REQUEST FOR PROPOSALS

to prepare an

ENVIRONMENTAL IMPACT REPORT

for the proposed

WALNUT CREEK BART
MIXED-USE TRANSIT ORIENTED DEVELOPMENT

CITY OF WALNUT CREEK

Issued February 1, 2008

Deadline for Submittal: February 28, 2008 at 4:00 pm
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PART I: GENERAL INFORMATION

A. Date RFP Issued: February 1, 2008

B. Date Proposals are Due: Thursday, February 28, 2008 at 4:00 p.m.

C. Deliver Proposals to: Carol Clark, Community Development Department, Second Floor, 1666 N. Main Street, Walnut Creek CA 94596

D. Description of Project: Preparation of an Environmental Impact Report and related documentation pursuant to the California Environmental Quality Act (CEQA) for a mixed-use transit oriented development at the Walnut Creek BART Station.

E. City Contact: Steven Buckley, Senior Planner, 1666 N. Main Street, Walnut Creek, CA 94596. buckley@walnut-creek.org; Phone: 925/943-5899, x359; Fax: 925/256-3500; or Scott Harriman, Senior Planner, harriman@walnut-creek.org; Phone 925/256-5899, x212.

PART II: THE CITY OF WALNUT CREEK

The City of Walnut Creek is located in central Contra Costa County. Walnut Creek has a population of approximately 65,000 residents, as well as strong retail and office employment sectors. The City has a busy and popular downtown retail district which includes a “traditional” downtown area along Main and Locust Streets as well as new and revitalized downtown retail areas located immediately to the south. The Broadway Plaza shopping area is the most well known of these retail destinations. Other recent commercial development projects include Broadway Pointe, Plaza Escuela, the Corners, and Olympia Place. Intensive office development neighbors the Walnut Creek BART Station within the “Golden Triangle” area. Additional residential development is occurring as high-density infill around the BART station as well.

PART III: BACKGROUND / DESCRIPTION OF THE PROJECT

The City of Walnut Creek has received a development application from the Walnut Creek Transit Lifestyles Associates for a mixed-use transit oriented development at the Walnut Creek BART station. The Walnut Creek BART station is situated at the northern portion of the downtown core area and is approximately 16.8-acres in size. The site is bisected by the existing BART aerial structure and station. The development area currently contains three surface parking lots (north, east, and south) comprising 851 spaces and a centralized three-story parking garage comprising 1,250 spaces. A bus transit center is located within the east parking lot. While the development application has not been deemed complete, there is sufficient information to commence with the environmental review.

The development proposal would replace the north and east parking lots with mixed-use buildings that would contain approximately 600 residential units and 19,000 square feet of ground floor retail space distributed at key entries, as well as live-work units that could convert to retail/office use. The residential development would consist of apartments within three and
four-story structures over underground parking, and would include centralized private open space.

The development proposal also includes replacement BART parking within a new parking structure (five-story, 7-level parking structure including one sub-surface level and one roof-top level) on the south parking lot. The existing BART parking structure would remain. The proposed parking structure would provide one-for-one replacement of BART parking and add 100 spaces. The parking structure also includes a new 15-bay integrated bus transit center with a 1,500 square foot transit office and approximately 30,000 square feet of commercial office space.

Circulation to and within the site would be substantially modified to serve the diverse uses and new building configuration. This would include vehicle access, drop-off and pick-up area, taxi area, pedestrian routes, bicycle access and parking, and transit station areas.

The City adopted a new General Plan and associated EIR in 2006 that established provision for mixed-use residential land uses on the western portions of the BART site. General Plan Amendments for height and residential land use on the eastern portion, rezoning, and design review will be required to develop the proposed project. The City Council recently conducted a public hearing in conjunction with representatives of numerous City commissions to review the proposal and provide comments and guidance. A summary of the issues is attached to this RFP.

