



Request for Proposal

**First Time Homebuyer Loan Program and Administration
Affordable Homeownership Program Development and Administration**

**Proposals Must be Received by:
August 2, 2024, 5:00 PM**

City of Newark

37101 Newark Boulevard
Newark, CA 94560

Point of Contact:

Steven Turner
Community Development Director
(510) 578-4208
steven.turner@newark.org

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I. INTRODUCTION

In 2020, the City of Newark initiated an effort to create and implement an Affordable Housing Work Plan consistent with the 2015-2023 Housing Element of the General Plan and incorporating priorities from community stakeholders, including City Councilmembers, Planning Commissioners, and Community Development Advisory Committee (CDAC) members. City staff and a consultant team prepared a work plan to respond directly to these needs and priorities. In May 2021, the City Council approved by resolution (Resolution No. 11201) the 2021-2023 Affordable Housing Work Plan (Work Plan) to supplement the City's current policies and create a number of new programs to proactively meet housing needs for all segments of the Newark community. Included in the adopted Work Plan is a program to develop recommendations for a First Time Homebuyer Loan Program.

In 2023, the City Council adopted the 2023-2301 Housing Element (Housing Element), which was subsequently certified by the State of California's Department of Housing and Community Development. The Housing Element contains goals, policies, and programs to increase access to affordable housing and bring homeownership within reach for Newark residents, particularly for first time homebuyers. Housing Element Program 5.1 specifically addresses the efforts for first time homebuyer assistance:

Program H5.1 - First Time Homebuyer Assistance

Bring homeownership within reach for Newark residents. Develop a BMR [below market rate, or affordable] homeownership program, and down payment assistance programs, with a focus on first time homebuyers and BIPOC residents with low homeownership rates. The City will participate in the Alameda County Housing & Community Development Department Mortgage Credit Certificate (MCC) and Down Payment Assistance (DPA) programs to provide down payment assistance to expand homeownership opportunities in Newark. Down payment assistance funds provided by the County may be used to leverage monies from other grants to provide additional assistance with the intent to make homeownership more attainable for families.

For many years, Newark has collected impact fees for the development of affordable housing. Recently, over \$20 million in impact fees have been invested into residential rental project projects that have or will produce over 250 units of affordable housing. Currently, there are no deed-restricted for-sale affordable units in Newark. However, later in 2024, the City Council will consider an ordinance that would shift the housing impact requirement from a fee to an inclusionary requirement that incentivizes the provision of units rather than the payment of a fee. This change, along with specific residential projects currently under review, is expected to produce the city's first deed-restricted, for-sale affordable housing units. The city lacks the organizational infrastructure to manage for-sale affordable units. The city seeks a partner to help establish and maintain a program for a portfolio of first-time homebuyer downpayment assistance loans, as well as affordable, for-sale Below Market-Rate (BMR) inclusionary housing units.

The City of Newark

The City of Newark is a growing, vibrant, multicultural city with a high quality of life, a diverse commercial and business sector, and an inclusive community character. The City is committed to ensuring that all current and future residents continue to enjoy Newark's distinctive community character through the implementation of policies and programs that provide all residents access to housing that meets the full range of household and community needs.

Newark is located in Southern Alameda County at the east end of the Dumbarton Bridge, 30 miles south of Oakland and 15 miles north of San Jose. Newark was incorporated as a General Law City in 1955 and has a Council/Manager form of government. Newark's population is approximately 50,000, with an encompassed area of approximately 13 square miles.

II. BACKGROUND/OVERVIEW OF DESIRED SERVICES

Newark is seeking the services of a professional service provider ("Firm") to assist the City in both developing a comprehensive affordable homeownership program and implementing the program in partnership with City staff.

There will be three distinct components of the scope of work, as follows:

- 1) Designing and administering a first-time homebuyer down payment assistance program.
- 2) Providing technical assistance for the development of program guidelines for deed-restricted below-market rate (BMR) homeownership units in new projects developed under regulatory agreements with the City (both presently and in the future with the adoption of an inclusionary housing program).
- 3) Program administration, including asset management activities such as monitoring and ensuring compliance with affordable homeownership deed restrictions.

