



**CITY OF  
WALNUT  
CREEK**

**ITB# 2025-001-AR**

INVITATION TO BID FOR AQUATICS  
CHEMICALS

SOQs submittal deadline:  
4:00 pm on August 18<sup>th</sup>, 2025

City of Walnut Creek  
Arts + Recreation Department, Third Floor  
1666 North Main Street  
Walnut Creek, CA 94596

Attn: Kevin Gordon  
Business Manager, Arts + Recreation  
(925) 256-3561  
[kgordon@walnutcreekca.gov](mailto:kgordon@walnutcreekca.gov)

## TABLE OF CONTENTS

Background and Purpose for Request	Page 3
Specifications and Project Scope	Page 3
Vendor Qualifications	Page 4
Deadlines and Procedures for Submitting SOQ	Page 5
Format of Bid	Page 6
Selection Process	Page 7
Terms of ITB	Page 7
Bid Pricing Sheet	Attachment 1
Insurance and Indemnification Requirements	Attachment 2
Supply and Services Agreement (Sample)	Attachment 3

## **A. BACKGROUND AND PURPOSE FOR REQUEST**

The City of Walnut Creek (“City”) through its Arts & Recreation Department operates 2 swimming pools and 1 sprayground at 2 locations within the Walnut Creek City Limits. Walnut Creek, located in the east San Francisco Area, is a city of approximately 70,000 residents, and is retail, cultural and recreational destination for people throughout the Bay Area. The City owns and operates two year-round aquatics facilities; Clarke Memorial Swim Center, located in Heather Farm Park off Ygnacio Valley Road and Larkey Swim Center located in Larkey Park off Buena Vista Avenue. Both facilities operate year-round.

Clarke Swim Center serves as a regional aquatics hub, serving approximately 300,000 patrons annually and supports a full range of aquatic services daily from learn to swim to scuba to masters programs.

Larkey Swim Center is more neighborhood based, serving swim teams and rentals in the winter months and a robust recreation and learn to swim program in the summer months. Larkey Swim Center routinely sees over 40,000 visitors in a 12 week span during the summer months.

The City is constructing a new Aquatic and Community Center at Heather Farm Park, scheduled for completion in late 2027 or early 2028. The facility will feature two primary pools: a 50-meter competition pool built to World Aquatics (FINA) standards, with 9 long-course lanes and 18 short-course lanes, and a 25-meter, 8-lane recreation pool with beach entry, play features, and current channel. These pools will require a comprehensive program of water treatment, chemical supply, and related services to ensure high-quality water standards for competitive, instructional, fitness, and recreational uses. Once the new aquatic facility is operational, the City anticipates that the need for chemical supply and related services at the existing Clarke Memorial Swim Center will be significantly reduced or fully discontinued, as operations transition to the new pools at Heather Farm.

Pursuant to this Invitation to Bid (“ITB”), the City is seeking bids for on-call, as-needed services to supply and deliver swimming pool chemicals and provide related services from one or more qualified vendors, including but not limited to furnishing the following chemicals (collectively, “Services”):

- Liquid chlorine (sodium hypochlorite),
- Hydrochloric Acid
- Muriatic Acid
- Sodium bicarbonate
- Calcium chloride
- Sodium thiosulfate
- Carbon Dioxide
- Fiber Clear
- Other water balancing or disinfectant chemicals as needed.

These chemicals will be ordered by the City on an “on-call” and “as needed” basis. The City intends to award one or more contracts for the Services for an initial five (5) year term pursuant to this ITB. Vendors interested in responding to this ITB (each referenced as a “bidder” or “vendor” hereinafter) must submit a bid containing all of the requested information and scope of work described herein.

## **B. SPECIFICATIONS AND SCOPE OF WORK**

### 1. Service and Specification Requirements

- Quality & Preparation of Chemicals
  - All chemicals provided must be approved by the National Spa & Pool Institute (NSPI) and the California State Health Department.