Responsible or interested agencies will include the Bay Area Rapid Transit District (BART), Central Contra Costa Transit Authority (CCCTA or County Connection), State Department of Transportation (Caltrans), East Bay Municipal Utility District (EBMUD), Regional Water Quality Control Board (RWQCB), Bay Area Air Quality Management District (BAAQMD), Contra Costa Transportation Authority (CCTA), and others.

PART IV: SCOPE OF WORK

The Scope of Work shall include preparation of an Environmental Impact Report and associated documentation pursuant to the California Environmental Quality Act (statutes and guidelines) and applicable regulations to analyze the impacts of the proposed mixed-use development within the context of the existing BART station site, multi-model transit services, and neighboring development pattern.

Consultants shall present a work program in their proposal that accomplishes the requirements of CEQA for the project described in this RFP. City staff has outlined the following approach, list of study topics, anticipated work products, and meetings to provide guidance and establish a minimum expectation for the purposes of comparing proposals.

Approach
The EIR consultant will work directly for the City of Walnut Creek. The consultants will be responsible for responding to comments from City Commissions and Council, the development team and the general public. The consultant is expected to keep an open dialogue with City staff throughout the process, and work closely with City staff in carrying out the scope of work.
The consultant shall prepare an initial study and project level EIR in conformance with the California Environmental Quality Act (statute and guidelines) and the City of Walnut Creek's CEQA Procedures. The selected consultant shall prepare a complete EIR addressing all potential impacts of the project, feasible mitigation measures and alternatives, and cumulative impacts. The consultant shall also prepare draft Findings and a draft Mitigation Monitoring Program for adoption by the City. The consultant shall participate in public hearings to present findings and conclusions of the EIR and respond to questions, and shall assist City staff in preparing necessary documentation for City action on the project.

The City adopted a General Plan 2025 EIR on April 4, 2006, which can be used wherever appropriate to establish the baseline conditions, cumulative impacts, and related matters.

Study Topics
The project team has prepared several technical studies which may be incorporated as appropriate and peer reviewed on behalf of the City. The following analysis, at a minimum, would need to be prepared in association with the EIR. Staff has identified the following topics that should be addressed:

- **Land Use / Policy Consistency.** A description and analysis of the planning context for the project shall be provided. This shall include reference to the City’s recently-adopted General Plan, and zoning, and the BART Transit-Oriented Development policy and BART Station Access guidelines. Local land use trends and urban design principles shall be identified.

- **Transportation.** The project will substantially change the circulation patterns at the site, including access to/from local roadways and freeway ramps, internal circulation, transit access and transfer center, pedestrian access to/from the BART station and new development, and bicycle access around the site. Parking will be modified to include an additional public parking structure (to be operated by the project developer), and will include additional trip generation from the new residential, retail and office uses. The EIR shall include a comprehensive analysis of the proposed development addressing on-site and off-site impacts in conjunction with the City, BART, County Connection, CCCTA, Caltrans, and others. An analysis of the location and operation of the new bus transit area and the relocated taxi and drop-off and pick-up areas, signal timing, pedestrian crossings, bicycle access and parking, and similar issues shall be addressed. A transit access study pursuant to BART standards shall be included. Parking adequacy, location, access, and operations shall be evaluated. The alternatives analysis shall include the possibility and potential impacts associated with a pedestrian/bicycle bridge over Ygnacio Valley Road and a new pedestrian crossing on California Boulevard. In addition, the EIR shall examine circulation and replacement/interim parking during the phased construction of the project.

- **Air Quality.** The air quality technical report shall evaluate long-term operational regional and local air quality impacts, and short-term construction related impacts. Additionally, the air quality technical report shall evaluate, in consultation with the BAAQMD, the potential health risk impacts associated with emissions from and on the proposed mixed-use transit facility. The technical report shall include potential air quality impacts associated with the proposed bus transit center, which would be roofed and partially enclosed within the proposed parking structure. The project’s potential impacts on climate change shall also be
Mitigation to address the impacts to the project area from the mixed-use transit facility should consider the reduction in vehicle trips.