The scope of services will entail the following general responsibilities for the selected firm:

- Managing the sale and resale of Below Market Rate (BMR) homeowner units
- Processing BMR Homeownership and Down Payment Assistance applications
- Processing requests for homeowner loan payoffs and subordinations
- Monitoring owner occupancy requirements
- Provide training and technical assistance on BMR requirements to both developers and homebuyers
- Monitor the BMR Homeownership portfolio and provide foreclosure prevention referrals to homeowners and recommendations on asset retention to the City
- Responding to inquiries, maintaining records and resolving questions and issues that arise during program operation.
- Semi-annual activity accounting in the form of written reports with data to city staff.

- Regular review of all deed-restricted unit documentation (title reports, etc) for any changes that could affect the BMR unit status.
- Participate in public meetings and community meetings, as requested (up to 20 hours per year)
- On an ongoing basis, monitor relevant legislation, programs and funding opportunities at the State and local levels.

City and Staff’s General Responsibilities:

- Maintain BMR program awareness within the Newark community; conduct informational campaigns with the Firm, maintain a database of interested homebuyers.
- Prepare regular reports and presentations to the city manager and city council
- Serve as program contract administrator; Community Development Department staff will be the point of contact with the Firm.
- At time of BMR unit sale, conduct unit inspections for health and safety/building code compliance

The Firm should have a background in administering similar BMR homeowner programs for municipalities and should be able to commence work for the City in August 2024.

Assumptions Regarding Size of Loan and Unit Portfolio

Newark currently has zero (0) deed-restricted, for-sale BMR homeownership units as of the release of this RFP. Newark’s first residential project with deed-restricted units is under review. If approved and constructed, these units could become available in 2026-2027. It is expected that the Firm selected to implement the scope of services below will be responsible for managing the portfolio of both first-time homebuyer loans and deed-restricted BMR units as it evolves. In any given year, the number of loans is expected to not exceed 5-10 loans. The number of new deed-restricted units per year with regulatory agreements depends upon the development pipeline. The City and the Firm will periodically review the portfolio’s growth and reassess the Firm’s capacity and budget to accommodate the portfolio and related program administration as new loans and units are added.

III. SCOPE OF SERVICES

Split across two distinct phases for program development and program implementation, the following scope of services is intended to provide information to proposing firms regarding the expectations of the City. As such, it is only a template and firms are encouraged to develop their own proposed scope of work to accurately communicate the proposed tasks and deliverables. Firms are also encouraged to consider creative approaches with the aim of effective service delivery to the City and those that utilize the BMR Homeownership Programs.

PHASE I: PROGRAM DEVELOPMENT

TASK 1: Develop First-time Homebuyer Down Payment Loan Program and Program Guidelines for Deed-Restricted BMR Homeownership Units

1.1 Develop First Time Homebuyer Down Payment Loan Program

Based on accepted best practices and taking into account the City's budgetary and policy context and regional resources and/or programs that may be available, the Firm will develop detailed program guidelines and an application process for a down payment assistance loan program. Respondents to this RFP are encouraged to provide a detailed approach for this task.

1.2 Design Program Guidelines for Deed Restricted BMR Homeownership Units

In parallel with developing the first time home buyer loan program, the selected consulting firm will work with City staff to develop detailed program guidelines for the City's BMR homeownership program. This will include but not be limited to the following key components:

- 1) Detailed program guidelines for the BMR homeownership program, including any related regulatory requirements.
- 2) Homebuyer application process and related program materials.
- 3) Resale process and requirements.
- 4) Portfolio management system.

As with the first time buyer loan program task, respondents are encouraged to leverage their expertise and knowledge of best practices in providing a detailed approach to this task.

PHASE II: PROGRAM IMPLEMENTATION

TASK 2: GENERAL PROGRAM ADMINISTRATION

2.1 Public Information

Firm will respond regularly to inquiries regarding the City's homebuyer loan and BMR homeownership units, received by telephone, mail, website, referral, and email. In addition, Firm will distribute program information to all interested parties. This information includes but is not limited to brochures, applications, program guidelines, and information regarding homebuyer education classes. City staff will maintain BMR program awareness within the Newark community and conduct informational campaigns. The City and Firm will maintain a single database of interested homeowners. The Firm may participate in community events and information sessions as requested by the City.