- Each chemical delivery must include a current Material Safety Data Sheet (MSDS).
- Delivery
  - The Vendor shall provide chemical delivery services for the following Facilities:
    - Clarke Memorial Swim Center
    - Larkey Swim Center
    - Sprayground at Larkey Swim Center
  - Planned Aquatics Facility at Heather Farm Park [INSERT SPRAYGROUND LOCATION]
  - Delivery of pool, fountain, spray park, and wading pool chemicals shall occur within 24 hours of order placement.
  - All deliveries must arrive at the designated Facility before 12:00 p.m., unless otherwise directed by authorized City staff.
  - There shall be no delivery charges for chemicals supplied to these Facilities.
- Storage
  - Chemicals delivered to a Facility must not be stacked higher than 4 feet, and dissimilar chemicals must be separated by at least 20 feet in accordance with Fire Department code.
  - ~~For bulk chemical supplies, the Vendor shall provide a 250-gallon storage tank at both swimming pools at no rental cost to the City; these tanks will remain the property of the Vendor.~~

## 2. Term of Contract

If awarded pursuant to this ITB, the contract term shall be for an initial term of five (5) years, with one (1) two-year extension available at the sole discretion and option of the City. If the vendor does not desire to extend the contract beyond the then-current term, the vendor must provide notice at least forty-five (45) days before the expiration of the then-current term.

## 3. Trial Period and Right to Award to Next Low Vendor

A ninety (90) day trial period applies to contracts awarded by this solicitation. During the trial period, vendors must successfully perform. Failure to perform may cause immediate cancellation of the contract. If a dispute occurs or a discrepancy arises as to acceptability of product or service, the City's decision prevails. The City will pay only for authorized orders received up to termination. If the contract is terminated within the trial period, the City may award the contract to the next low responsive Bidder by mutual agreement with that Bidder. Any new award will be for remaining contract work and is also subject to a trial period.

## 4. No Guaranteed Usage; Multiple Awards

The City does not guarantee utilization of the Services through any contracts that may be awarded pursuant to this ITB. The City will only request Services be provided on an on-call, as needed basis at its sole discretion. This ITB only provides an estimate of the City's potential utilization of Services and is solely to help bidders prepare their bids; it does not serve as a guarantee of usage of any quantity or frequency. The City reserves the right to make multiple or partial awards pursuant to this ITB, and/or to order greater or less quantities based on City needs pursuant to one or more contract(s) awarded. The City reserves the right to use other appropriate contract sources to obtain these Services. The City may also periodically re-solicit new additions to the vendor pool, to invite additional bidders to submit bids for award. Use of such supplemental contracts does not limit the right of the City to extend existing contracts, or to terminate existing contracts for convenience or cause.

If the City awards multiple contracts to form a vendor pool, the City may place an order with any pool vendor or may solicit multiple quotes to select among the pool vendors. If the City request quotes, the vendors must use the costs and hourly rates in their respective contracts.

## 5. Vendor Qualifications

Bids submitted in response to this ITB shall demonstrate the following qualifications:

- **Order Desk:** The successful vendor shall provide a telephone service or “order desk” to receive calls from City departments for advice or assistance, recommendations on products, parts, and repairs, and for receiving and processing of phone orders. The Order Desk shall be available from 7:00 a.m. to 5:00 p.m. all business days except City holidays. If the vendor’s standard operating hours are otherwise, notify City Purchasing. Depending on the Department needs, hours similar to, but not exactly the same as the 7-5 schedule may be accepted by the City as compliance to this requirement.
- **Adequate Inventory and Response Times:** The vendor shall provide five (5) business days’ response time and delivery for most new orders placed by the City. Vendor will maintain adequate inventory to stock and provide same-day response on the most frequently ordered items, allowing City employees to purchase products or parts at the Vendor location within the same-day of placing the order.
- **Delivery Option:** The Vendor shall provide a delivery service for routine orders. The Vendor will pick up or deliver products to the City location specified. There will be no charge for delivery, unless specified in the Bid.
- **Delivery/Shipping:** Materials, supplies and/or equipment must be delivered within 24 hours after the City has placed an order.
- **No Minimum Order Quantities:** There will be no minimum order quantities for any resultant contract.
- **Warranty:** The Vendor warrants all materials and workmanship delivered under any resulting contract to be free from defects, damage or failure which the City may reasonably determine is the responsibility of the Vendor, for a minimum of ninety (90) days after final acceptance and without cost to the City for labor, materials, parts, installation or any other costs except where longer periods of warranty of guarantees are specified.
- **Right to Replace Products & Product Discontinuance:** If the manufacturer discontinues or replaces a product, Vendor may request the City accept a substitute product for the contract. Pricing for a product replacement or substitute must be the same discount rate as provided to the City on the original product.

