if the RFQ did not contain the particular provision held to be invalid.

RFQ and Proposal Incorporated into Final Contract

This RFQ and the successful proposal will be incorporated into the final contract.

Proposal Amendment

The City will not accept any amendments, revisions, or alterations to proposals after the deadline for proposal submittal unless such is formally requested, in writing, by the City.

Consultant Participation

The City reserves the right to share with any Consultant of its choosing this RFQ and proposal responses in order to secure a second option. The City may also invite said Consultant to participate in the Proposal Evaluation process.

Warranty

The selected Consultant will warrant that the proposed solution will conform in all material respects to the requirements and specifications as stated in this RFQ and as demonstrated during the evaluation process. In addition, the requirements as stated in this RFQ will become part of the subsequent agreements.

Rights of the City

The City reserves the right to:

- Make the selection based on its sole discretion
- Reject any and all proposals
- Issue subsequent Requests for Qualification
- Postpone opening proposals if necessary for any reason
- Remedy errors in the Request for Qualification process
- Approve or disapprove the use of particular subcontractors
- Negotiate with any, all, or none of the Consultants
- Accept other than the lowest offer
- Waive informalities and irregularities in the proposals
- Enter into an agreement with another Consultant in the event the originally selected Consultant defaults or fails to execute an agreement with the City
- An agreement will not be binding or valid with the City unless and until it is approved by the City Council and/or executed by authorized representatives of the City and of the vendor.

Other Notes

This RFQ and the review/interview process does not commit or require the City to award a contract, to pay any costs incurred in the preparation of a proposal for this request, or to procure or contract for services. The City reserves the right to accept or reject any or all proposals received as a result of this request, to negotiate with any qualified Consultant, or to modify or cancel in part or in its entirety the RFQ if it is in the best interest of the City to do so. Furthermore, a contract award may not be made based solely on price.

The City reserves the right to accept or reject any and all submitted Proposals, to waive minor irregularities, to request additional information from the responsive Consultant at any stage of the evaluation, to not conduct oral interviews or presentations, and to choose the Consultant which in its opinion best serves its interest. Submissions from Consultant not chosen to perform the work will not be returned.

The City and the final selected firm may agree to add additional work to the scope of services by mutual agreement at a later date. The City may elect to stop work at any time in the contract and

will pay for work completed to that point on a time and material basis. The City reserves the right to reject any proposals based upon the proposer's prior history with the City or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet milestones or other contractual failures. This RFP/RFQ and the interview process shall in no way be deemed to create a binding contract or agreement of any kind between the City and any proposer.

Attachments

The following attachments are included and incorporated as a part of this RFQ by this reference:

- Attachment 1: Plan Review Turnaround Times
- Attachment 2: Standard Consultant Services Agreement

Attachment 1

PLAN REVIEW TURNAROUND TIMES

(In Business Days)^a

Processing Information			First Review ^b						Subsequent Rechecks and Revisions					
Category	Project Type	Sets of plans required	Planning	City Arborist (consultant)	Engineering	Traffic	Building ^d	Maximum Time	Planning	City Arborist (consultant)	Engineering	Traffic	Building ^d	Maximum Time
Residential (single family and duplex only)	New	6	15	10	20	15	23	23	10	10	10	10	18	18
	Additions	5	10	10	15	-	18	18	5	10	10	-	13	13
	Alterations	5	5	10	10	-	13	13	5	10	10	-	13	13
	Demolition	5	10	10	10	10	13	13	5	10	5	5	8	13
	Pools	4	10	10	10	-	13	13	5	10	5	-	8	13
Commercial (multifamily residential and non-residential)	New	6	20	10	15	15	28	28	15	10	15	10	23	23
	Additions	6	15	10	15	15	23	23	10	10	10	10	18	18
	Alterations	5	15	10	10	-	18	18	10	10	5	-	13	13
	Demolition	5	10	10	10	5	13	13	5	10	10	5	8	10
	Pools/Re-roof	4	10	10	10	-	13	13	5	10	5	-	8	10
	Sign/Awning	4	5	-	5 ^c	-	8	8	5	-	5 ^c	-	8	8

Footnotes:

- a. The times presented in this table represent the maximum times for plan reviews of permit applications. First round reviews may result in an approved plan or a comment list. Business days do not include City Holidays or weekends. Note that the times shown are approximate and will vary depending on staffing levels during the year. Every effort is made by staff to provide turnaround times that do not exceed these times and are less than the times shown.
- b. Assumes design review has first been completed for those projects requiring design review. Although planning and engineering cannot begin a plan review of a building permit application before design review has been approved, applicants who wish to submit for building plan review prior to design review approval may do so at their own risk, provided support for such submittal has been obtained from planning and engineering by building staff. Revisions may be necessary to the building permit application resulting from design review processes. Additional plan review fees may be necessary due to required design changes.
- c. Only if an encroachment agreement is needed because the awning or sign projects into the public right-of-way or the installation will require use of City property.
- d. Refer to Policy Bulletin-061 for Building Division Expedited Plan Review Turnaround Times. The expedite option applies to Building Division review only and will not reduce the plan review times for any of the other divisions. Please note this may not be an option for certain projects, it is up to the discretion of the Building Official. Following the guidelines set in place by Contra Costa County’s Health order.

Attachment 2

**City of Walnut Creek
CONSULTANT SERVICES AGREEMENT**

THIS CONSULTANT SERVICES AGREEMENT (“Agreement”) is entered into on _____, 2025, between the City of Walnut Creek, a California municipal corporation (“City”), and _____ (“Consultant”).