The Firm will also provide periodic training and technical assistance on BMR requirements to both developers and homebuyers.

2.2 Records Management

Firm will maintain detailed records on the following information:

- Number of loans requested, approved, funded, and denied
- Loan recipients and units purchased

- Marketing activities
- Participant information and correspondence
- Copies of publicly available ownership records and property information

Firm will prepare reports or memorandums summarizing the above information semi- annually or upon request of City staff. Firm will maintain complete and accurate files, including paper and digital files. This will include scanning, printing and organizing. Firm will track relevant information on each file and update databases regularly.

TASK 3: FIRST-TIME HOMEBUYER DOWN PAYMENT LOAN PROGRAM MANAGEMENT

4.1 Homebuyer Application Processing

Firm will review all loan program applications and provide the City with a recommendation for approval or rejection based on current best practices standards. For approved applicants, Firm will prepare the necessary information and documentation, and provide it to the City for execution and to the escrow officer in a timely manner to ensure a successful closing.

4.2 First Time Homebuyer Loan Closings

Firm will work directly with potentially eligible loan program applicants, as well as with other parties to the potential transaction including real estate agents, lenders, mortgage brokers, and/or contractors, to facilitate the closing of City loans. Firm will work proactively throughout the process to identify and resolve any potential problems.

TASK 4: BMR HOMEOWNERSHIP PROGRAM MANAGEMENT

5.1 Sale and Resale Management

Firm will coordinate with developers for initial sales and BMR homeowners interested in selling their BMR unit to ensure that the listing, marketing, and sale comply with the program guidelines. Firm will calculate the maximum resale price, which may include an allowance for capital improvements, review the listing agreement, authorize the MLS listing of the home, and conduct an inspection of the BMR unit to ensure that the home is in good repair and clean, ensure the marketing guidelines are followed, and coordinate with the homeowner, real estate agent, and title company on the sale of the house.

5.2 Purchaser Eligibility Review

Firm will review applications for the purchase of BMR units to determine the household's eligibility. Firm will work directly with applicants, as well as with their real estate agent, lender, and/or mortgage broker, during the application period and throughout the transaction to facilitate the close of escrow. Firm will work proactively with all parties to identify and resolve any issues and will maintain the necessary information and documentation and provide it to the escrow officer in a timely manner to ensure a timely closing.

5.3 Purchaser Selection Process and Implementation

Firm will work with City to establish and implement a purchaser selection process to market, screen, and select eligible buyers in line with City priorities.

TASK 5: ASSET MANAGEMENT – ALL AFFORDABLE HOMEOWNER PROGRAMS

4.1 Loan Portfolio Management

Firm will process requests related to existing program assets, including BMR units and outstanding loans. Requests may include, but are not limited to:

- Capital improvement credits
- Loan retirements and repayments
- Reconveyances/quit claims
- Subordination
- Trusts

Note: Once the program has been initiated, the City anticipates processing on average five (5) transactions annually, however, this does not include requests that are initiated but not completed by the homeowner.

4.2 Owner Occupancy Monitoring

Firm will monitor owner-occupancy requirements for the housing programs, as applicable, and provide foreclosure prevention referrals to homeowners and recommendations on asset retention to the City. Firm will prepare demands for loan repayments and demands for the sale of non-owner occupied BMR units and will initiate foreclosure proceedings, if necessary, upon the direction of the City Staff.

IV. TERM OF SERVICE

Staff will recommend to the City Council that the selected firm will be retained by the City for a three (3) year term. The City reserves the right, at its sole discretion, to end the term of service or change the status and role for any firm selected pursuant to this Request for Proposals (“RFP” or “Request”), at any time prior to the expiration of the stated term of service with or without cause.

V. SUBMITTAL REQUIREMENTS

The following information must be submitted in the following order to be considered.

Tab 1 - Cover Letter

- Include a cover letter (limit to 1 page) stating that:
 - The information submitted in and with the proposal is true and accurate, and
 - The person signing the letter is authorized to submit the proposal on behalf of the Firm.