### **C. DEADLINES AND PROCEDURES FOR SUBMITTING BID**

<b>Milestone</b>	<b>Associated Date</b>
Release of ITB	July 23, 2025
Question Submission Deadline	August 7, 2025
City Response to Questions	August 11, 2025
<b>Bids Due</b>	August 18, 2025
Notification of Selection	September 1, 2025
Estimated date of Purchase	October 2025

Any questions regarding this Invitation to Bid must be sent to Kevin Gordon at [kgordon@walnutcreekca.gov](mailto:kgordon@walnutcreekca.gov) by **August 7<sup>th</sup>, 2025**. The email’s subject must contain the words “Invitation to Bid Question”. An answer to any questions received will be returned or posted to the City webpage no later than **August 11<sup>th</sup>, 2025**. The City may provide addenda to this ITB with answers to questions received, or additional amendments to this ITB based on questions received, at its sole discretion and in equal treatment of all bidders to this ITB.

Bids meeting the above stated requirements must be submitted by **August 18<sup>th</sup>, 2025**. Submissions not actually received by the City on this date will not be considered, regardless of when they were sent.

Email submissions should be sent to Kevin Gordon [kgordon@walnutcreekca.gov](mailto:kgordon@walnutcreekca.gov). The email's subject line must contain the words "Invitation to Bid".

#### **D. FORMAT OF BID**

Bids shall be submitted in digital format (PDF preferred). Bids should be no more than 15 pages. Any materials submitted will become the property of the City and will not be returned.

Each bid must include the following, in the order listed below:

1. **Cover Letter**  
Briefly introduce the bidder's company, identify the primary contact for the bid, and explain the bidder's interest in providing aquatic chemicals to the City of Walnut Creek.
2. **Company Qualifications**  
Describe the bidder's experience supplying aquatic chemicals to public agencies or recreational facilities, especially municipalities or recreation departments. Include how long has the bidder been in business and any relevant certifications or regulatory compliance.
3. **Key Personnel**  
Identify key individuals responsible for account management and delivery logistics, including their roles and relevant experience.
4. **Product Availability and Inventory Management**  
Describe any seasonal or regional availability issues, and how the bidder's company ensures sufficient inventory to meet recurring orders during the peak pool season.
5. **Delivery and Support Services**  
Describe the bidder's ability to meet the City's delivery requirements, including:
  - Delivery within 24 hours of order
  - Morning delivery before 12:00 p.m.
  - Delivery to multiple locations (Clarke Memorial Swim Center and Larkey Swim Center)
  - Safe handling and separation of incompatible chemicalsInclude details on the bidder's delivery fleet, procedures for emergency deliveries, and safety protocols.
6. **Pricing Bid (Attachment A)**  
Provide an itemized pricing schedule listing the **unit price** for each chemical offered, using appropriate industry-standard units (e.g., per gallon, per pound, per drum).
  - Clearly state if pricing is fixed or subject to escalation (and under what conditions)
  - Indicate minimum order quantities, if any
  - Note any delivery charges (delivery should ideally be included)
  - If applicable, include tank rental terms or confirm if tanks are provided at no cost
7. **References**  
Provide at least two references from similar public-sector clients (preferably in California) that the bidder has supplied pool chemicals to within the past five (5) years.
8. **Past Contract Performance**  
Disclose any contracts or agreements that have been terminated for default or convenience in the last three years, if applicable.
9. **Litigation Disclosure**  
List any ongoing or pending litigation that could impact the bidder's ability to perform under this contract.
10. **Insurance & Business License Confirmation (Attachment B)**  
Confirm the bidder's ability to meet the City's insurance and indemnification requirements. A current City of Walnut Creek business license is required before execution of the contract.

## **E. SELECTION PROCESS**

### **I. Bid Review and Evaluation**

All bids submitted by the deadline and in accordance with the format requirements will be reviewed for responsiveness. The City will evaluate each bid based on the following primary criteria:

- Meeting all submittal requirements of the ITB
- Ability to meet the City's requirements for chemical availability, delivery timelines, and safety protocols
- Unit pricing for each chemical, inclusive of delivery
- Completeness of bid, including all required attachments and disclosures

If any element of this requested content is not included therein, the City reserves the right not to advance the bid to the next stage of the selection process.