- **Noise.** A noise analysis shall be prepared to address impacts to the development from the adjacency of BART, transit, local traffic, and freeway traffic. Construction-period impacts shall be addressed, including impacts to the phased development of the project, and impacts to BART and transit patrons and surrounding land uses. Long-term operational noise impacts associated with the development and operation of the project shall also be addressed. The noise report shall determine the land use/noise compatibility of proposed land uses based on the City's Noise Element, Noise Ordinance, and other relevant standards.

- **Aesthetics.** The EIR shall evaluate the proposed development for compatibility with the existing and planned urban setting of the site. Particular features to be addressed include public views of Mt. Diablo, urban design of the project within the context of a transit center, gateway views from the freeway and arterial roadways, and functional relationships to the downtown, Golden Triangle, and other neighboring areas. The City’s public art requirements shall be included in the analysis. Public and private open space areas shall be evaluated for suitability in the context of a public transit center and residential/office/retail complex.

- **Hydrology.** Urban storm water management shall be evaluated in light of C.3 permit requirements. Construction-period impacts related to groundwater characteristics shall be addressed in light of locally elevated levels of sulfur and required dewatering to construct below-grade parking structures.

- **Geotechnical.** A geotechnical and soils technical report has been prepared to explore the surface and subsurface conditions of the project site. A peer review shall be conducted and findings and recommendations shall be incorporated into the EIR.

- **Hazardous Materials.** A Phase 1 Environmental Site Assessment has been prepared by the applicant and submitted to the City evaluating the historical record of hazardous wastes or hazardous safety issues. The EIR shall evaluate potential impacts to the proposed uses and underground parking (excavation and de-watering).

- **Public Services.** Currently, BART Police provides primary security and responds to all calls for service on BART property. The Walnut Creek Police Department (WCPD) maintains a directive for coordination with BART Police in limited instances. The proposed transit village adds residential and commercial uses, and non-BART parking facilities, which will require additional WCPD services. The EIR shall evaluate project-related impacts to City police service levels and mitigations.

- **Utilities / Services / Recreation.** Water service, sewer service, and other utilities and services shall be analyzed in consultation with providers. Efficiency, service capacity, fiscal impacts, and related issues shall be addressed.

- **Biological Resources.** The site contains numerous landscape and perimeter trees, which shall be reviewed as part of the analysis.

- **Cultural Resources.** The potential for excavation to uncover significant archaeological resources should be considered.

- **Population/Housing.** The project proposes residential and commercial uses which shall be evaluated within the context of the General Plan and other growth projections.
The City does not anticipate that the following topical areas will require analysis in the EIR because the site is a previously-developed urban site:

- Agricultural Resources.
- Mineral Resources.

The consultant should present comments on this scope of work and provide independent judgment on the scope of studies to be prepared as part of the EIR. Consultants should specify assumptions about information sources and reliance on the efforts of City staff or consultants hired by the project proponent.

**Tasks / Work Products:**

**Kick-Off Meeting**
The consultant team shall be available for a kick-off meeting with City and BART staff and the development team to review the scope of work, available information, schedule, and work products. This meeting is expected to occur within 1 week of the Notice to Proceed. A draft project description, alternatives description, and Draft EIR outline shall be provided by the consultant at this meeting.

**Notice of Preparation/Initial Study**
The consultant shall prepare and circulate a Notice of Preparation/Initial Study (NOP/IS) for the EIR including distribution to the State Clearinghouse, Responsible and Trustee Agencies, County Clerk, and others. City staff will review and approve the NOP/IS prior to distribution, and will provide additional distribution to interested parties. Ten hard copies and one electronic copy shall be provided to the City. At the conclusion of the 30-day review period, the consultant shall review and summarize all comments received in response to the NOP/IS for inclusion in the Draft EIR. Any topics not already addressed in the consultant’s scope of work shall be identified. The administrative draft NOP/IS is expected to be provided within 4 weeks of the Notice to Proceed. The NOP/IS is expected to be published within 6 weeks of the Notice to Proceed.