Tab 2 - Organization Background and Experience

- **Firm Information.** State full name and address of your firm and identify the parent company if you are a subsidiary. Specify the office that will perform, or assist in performing the work. Indicate whether you operate as a partnership, corporation, or sole proprietorship. Indicate where your company is headquartered and where incorporated as applicable. Provide the location(s), extent, and capabilities of the firm's offices and employees located in the San Francisco Bay Area. A brief description of your organization, its history and main areas of business.
- **Firm Qualifications and Experience.** Provide evidence of qualifications and experience of Firm in administering affordable homeowner and/or affordable rental housing programs that would be comparable.
- **References.** Provide names, addresses, telephone numbers and email addresses of up to three clients the City can contact concerning your firm's performance as administrator for similar affordable housing programs. List references for which you have acted as administrator, currently or in the past, including name, address, telephone number and contact person including email address.

Tab 3 - Staff Background and Experience

- Provide names and brief resumes of all key personnel who will be assigned to this project.

Tab 4 - Capacity and Approach

- **Office Location and Staffing Capacity.** Provide the location of the office that will administer the program. Identify the staff that will be assigned to this project, the other projects they are working on, and the time commitment they have to the other projects, if any. Provide the name, address, email and telephone number of the contact person in your firm authorized to negotiate agreement terms and render binding decisions on contract matters.
- **Work Plan.** Identify your approach and plan of action for performing the tasks outlined in Section III (Scope of Services), including the time needed to be acclimated with the various affordable housing programs, and the role and primary responsibilities assigned to each staff member. If the Firm intends to engage any sub-consultants to complete, please identify the sub-consultant and the responsibility they will have related to your work plan.
- **Conflict of Interest.** Identify any recent, present, or proposed work undertaken by the Firm, any subcontractor or subsidiary, or any other type of business or other relationship that could represent a potential, real, or perceived conflict of interest concerning this project. A conflict of interest could potentially, for instance, include current work under contract to a landowner or developer within the Newark sphere of influence.

Tab 5 - Budget

- Provide a total proposed not-to-exceed budget for all of the services described in this RFP and a cost breakdown per task for the initial term of the contract. Identify the hourly rate for each staff member assigned to the project. Provide a copy of a sample invoice that will be utilized for monthly billing.

- Budget should break out costs for initial program design and development separately from ongoing administration and monitoring.

VI. SELECTION CRITERIA AND SELECTION PROCESS WITH ESTIMATED DATES

Proposals will be screened and the top candidates may be interviewed by a selection committee. The qualifications for the top candidates will be verified and references will be checked. In reviewing the proposals, the City will carefully weigh:

- Firm’s understanding of the City’s desires and general approach to completing the work;
- Firm’s experience with contracts of similar scope, complexity and magnitude;
- Qualifications of the staff assigned to this project;
- Demonstrated ability of the Firm to perform high-quality work, control costs, and to meet time schedules;
- Satisfaction of previous clients, and
- Ability to work effectively with City staff.
- Proposed cost and rate schedule.

The City retains sole discretion to evaluate proposals and may make an award to the Firm. Receipt of proposals in response to this RFP does not obligate the City in any way to engage any Firm, and the City reserves the right to reject any or all proposals, wholly or in part, at any time, without penalty. The City shall retain the right to abandon the proposal process at any time prior to the actual execution of a contract with a Firm, and the City shall bear no financial or other responsibility in the event of such abandonment. The City reserves the right to negotiate all final terms and conditions of any agreements entered into.

The City’s target dates are as follows:

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|--------------------------------------|------------------------------|
| • Release of RFP: | June 14, 2024 |
| • Questions due: | July 3, 2024 |
| • Q&A session (Zoom): | July 12, 2024 |
| • Q&A published: | July 18, 2024 |
| • RFP responses due: | August 2, 2024 |
| • Interviews (at City’s discretion): | Week of August 18, 2024, TBD |
| • Services Agreement Contract award: | September 2024 |

VII. SUBMITTAL GUIDELINES

Firms shall email an electronic copy of their proposal to **Steven Turner, Community Development Director (steven.turner@newark.org)**, with the subject line reading “City of Newark – Proposal for First Time Homebuyer Loan Program and Administration and Affordable Homeownership Program Development and Administration” by **August 2, 2024, at 5:00 PM**

Any changes made by the City to the requirements in this RFP will be made by written addenda.