### **II. Final Selection and Award**

The City's final selection will be based primarily on lowest responsive and responsible bid pricing, including the cost of delivery, the qualifications and prior experience of vendor, and the vendor's demonstrated ability to reliably provide the specified chemicals in the quantities and timelines required.

If no single vendor is able to supply all required chemicals at competitive pricing and in accordance with the City's delivery needs, the City may choose to make multiple or partial awards and establish a vendor pool. In that case, purchases may be made from the vendor offering the best combination of price, availability, and service for each specific order.

The City does not guarantee volume or exclusivity to any vendor and reserves the right to order from one or more vendors in the pool based on operational requirements.

Final selection of a vendor and authority awarding the contract shall be at the sole discretion of the City. Any contract resulting from this ITB shall not be effective unless and until approved by the appropriate City officials. All contract awards will be contingent upon the City's verification of required insurance and a current Walnut Creek business license.

## **F. TERMS OF ITB**

Vendor understands and acknowledges that the representations below are material and important and will be relied on by the City in evaluation of the bid. Submission of a response to this ITB shall constitute an agreement to all terms and conditions specified in the ITB.

### **General Conditions**

The City reserves the right, at its sole discretion, to alter, amend, modify or cancel this solicitation at any time, including the modification of the deadlines and schedule and/or the scope of work, or to withdraw this solicitation, in whole or in part, at any time prior to the award of a contract pursuant hereto.

This ITB is not an offer by the City to contract with a bidder responding to this ITB. This ITB does not commit the City to award a grant, enter into an agreement, to pay any costs incurred in the preparation of a bid for this ITB or any related submittal materials or to procure or contract for any services. Each bidder submitting a bid in response to this ITB acknowledges and agrees that the preparation of all materials for submittal to the City and all presentations, related costs and travel expenses are the bidder's sole responsibility and the City

shall not, under any circumstances, be responsible for any cost or expense incurred by the bidder.

The City reserves the right to: accept or reject any or all bids, in whole or in part, or to alter the selection process in any way; to issue addenda to clarify or modify the contents of this ITB; to extend, shorten or postpone the selection process for its own convenience at any time; to waive any minor defects, irregularities, informalities, or irregularities in this ITB or in bids received; to accept or reject any individual subcontractor that an bidder proposes to use; to request additional information and/or clarifications from any or all responders to this ITB at any time; to contact any bidders for additional information; to contact any references provided; to contact any current users of a bidder's services; solicit information from any available source concerning any aspect of a bid; and to negotiate with any qualified bidders or to cancel the ITB in part or whole at any time.

The City reserves the right to reject any bid based upon the bidder'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 contract milestones or other contractual failures. This ITB 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 bidder. The City is not obligated to select a bidder with no or unsatisfactory related experience.

By submitting a bid, bidder represents and warrants that it has thoroughly examined and is familiar with work required under this ITB, that bidder has conducted such additional investigation as it deems necessary and convenient, that bidder is capable of providing the services requested by the City in a manner that meets the stated objectives and specifications as outlined in this ITB, and that bidder has reviewed and inspected all materials submitted in response to this ITB. Once the bidder has been selected, a failure to have read the conditions, instructions, and specifications herein shall not be cause to alter the contract or for selected bidder to request additional compensation. The City and selected Bidder may agree to add additional work to the Scope of Work by a later agreement. 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.

#### **Nondiscrimination**

By submitting a response pursuant to this ITB, a bidder represents that it and its subsidiaries and any proposed individual subcontractor do not and will not discriminate against any employee or bidder for employment on the basis of race, religion, sex, color, national origin, sexual orientation, ancestry, marital status, physical condition, pregnancy or pregnancy-related conditions, political affiliations or opinion, age or medical condition.

#### **Public Records**

All documentation and/or materials submitted with the response/bid 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 bidder desires to claim portions of its bid as exempt from disclosure as proprietary material or trade secret, it is incumbent upon the bidder 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 bidder who submitted such information with reasonable notice to allow the bidder 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 bidder 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 bid in response to this ITB, a bidder 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 ITB or City's award of a contract if any.

