

**City of Walnut Creek  
MASTER CONSULTANT SERVICES AGREEMENT**

THIS AGREEMENT is entered into on \_\_\_\_\_, 202\_\_ 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 services, as described by each Task Order.

B. Consultant has the skill, experience, ability, background, certification and knowledge to provide the services. Consultant qualifications have been reviewed and accepted by the City. Consultant desires to perform such professional services under agreement with the City.

C. The City having issued a Request for Qualifications which outlined necessary skills and experience and timeframe for the work contemplated under this Agreement.

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

AGREEMENT

1. **Services.** Subject to the terms and conditions set forth in this Agreement (“Agreement”), Consultant shall provide the professional engineering design services as described in each Task Order provided by the City and coordinate activities so the project that is the subject of each Task Order is completed according to the City’s requirements.

a. Task Orders. It is understood and agreed that each Task Order shall list the scope of services to be performed, the schedule for performance, any special conditions, and the form and conditions of compensation for services. A Task Order is effective only when signed by Consultant and the City Manager and Administrative Services Director, or their authorized representatives. The City shall designate a representative who shall be fully acquainted with the project and have authority within the limits of City policy to render decisions promptly.

The City will cooperate with Consultant and provide reasonable access to the site. Upon written request, the City shall provide all reasonably available information including reports, preliminary plans, maps, surveys, and other related information regarding its requirements for a project that is the subject of a Task Order. Consultant may reasonably rely on the accuracy and completeness of the information provided.

b. Performance. Consultant shall perform the services described in the Task Order. The time of performance of the services under this Agreement is important to the City, and all time deadlines identified in the Task Order 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, a fee that does not exceed the total budgeted amount detailed in each Task Order. The maximum amount of

compensation for this Agreement and Task Orders issued with it is \$ \_\_\_\_\_. Consultant is under no obligation to provide continuing services for a Task Order when the fee reaches the budgeted amount, unless the Task Order is amended to reflect an increased amount. Each Task Order may reflect either a fixed fee amount or an hourly rate. The rates shall include all direct and indirect charges to each Task Order, except as noted in the Task Order. If Consultant uses subconsultants, those services shall be invoiced at cost plus a percentage as indicated in the Task Order. Consultant may revise the hourly rate schedule yearly, to take effect on the first day of January.

b. **Payment.** Consultant shall bill City monthly, and 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. Consultant reserves the right to assess a 1 ½ % per month (18% per year) service charge on any unpaid balances over 60 days.

### 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. The maximum term will be \_\_\_\_\_.

b. **Termination.** Either party may terminate the Agreement by giving seven 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 drawings, specifications, and documentation developed as of that time. Consultant shall accept as full payment either: (i) if the Task Order indicated an hourly rate, payment based on the hours worked up to the time of termination; or (ii) if the Task Order indicated a fixed fee, a pro rata share of the total Agreement based on the portion of work actually performed.

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 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. Any re-use of designs without Consultant's written authorization will be at the City's risk.

**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 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 of 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 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.
  - (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.

**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: Steve Waymire, City Engineer  
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.

12. Signatures.

CITY OF WALNUT CREEK	CONSULTANT
By: _____ City Manager	By: _____
By: _____ Public Works Director	Its: _____
	Date: _____

*City of Walnut Creek Master Consultant Services Agreement*

Reviewed by:  _____	
City Attorney	City business license # _____