Any written addenda issued to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The City will not be bound by any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions.

The City reserves the right to revise or withdraw this RFP at any time and for any reason.

The City reserves the right to reject any and all proposals, to waive any minor informalities, irregularities, and/or non-responsiveness that do not influence the competitive nature of the

All inquiries regarding the RFP should be directed to Community Development Director Steven Turner by email at steven.turner@newark.org or by telephone at 510-578-4208.

An optional Q&A session on Zoom will be held on July 12, 2024. Please send an email with a request to participate in the Zoom session to Steven Turner (steven.turner@newark.org).

VIII. ADDITIONAL SUBMITTAL INFORMATION

All costs incurred during proposal preparation or in any way associated with a firm's preparations, submission, presentation, or oral interview, if held, shall be the sole responsibility of the firm.

If awarded a contract, the Firm shall maintain insurance coverage, including errors and omissions and worker's compensation, reflecting the minimum amounts and conditions specified by the City as outlined in the attached Contractual Services Agreement. Firms are liable for all errors or omissions contained in the submittal. By submitting a proposal, interested firms represent that they: (1) have thoroughly examined and become familiar with the work required under this RFP; (2) comprehend all conditions that may impact the requested scope of services; (3) have reviewed of all addenda, if any, and (4) are capable of providing the equipment, goods and services necessary to perform the requested scope of services and/or meet the specifications outlined in this RFP, in a manner that meets the City's objectives. Failure to examine the documents and inform itself shall be at firm's own risk. A Proposer shall have no claim against the City based upon ignorance of or misunderstanding of the RFP documents.

Once the award has been made, failure of a firm to have read all of the conditions and instructions of the RFP and/or the Agreement shall not be cause to alter any term of the Agreement nor shall such failure provide valid grounds for a firm to withdraw its proposal or to seek additional compensation.

Additionally, if awarded a contract, the Firm shall maintain a valid City of Newark business license at all times during the performance of work under the contract.

All proposals and rates set forth therein shall be deemed to include applicable taxes. Interested firms shall be appropriately licensed in accordance with the laws of the State of California for the work to be performed. The cost for any required licenses or permits shall be the responsibility of the selected firm(s). The selected firm(s) is liable for any and all taxes due as a result of the agreement.

Attachment A

**City of Newark
Standard Services Agreement**

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter “Agreement”) is made and entered into this ___ day of [Month, Year] by and between the **CITY OF NEWARK**, a municipal corporation (“City”), and [**INSERT** name of business and description of legal entity, i.e., LLC, Partnership, Corporation, etc.], (“Consultant”), collectively the “Parties”.

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: [**INSERT**describe services]

WHEREAS, in response to City’s request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit “A” (“Services”), in return for the compensation described in this Agreement and Exhibit “B”.

WHEREAS, in reliance upon Consultant’s documentation of its qualifications, as set forth in Exhibit “C”, City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

CONSULTANT’S SERVICES. Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit “A” in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit “A”, the Agreement shall control.

TIME FOR PERFORMANCE. Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit “A”; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant’s work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant’s officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City’s performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant’s performance must be governed by sound professional practices.

COMPENSATION.

“Not to Exceed” Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant’s hourly or other rates set forth in Exhibit “B”. The payments specified in Exhibit “B” shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum \$[**INSERT**] unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services or incurring such costs and expenses by City, evidenced in writing authorizing such additional amount.

Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant’s billing rates (set forth on Exhibit “B” hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit “B”; or, if no manner is specified in Exhibit “B”, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

Payment. Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit “B”, for Services, which are performed in accordance with this Agreement to the satisfaction of City.