### **Execution of Supply & Services Agreement**

By submitting a response to this ITB, the selected vendor agrees to execute the Supply & Services Agreement with the City in the form attached to this ITB as Attachment 3 and incorporated herein. Bidders must be prepared to enter into the agreement under the standard terms, accept the indemnification obligations, and be able to provide the required insurance at its sole cost and expense. Any final contract must include the City's standard insurance and indemnification requirements. If the City is unable to negotiate a satisfactory agreement with the top-selected bidder, with terms and conditions the City determines, in its sole judgment, to be fair and reasonable, the City may elect to negotiate with the next qualified bidder. The City reserves the right to negotiate any and all terms of the Consultant Services Agreement and task orders, including the Term, Scope of Service and Compensation, with any bidder or no bidder.

The selected vendor is required to provide a valid City business license number prior to contract approval. Please note that changes to the selected vendor's project personnel shall not be allowed without prior written approval by the City.

#### **Attachments:**

Attachment 1 – Bid Pricing Sheet

Attachment 2 – Summary of Insurance Requirements

Attachment 3 – Supply & Services Agreement

**BID PRICING SHEET**

Instructions:

Please complete the table below with unit pricing for each listed chemical. Prices should reflect delivery included to two aquatic facilities: Clarke Memorial Swim Center and Larkey Swim Center (which includes the sprayground). Use standard commercial packaging units. If the bidder cannot supply a listed chemical, indicate N/A in the price column.

Chemical Name	Standard Packaging Unit	Unit Price	Available Year-Round? (Y/N)	Minimum Order Quantity (if any)
Sodium Hypochlorite (Liquid Chlorine, ~12.5%)	Per Gallon (bulk or container)			
Muriatic Acid (Hydrochloric Acid, ~31%)	Per Gallon			
Sodium Bicarbonate	Per 50 lb. Bag			
Calcium Chloride	Per 50 lb. Bag			
Cyanuric Acid (Stabilizer)	Per 50 lb. Drum or Bucket			
Sodium Thiosulfate (Dechlorinator)	Per Pound or 50 lb. Bag			
Algaecide	Per Gallon or Container			
CO <sub>2</sub> (for pH control, if applicable)	Per Tank (specify size)			
Fiber Clear	Per oz. or lb.			
Other (Specify)				

Bulk Delivery Capabilities (check all that apply):

- Provide storage tanks at no cost
- Deliver bulk chlorine (≥ 100 gallons/order)
- Deliver acid in bulk format
- Separate incompatible chemicals in transit

Delivery Lead Time (standard orders):

\_\_\_\_\_ hours or \_\_\_\_\_ business days from order placement

Emergency Delivery Option:

- Available    Not Available

If available, emergency delivery time: \_\_\_\_ hours



## SUMMARY OF INSURANCE REQUIREMENTS

Refer to City of Walnut Creek Bidder Services Agreement for comprehensive insurance provisions

Proof of insurance comprised of certificates of insurance and original endorsements of comprehensive general liability, auto liability and workers' compensation insurance written by one or more responsible insurance companies licensed to do business in California.

- **Certificate of Insurance**
  - **General Liability policy**
    - \$2,000,000 per occurrence
    - \$4,000,000 general aggregate
    - Certificate Holder:
      - City of Walnut Creek**
      - 1666 North Main Street**
      - Walnut Creek, CA 94596**
  - **Automobile Liability**
    - \$1,000,000 combined single limit per accident for bodily injury and property damage
  - **Workers' Compensation policy** as required by the Labor Code of the State of California and Employers Liability Insurance–
    - \$1,000,000 per accident
    - \$1,000,000 per disease or injury
  - **Errors and Omissions Liability/Professional Liability**
    - \$1,000,000 per claim and annual aggregate

### ALL Certificates of Insurance MUST have accompanying Endorsements

- **Endorsement(s) for General Liability and Automobile Liability**
  - An original Additional Insured Endorsement naming in its entirety:

***“The City of Walnut Creek, its officials, officers, directors, employees, agents and volunteers”***

as additional insured in respect to liability arising out of activities performed by or on behalf of Company and **MUST** reference the applicable policy number on the endorsement.