**Scoping Meeting**
During the public review period of the NOP/IS, the consultant and City staff shall conduct a scoping meeting at City Hall. The consultant shall present the proposed work scope and shall record and summarize all comments at this meeting for inclusion in the Draft EIR. Any topics not already addressed in the consultant’s scope of work shall be identified. This meeting is expected to occur within 10 weeks of the Notice to Proceed.

**Administrative Draft Environmental Impact Report**
The consultant shall prepare an Administrative Draft EIR (ADEIR) for the project. The ADEIR shall include a complete project description, existing conditions setting, evaluation of project impacts, recommended mitigation measures and a determination on the level of impacts for the project. All content requirements shall be met as required by CEQA, including project alternatives. The consultant should assume that three alternatives, in addition to the No Project
alternative, will be evaluated in the EIR. These may include modified site plans, limited
development areas, and a mitigated alternative illustrating the incorporation of recommended
measures.

The ADEIR shall evaluate short-term construction related impacts, operational impacts and
cumulative impacts. The thresholds to determine the level of impacts shall be based on the
CEQA Checklist and General Plan standards, among others. Comments received from the
NOP/IS and Scoping Meeting shall be addressed in the ADEIR. Six hard copies and one CD of
the ADEIR shall be submitted to the City for review and comment. After review and revision
of the ADEIR based on staff comments, the consultant shall prepare a Screencheck ADEIR in order
to provide a final review prior to public circulation of the Draft EIR (DEIR). It is anticipated that
review of the Screencheck ADEIR will focus on typographical errors, formatting, and other
minor edits only. The ADEIR is expected to be completed within 19 weeks of the Notice to
Proceed. The Screencheck DEIR is expected to be completed within 23 weeks of the Notice to
Proceed.

Draft Environmental Impact Report
The consultant shall incorporate City staff comments on the Administrative Draft EIR and
Screencheck into the Draft EIR. The consultant shall provide 50 hard copies and 50 CD’s of the
Draft EIR for circulation as required. An electronic copy will be posted on the City’s web site
for public review. The consultant shall also prepare the Notice of Completion and Notice of
Availability, which will be filed and published by the City. The Draft EIR is expected to be
completed within 25 weeks of the Notice to Proceed.

Public Hearings on Draft EIR
Numerous Commissions and the City Council will review and comment on the Draft EIR and
project. City staff will schedule the hearings, provide public notice, and prepare staff reports.
The consultant is expected to be available to present the findings of the Draft EIR at up to 6
public hearings during the 45-day review period. The consultant shall also summarize the
comments and identify topics not already addressed in the EIR. These hearings are assumed to
be completed during the public review period and be completed within 32 weeks from the Notice
to Proceed.

Draft Response to Comments
The consultant shall prepare responses to comments (written and oral) received on the Draft EIR
and produce a Response to Comment Document. Additionally, the consultant shall prepare a
draft Mitigation Monitoring Program and draft Findings for the project. A set of findings
addressing “significant unavoidable impacts,” if any, shall also be submitted to the City for
review. Ten hard copies and one electronic copy of the documents is expected to be submitted
within 37 weeks of the Notice to Proceed. The consultant shall indicate the assumed level of
effort for this task and the method of addressing any additional level of effort, i.e. change order,
time-and-materials billing, etc.
Final EIR, Response to Comments, Mitigation Monitoring Program, and Findings
The consultant shall incorporate City staff comments into the Final Response to Comment Document. The Final EIR shall be prepared as a complete restatement of the Draft EIR incorporating all revisions, response to comments, findings, and mitigation monitoring program. Fifty hard copies and one electronic copy are expected to be submitted within 41 weeks of the Notice to Proceed. The consultant shall attend final adoption hearings to present the findings of the Final EIR and assist City staff with final documentation for action on the project. This task is assumed to be completed within 45 weeks of the Notice to Proceed.