Consultant’s Failure to Perform. In the event that Consultant performs Services that do not comply with the requirements of this Agreement, Consultant shall, upon receipt of written notice from City, re-perform the services (without additional compensation to Consultant). If Consultant’s failure to perform in accordance with this Agreement causes damages to City, Consultant shall reimburse City for the damages incurred (which may be charged as an offset to Consultant’s payment).

ADDITIONAL SERVICES. In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

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

PERSONNEL. Consultant understands that, in entering into this Agreement, City has relied upon Consultant's ability to perform in accordance with its representations regarding the qualifications of Consultant, including the qualifications of its Authorized Representative, its designated personnel, and its Subconsultants, if any, identified in Exhibit "C". Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or Subconsultants identified in Exhibit "C", without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

Consultant agrees to include with all Subconsultants in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subconsultant's work. Subconsultants hired by Consultant agree to be bound to Consultant and City in the same manner and to the same extent as Consultant is bound to City under this Agreement. Subconsultant further agrees to include these same provisions with any Sub-subconsultant. A copy of this Agreement's Indemnity and Insurance provisions will be furnished to the Subconsultant upon request. The Consultant shall require all Sub-subconsultants to provide a valid certificate of insurance and the required endorsements included in this Agreement prior to commencement of any Services and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or Subconsultants, Consultant shall, immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

FACILITIES AND EQUIPMENT. Consultant shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing Services.

INFORMATION AND DOCUMENTATION.

Information from City. City has made an effort to provide Consultant with all information necessary for Consultant's performance of Services. If Consultant believes additional information is required, Consultant shall promptly notify City and City will provide to Consultant all relevant non-privileged information in City's possession.

Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

Ownership of Work Product. All original documents prepared by Consultant (including its employees and subconsultants) for this Agreement ("Work Product"), whether complete or in progress, are the property of City and shall be given to City at the completion of Consultant's Services, or upon demand of City. Consultant shall have a right to make and keep copies of the Work Product except for any confidential information. Consultant shall not reveal the Work Product or the confidential information contained in the Work Product, or make it available, to any third party without the prior written consent of City.

CONFLICTS OF INTEREST PROHIBITED. Consultant (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Consultant shall comply with all requirements of the Political Reform Act (California Government Code Section 81000, *et seq.*) and other laws relating to conflicts of interest, including: (a) Consultant shall not make or participate in a decision made by City if it is reasonably foreseeable that the decision may have a material effect on Consultant's economic interest, and (b) if required by law, Consultant shall file financial disclosure forms with the City Clerk. If Consultant maintains or acquires a conflicting interest, any contract with City (including this Agreement) involving Consultant's conflicting interest may be terminated by City.

NONDISCRIMINATION. Consultant shall comply with all applicable federal, state, and local laws regarding nondiscriminatory employment practices, whether or not said laws are expressly stated in this Agreement. Consultant shall not discriminate against any employee or applicant because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, sex, age, or any other basis, as defined in California Civil Code Section 51.

COMPLIANCE WITH LAW AND STANDARD OF CARE. Consultant shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Consultant shall perform Services using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Consultant, performing under circumstances similar to those required by this Agreement.

RESERVED.

RESERVED.

INSURANCE. Consultant shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Consultant, his agents, representatives, subconsultants, or employees.

Verification of Coverage.

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language 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 City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

CITY OF NEWARK
Attn: Risk Manager
37101 Newark Boulevard
Newark, CA 94560

City reserves the right to require and obtain complete, certified copies of all required insurance policies and endorsements at any time. Failure to exercise this right at any time shall not constitute a waiver of right to exercise later. Consultant shall immediately furnish City with certificates of renewal for each policy that is renewed during the term of this Agreement.

Minimum Scope of Insurance.

Coverage shall be at least as broad as:

Insurance Services Office Form Number CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising injury; and

Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: **\$2,000,000** per occurrence for (including products and completed operations, property damage, bodily injury, and personal and advertising injury) bodily injury, personal injury, and property damage. If a general aggregate limit applies, 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** per accident for bodily injury and property damage.
3. Employer’s Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim; **\$2,000,000** aggregate.

Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers, or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

Claims Made Policies.