- Primary and Non-Contributory
  - Completed Operations
  - Waiver of Subrogation
- **Waiver of Subrogation for Workers' Compensation policy (if applicable)**
    - The Waiver of Subrogation endorsement **MUST** reference the policy number.

**The certificates and endorsements are to be on ISO-approved forms. The City will not accept a Certificate of Insurance alone as proof of insurance coverage.**

**City of Walnut Creek  
SUPPLY & SERVICES AGREEMENT**

THIS SUPPLY & SERVICES AGREEMENT (“Agreement”) is entered into on \_\_\_\_\_, 2025, between the City of Walnut Creek, a California municipal corporation (“City”), and \_\_\_\_\_ (“Vendor”).

**RECITALS**

- A. The City wishes to contract for chemical goods and related services for its aquatics facilities and related spray grounds.
- B. Vendor has the skill, experience, ability, background, certification and knowledge to provide the goods and services. The City has reviewed and accepted Vendor’s qualifications.
- C. Vendor wishes to furnish such goods and related services under agreement with the City.

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

**AGREEMENT**

- 1. **Services.** Vendor shall provide the supplies and 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 Vendor, and Vendor 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. Vendor shall submit invoices to the City for goods and services provided, as set forth in Exhibit A, 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).
  - b. Termination. City may terminate this Agreement without cause at any time and for any reason upon 10 days written notice to the Vendor. Upon receipt of any notice of termination, and if requested to do so by the City, Vendor shall stop work at the stage directed by City and shall deliver all drawings, specifications and documentation developed as of that stage. Vendor 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.** Vendor shall perform all services required in the manner and according to the standards observed by a competent practitioner of the profession in which Vendor is engaged in the geographical area in which Vendor practices his profession.

5. **Responsible Personnel.** Vendor represents that it is fully qualified to perform the services under this Agreement. Vendor represents and warrants to the City that Vendor has, and at all times during the performance of this Agreement shall, maintain all licenses, permits, qualifications, and approvals that are required for Vendor to practice Vendor's profession. Vendor 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 Vendor to perform services, Vendor shall remove any such person immediately upon receiving notice from the City.

6. **Facilities and Equipment.** Vendor 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.** Vendor, 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 Vendor performs this Agreement and shall only dictate the results of the performance. Vendor shall not represent that Vendor or its agents, employees or independent contractors are agents or employees of the City. Vendor is responsible for the payment of all taxes, workers' compensation insurance and unemployment insurance. Vendor shall obtain no rights to retirement benefits or other benefits that accrue to City's employees, and Vendor hereby waives any claim it may have to those rights. Except as the City may specify in writing, Vendor 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 Vendor.** Vendor (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 Vendor's services under this Agreement. Vendor 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 Vendor is determined to be a "Consultant" or a "designated employee" within the meaning of the Political Reform Act, Vendor 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 Vendor agrees to maintain all records and other evidence pertaining to costs incurred and work performed, and shall make them available at the Vendor'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 Vendor in the performance of this Agreement, shall become the property of the City.

11. **Indemnification.** Vendor 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 Vendor'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; “Vendor” means the Vendor, 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 Agreement, and are not limited by the provisions of Section 12 relating to insurance.

12. **Insurance.** Vendor 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. Vendor 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.
  
- 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 Vendor 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 Vendor; products and completed operations of Vendor; premises owned, occupied or used by Vendor; or automobiles owned, leased or borrowed by Vendor. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, agents or volunteers.

(b) Vendor'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 Vendor'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) Vendor'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 Vendor for the City.

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. Vendor 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: <<Name of City Staff Contact Person>>  
1666 North Main Street  
Walnut Creek, California 94596

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

b. Assignment. This Agreement contemplates the personal services of Vendor 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 Vendor. Vendor 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. Vendor 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 Vendor, 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.**

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

By: _____ City Attorney	
----------------------------	--

Exhibits:

- A Scope of Services (Agreement Section 1.)
- B Rates for time and materials (Agreement Section 2.a.)

**Exhibit A**  
**Scope of Services**

*[to be completed by staff]*

**Exhibit B**  
**Rates for Time and Materials**

*[to be completed by staff]*