RECITALS

- A. The City wishes to contract for professional consulting services.
- B. Consultant has the skill, experience, ability, background, certification and knowledge to provide the services. The City has reviewed and accepted Consultant’s qualifications.
- C. Consultant wishes to perform such professional services under agreement with the City.

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

AGREEMENT

- 1. **Services.** Consultant shall provide the professional services described in Exhibit A. The time of performance of the services under this Agreement is important to the City, and the time deadlines identified in Exhibit A shall be strictly construed.
- 2. **Compensation and Payment.**
 - a. Compensation. As full consideration for the performance of services under this Agreement, City agrees to pay Consultant, and Consultant agrees to accept from City, an amount not to exceed \$_____, including an accounting of time and materials expended for the entire project. Time and materials shall be billed at the rates set forth in Exhibit B.
 - b. Payment. Consultant shall bill City monthly for work completed, and City agrees to pay the invoice within 30 days of receipt.
 - c. Additional Services. Any additional services required beyond those set forth in this Agreement shall be performed only if mutually agreed to in writing by the parties.
- 3. **Term; Termination.**

a. **Term.** This Agreement shall begin upon execution by both parties and remain in effect until terminated under subsection (b). The maximum term will be 5 years.

b. **Termination.** City may terminate this Agreement without cause at any time and for any reason upon 10 days written notice to the Consultant. Upon receipt of any notice of termination, and if requested to do so by the City, Consultant shall stop work at the stage directed by City and shall deliver all drawings, specifications and documentation developed as of that stage. Consultant shall accept as full payment for services rendered to the date of termination a pro rata share of the total Agreement payment based on the portion of work actually performed.

4. **Professional Efforts.** Consultant shall perform all services required in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices his profession.

5. **Responsible Personnel.** Consultant represents that it is 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, wishes the removal of any person(s) assigned by Consultant to perform services, Consultant shall remove any such person immediately upon receiving notice from the City.

[For projects involving Federal funding only; delete for all others.] Contractor is not debarred or suspended under Federal law and shall not use funds provided under this Agreement directly or indirectly to employ or engage the services of any subcontractor during any period of disbarment, suspension or placement in ineligible status under Title 2 Code of Federal Regulations Part 180. Further, Contractor has signed the Debarment and Suspension Certification attached as Exhibit C.

6. **Facilities and Equipment.** Consultant shall, at its sole cost, expense, and liability; furnish all facilities and equipment that may be required for providing services under this Agreement.

7. **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 those 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.

8. **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).)

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

10. **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.

11. **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 duty of a "design professional" to indemnify and defend the City is limited to claims that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of the design professional, under Civ. Code § 2782.8. Except as otherwise authorized by Civ. Code § 2782.8, the cost to defend charged to any "design professional" shall not exceed the design professional's proportionate percentage fault.)

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 12 relating to insurance.

12. **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.

(4) Errors and omissions/Professional liability insurance for all design professionals such as architects, landscape architects or engineers.

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 combined single limit, 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.

(4) Errors and Omissions/Professional Liability: \$1,000,000 per claim and annual aggregate. If Consultant maintains higher limits than the minimum required by this contract, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant.

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) Errors and Omissions/Professional Liability Coverage. Consultant's insurance shall include minimum Extended Reporting Period Coverage of three years.

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

f. 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.

13. **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: Frank Kong, Chief Building Official
1666 North Main Street
Walnut Creek, California 94596

CONSULTANT: <<NAME OF BUSINESS>>
Attn: <<CONSULTANT CONTACT PERSON>>
<<ADDRESS>>
<<CITY, STATE ZIP>>

- 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, subcontract 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 is voidable at the City's option if this provision is violated.
- e. Governing Law; Venue. 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.

14. Signatures.

CITY OF WALNUT CREEK	CONSULTANT
<p>By: _____ City Manager</p> <p>Approved as to Form:</p> <p>By: _____ City Attorney</p>	<p>By: _____</p> <p>Its: _____</p> <p>City business license # _____</p>

Exhibits:

- A Scope of Services (Agreement Section 1.)
- B Rates for time and materials (Agreement Section 2.a.)
- C Debarment and Suspension Certification (Agreement Section 5.)** *[Note to Staff: For projects involving Federal funding only; delete for all others. There are often many other federal requirements which need to be incorporated. Contact City Attorney's office with your federal funding information, so it can be integrated into the Agreement.]*

Exhibit A
Scope of Services

[to be completed by staff]

Exhibit B
Rates for Time and Materials

[to be completed by staff]

Exhibit C
City of Walnut Creek
Debarment and Suspension Certification
(For projects involving federal funding)

Title 2, Code of Federal Regulations, Part 180, Section 180.335

The Bidder, under penalty of perjury, certifies that, except as noted below, he/she or any other person associated with the Bidder (in the capacity of owner, partner, director, officer, manager):

- (a) Is not currently excluded or disqualified by any Federal agency;
- (b) Has not been convicted within the preceding three years of any of the offenses listed in 2 C.F.R. 180.800(a) (Causes for Debarment), or had a civil judgment rendered against him/her for one of those offenses;
- (c) Is not currently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed in 2 C.F.R. 180.800(a); or
- (d) Has not had any public transactions (Federal, State or local) terminated within the preceding three years for cause or default.

If there are any exceptions to this certification, insert the exception in the following space. For each exception, indicate to whom it applies, the initiating agency, and dates of action.

Exceptions will not necessarily result in denial of your participation. (2 C.F.R.180.340.)

Signed: _____

Date: _____

□ Initials of City staff member checking EPLS (<http://epls.gov>):
(2 C.F.R. 180.300.)