For all “claims made” coverage, in the event that Consultant changes insurance carriers Consultant shall purchase “tail” coverage or otherwise provide for continuous coverage covering the Term of this Agreement and not less than five (5) years thereafter. Proof of such “tail” or other continuous coverage shall be required at any time that the Consultant changes to a new carrier.

Wasting Policies.

No policy required by this paragraph 14 shall include a “wasting” policy limit (ie. limit that is eroded by the cost of defense).

Remedies.

In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant’s breach:

1. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
3. Terminate this Agreement.

Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City Risk Manager. All insurance companies providing coverage to Consultant shall be insurance organizations authorized by the Insurance Commissioner of the State of California to transact the business of insurance in the State of California.

Other Insurance Provisions.

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

Additional Insureds. City, its officers, officials, directors, employees and volunteers (“Additional Insureds”) are to be covered as insureds with respect to liability arising out of work or operations performed by or on behalf of Consultant; including materials, parts or equipment furnished in connection with such work or operations.

Primary Coverage. For any claims related to Services, Consultant’s insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant’s insurance and shall not be contribute with it. Consultant’s policy will not seek contribution from the City’s insurance or self-insurance.

Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled during the term of this Agreement without notice to City.

Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

Deductibles and Self-Insured Retentions (SIR). All deductibles and self-insured retentions must be disclosed to the City Risk Manager for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied by either the named Insured or the City.

Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of

alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Consultant or any employee, agent, or subconsultant of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of Services or the termination of this contract. The provisions of this paragraph are not limited by and do not affect the provisions of this contract relating to insurance.

Consultant/Subconsultant's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement.

LICENSES, PERMITS, ETC. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

TERM/TERMINATION.

The term of this Agreement shall commence upon the date first hereinabove written and shall expire upon completion of performance of Services hereunder by Consultant.

Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

CONTRACT ADMINISTRATION. This Agreement shall be administered by of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

NOTICES. Written notices required or convenient hereunder shall be delivered personally or by depositing the same with the United States Postal Service, first class (or equivalent) postage prepaid and addressed, in the case of Consultant, to:

CITY OF NEWARK

Consultant

Address: _____

Administrator

City of Newark
Attn:
37101 Newark Boulevard
Newark, CA 94560

PARAGRAPH HEADINGS. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

EXHIBITS. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the Parties' intent under this Agreement.

GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

ATTORNEY'S FEES. In the event any legal action is commenced to enforce this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred.

ASSIGNABILITY. Neither Consultant nor City shall subconsult, assign, sell, mortgage, hypothecate, or otherwise transfer their respective interests or obligations in this Agreement without the express prior written consent of the non-transferring party.

MODIFICATIONS. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both Parties.

WAIVERS. Waiver of breach or default under this Agreement shall not constitute a continuing waiver of a subsequent breach of the same or any other provision of this Agreement.

ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the Services. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

SIGNATURES. The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of Consultant and City. This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

COVENANT AGAINST CONTINGENT FEES. Consultant hereby warrants that Consultant has not employed or retained any company or person, other than a *bona fide* employee working for Consultant, to solicit or secure this Agreement, and Consultant has not paid or agreed to pay any company or person, other than a *bona fide* employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon or resulting from the award or formation of this Agreement. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at City's discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF NEWARK,
a municipal corporation

CITY OF NEWARK, a municipal corporation

CONSULTANT

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

ATTEST:

By: _____
By: Sheila Harrington
Title: City Clerk
Date: _____

APPROVED AS TO FORM:

By: _____
By: Kristopher Kokotaylo
Title: City Attorney

EXHIBIT A

SCOPE OF SERVICES

This Scope of Services, Exhibit “A,” is hereby incorporated by reference into the Agreement, under Agreement Paragraph 1.

EXHIBIT B

COMPENSATION

This compensation schedule, Exhibit “B,” is hereby incorporated by reference into the Agreement, under Agreement Paragraph 3.

For all services identified in Exhibit “A”, Scope of Services, the City agrees to pay, and Consultant agrees to accept as total compensation the following:

EXHIBIT C
QUALIFICATIONS

These Consultant Qualifications, Exhibit “C,” are incorporated by reference into the Agreement, under Agreement Paragraph 6.