Meetings: In addition to the staff and public meetings listed above, the consultant is expected to be available for occasional status meetings and conference calls with City staff.

PART V: PROPOSAL REQUIREMENTS

Interested consultants shall provide six (6) bound copies of the following, in an 8 1/2 x 11 inch booklet format and one CD ROM in Adobe.pdf format:

1. Information on the qualifications of the firm / team.

2. Resumes for the professional members of the team. Please clearly describe the role of each professional team member and their level of involvement. For the team leader(s) please include references from cities where the leader(s) has led a similar project.

3. A work program that clearly identifies studies to be completed, work products, methodology, process, and timing. This work program should identify any information sources, documents, or other resources that the consultant assumes the City would provide.

4. Proposed fee and method of computation. Please break down the fee by product and work tasks. Also include a listing of the hourly costs of each member of the consulting team and an amount of time you are estimating they will spend on each task. Include costs for additional public meetings outside the scope.

5. Comments on the City’s standard contract. Attached to this RFP is a copy of the City’s standard contract. Consultants shall indicate their willingness to agree to the contract in its current form or describe preferred terms.

6. Description of how the City would be charged for work outside the scope of the bid.

Proposals shall be submitted no later than 4:00 p.m. on February 28, 2008 to Carol Clark, Community Development Department, 1666 N. Main Street, P.O. Box 8039, Walnut Creek CA 94596. Late submittals, postmarks and faxes will not be accepted.
PART VI: CONSULTANT SELECTION PROCESS

This RFP has been distributed to a list of consultants known or expected to be interested in this project. Consultants are encouraged to distribute this RFP to others and to form teams as necessary to address the range of topics and tasks to be completed.

An optional pre-bid meeting will be conducted by City staff on Monday, February 11, 2008 at 10:30 a.m., at City Hall, second floor conference room, 1666 N. Main Street, Walnut Creek. Questions may also be submitted by e-mail to Steven Buckley at buckley@walnutcreek.org, and at 925/943-5899 x359. A summary of questions and answers will be provided to the consultant distribution list and others who express interest.

A Consultant Selection Committee comprised of City staff will review proposals and determine those that are most qualified to proceed in the selection process based on the following criteria:

1. Understanding of the City, project, and issues;

2. Expertise in the preparation of Environmental Impact Reports and associated work products and processes;

3. Proposed approach and methodology to the work scope including technical studies, documentation, and meetings;

4. Ability to work with staff, applicant, community and decision-makers to communicate findings and recommendations;

5. Cost of consultant services.

Selected consultants may be scheduled for interviews (within approximately two weeks of the submittal deadline). The final selection will be made by City staff and a contract will be negotiated with that firm/team. If a contract cannot be negotiated, the City will proceed to negotiate with the second-ranked firm/team. The City reserves the right to not enter into a contract with any of the respondents. The Community Development Director shall have the final approval authority over the selection and contract.

ATTACHMENTS
1. Project Location Map and Aerial Photographs
2. General Plan and Zoning for the Site
3. Preliminary Project Plans (contained on CD ROM)
4. Summary of January 8, 2008 City Council Meeting
5. Standard Consultant Services Agreement Contract
City Council summary on the BART TOD
Items for further study

Project-wide

- What improvements are needed on Pringle?
- Specify how noise be handled throughout center
- Define/Study project amenities (club house, fitness center, business center)
- Evaluate Views into project site from:
  - BART train, platform
  - Elevated Freeway
  - From surface streets at major points
- Mt. Diablo Views
  - Define line of sight
  - Define view corridors
  - Define view goals
  - Identify view potential/trade-off
- Describe Private vs BART parking charge
- Evaluate use of roof tops
  - Viewing platforms
  - Gardens
  - Restaurant
  - Solar panels
- Evaluate land use mix and locations
  - Resident/Retail/Office/Commercial/Live-Work
  - Specialty Grocery

Transportation, Circulation

- Identify/Improve pedestrian and bike routes to community parks, open spaces, recreational facilities
- Improve bike access and facilities
- Study/Improve pedestrian crossing at corner of YVR and California
- Study mid-block crossing on California Boulevard
- Consider pedestrian/bike bridge over YVR
  - Evaluate best location (to Oakland Ave, mid-block, at corner)
- Consider (regional) TDM center
- Study effect of metered on-ramps
- Study expansion of shuttle service and funding opportunities
Consider shuttle stop on California Boulevard

Study shared car/bus roadways

Site Design, Architecture

- Create active, programmable urban open spaces
  - Accommodates multiple uses
  - Consider demand for tennis/basketball

- Robust walkways (skate board-proof/graffiti-resistant)

- Provide evaluation of building scale, openness and proximity (project currently appears tight)

- Consider urban “residential” architectural character

Public Art

- Great opportunity for significant, distinctive, creative and dynamic installations
  - Consider art to support gateway and sense-of-place concepts
  - Examine hierarchy of public spaces including benches and smaller pieces
  - Incorporate art (Arts Commission, public) into review process (not an afterthought)

Landscape features

- Use native plant palette
- Water conserving
- Friendly to local bird and insect species

Southwest Parcel (New transit hub, replacement parking garage, commercial/office)

- Incorporate bus layover space

- Bus Center to accommodate driver breaks

- All bus movements should be contained on site (should not require exiting site to re-circulate)

- Improve drop-off/pick-up and taxi stand
  - Not visible to fare gate
  - Too removed from transit center
  - Consider second (intuitive) location

- Consider more parking rather than commercial/office in new parking structure
  - Are additional 100 spaces adequate?
  - Is a health club necessary at a transit hub?
  - Consider design alternatives for a garage-edge facing YVR.

- Examine bridge connection between existing and proposed parking structures

- Evaluate pedestrian crossing from center bus lane
- Study effect (under-utilization) of reserved parking

Northwest Parcel

- Evaluate view/architectural enhancement of and into existing parking structure from new residential building
- Study interface with pedestrian corridors and public sidewalks to enliven pedestrian experience

Eastern Parcel

- Consider revised massing
  - Open up pedestrian corridor (appears too tight)
  - Move buildings closer to Ygnacio Valley Road and California Boulevard
  - Study architectural balance of opening corner for views/open space while maintaining building edge
- Consider art at corner
CONSULTANT SERVICES AGREEMENT

THIS AGREEMENT is entered into by and between the City of Walnut Creek, a Municipal Corporation ("City"), and _______ ("Consultant").

RECITALS

A. The City desires to contract for the provision of professional services for the __________________ Project.

B. Consultant qualifications have been reviewed and accepted by the City. Consultant desires to perform such professional services under agreement with the City.

NOW, THEREFORE, in consideration of the terms and conditions contained herein, 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 services as described in the attached "Proposal for __________________" ("Proposal").

2. Payment.

   (a) Payment for Professional Services. For and in full consideration of the full and successful performance of the obligations of this Agreement, City agrees to pay Consultant, and Consultant agrees to accept from City as full compensation for said services, an amount not to exceed $_______, and to be based on an accounting of time and materials expended for the entire study. Time and materials shall be billed at the rate set forth in the Proposal. Consultant shall bill City monthly by or before the fifth day of the month. Consultant shall submit invoices in triplicate and addressed to the City. Each bill should include a summation of work performed and work remaining to complete the scope of work. The City shall each month retain ten percent of the total payment not to exceed $_______, which retention shall be paid to Consultant upon acceptance by the City of the satisfactory Final Report.

   (b) 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 City and Consultant.

3. Responsible Personnel. The professional services described in this agreement shall be performed in part and supervised by ________. Additional work shall be performed by ________. Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that the City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any person or persons assigned by Consultant to perform services pursuant to this Agreement, Consultant shall remove any such person immediately upon receiving notice thereof from the City.

4. Facilities and Equipment. Consultant shall, at its sole cost and expense, furnish all facilities and equipment that may be required for furnishing services pursuant to this Agreement.

5. Subcontracting. Consultant shall not be permitted to subcontract any portion of this Agreement without the express written consent of the City.

6. Independent Contractor. Both parties understand that 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. Except as the City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of the City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement, to bind the City to any obligation whatsoever.

7. Reports. Consultant shall furnish interim reports quarterly as to the progress of the study or upon demand by the City. A Final Report in draft form shall be provided to the City thirty days prior to Agreement termination for review, recommendations and approval by both parties prior to the Consultant furnishing __ printed copies of the approved final report.

8. Publication. Consultant shall not be authorized to copyright the final report, any papers, interim reports, forms, or other material that is a part of the work under the Agreement, without the written approval from the City.

9. Project Inspection. The City may review and inspect the Consultant's activities during the progress of the program.

10. Accounting Records. The Consultant agrees to maintain all records and other evidence pertaining to costs incurred and work performed hereunder, 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.

11. Ownership of Data. All data, maps, photographs, and other material collected or prepared under the Agreement shall become the property of the City.

12. Termination. City may terminate this Agreement at any time for any reason upon __ days written notice to the Consultant. Upon receipt of such notice 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 said 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.

13. Amendment. It is mutually understood and agreed that no alteration or variation of the terms of this Agreement, or any subcontract requiring the approval of the City shall be valid unless made in writing, signed by the parties hereto.

14. Non-Solicitation Clause. The Consultant warrants that he/she has not employed or retained any company or persons, other than a bona fide employee working solely for the consultant, or paid any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission,
percentage, brokerage free, gift, or contingent fee.

15. Indemnification. Consultant shall indemnify, defend, and hold harmless the City and its officers, officials, employees and volunteers against any and all liability, claims, actions, causes of action or demands whatsoever against any of them, including any injury or death of any person or damage to property or other liability of any nature, arising out of or in any way connected with the performance of this Agreement, except for loss or damage which was caused by the willful misconduct or sole negligence of the City.

16. 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 liability insurance appropriate to Consultant's profession.

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

(1) General Liability: $1,000,000 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, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

(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 Liability: $1,000,000 per claim and annual aggregate

(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 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 hired 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) All Coverages. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party except after thirty (30) days' prior written notice by mail has been given to 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. Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. 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.

17. Safety and Accidents. Consultant shall comply with all laws and industrial safety standards. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City's Risk Manager by telephone.

18. Ownership of Documents. All documents of any type developed or obtained by Consultant in the performance of this Agreement shall be deemed to be the property of the City.
19. Notice. Any notice to be given under this Agreement shall be given by enclosing the same in a sealed envelope, first-class postage prepaid and depositing the same in the United States mail, addressed to the party at the following address:

CITY:
Community Development Director
City of Walnut Creek
P.O. Box 8039
Walnut Creek, CA 94596

CONSULTANT:

20. 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 this Agreement or the rights or obligations hereunder without the prior written consent of the City.

21. Qualifications. 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 of any nature which are required for Consultant to practice Consultant's profession.

22. Time of Performance. The time of performance of the services under this agreement is important to the City, and all time deadlines identified in the Project Schedule shall be strictly construed.

23. Standard of Performance. Consultant shall perform all services required pursuant to this Agreement 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. All products which Consultant delivers to City pursuant to this Agreement shall be prepared in a substantial, workmanlike 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.

24. 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.

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

26. Entire Agreement. 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.
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of ________, 2003.

CONSULTANT

By: ______________________  By: ______________________
    , Principal

Recommended by:

__________________________

I HEREBY APPROVE THIS EXPENDITURE AND CERTIFY THAT FUNDS ARE AVAILABLE FOR PAYMENT.

By: ______________________
    Finance Officer

Reviewed by: ______________________
    City Attorney