

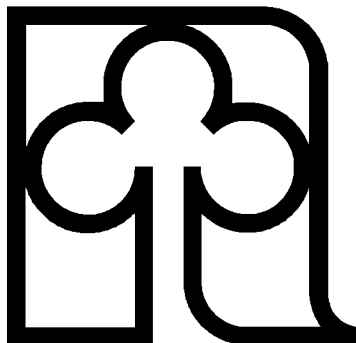
CITY OF NEWARK

REQUEST FOR PROPOSALS

For

PROJECT 884C: DOCUMENT SCANNING SERVICES

Date of Issuance: February 7, 2019



PROPOSAL DEADLINE: February 26, 2019 before 2:00 p.m.
LOCATION: 37101 Newark Blvd, 1st Floor, Cashier Counter, Newark, Ca 94560

1.00 Overview and General Instructions to Bidder

The City of Newark invites your company to submit a written proposal to provide ongoing document conversion services to the City of Newark. The conversion product and output must be fully compatible with the City's existing LaserficheNT 10.3 (client-server) document management and retrieval system.

The proposal should strictly follow the guidelines set herein and clearly demonstrate how the document conversion services that your company proposes can best satisfy the requirements of the City of Newark. This written Request for Proposal (RFP) states the City's requirements and specifies the rules for preparing the proposal.

The City may also require optical character recognition (OCR), indexing, and/or expedited processing services related to some or all of the documents to be converted. Specific processing and treatment instructions for the various document sizes will be determined in consultation with the winning bidder.

1.01 Inquiries from Bidders

Bidders may submit inquiries or request clarifications in writing (email preferred) no later than 4 p.m. on February 20, 2019. The answers to all such inquiries will be distributed to all bidders via e-mail only.

Inquiries should be directed to the Project Manager:

Sheila Harrington
City Clerk
City of Newark
37101 Newark Blvd, 5th Floor
Newark, CA 94560
510-578-4266 voice
Sheila.Harrington@newark.org

Bidders are expressly instructed that the above City contact is the only authorized source of information. Unauthorized contact with any other City personnel may result in immediate disqualification of the bidder.

Information regarding the LaserficheNT document management and retrieval system can also be found at www.laserfiche.com.

1.02 Delivery of Proposals

Bidders are instructed to deliver **two (2) hardcopies** of their response to this RFP **no later than 2:00 p.m. on Tuesday, February 26, 2019** to:

City Clerk
City of Newark
37101 Newark Blvd., 1st Floor Cashier Counter
Newark, CA 94560-3796

All responses must be sealed and clearly marked "PROPOSAL – DOCUMENT SCANNING SERVICES" and include on the cover your company name. Proposals may not be submitted electronically.

1.03 Proposal Duration

Proposals submitted in response to this RFP must be valid for a minimum period of ninety (90) days, and must be so marked.

1.04 Prime Vendor Responsibility

This RFP shall require the successful bidder to supply ongoing document scanning services to the City of Newark.

Prime vendor responsibility requires that the successful bidder be responsible for the complete conversion process, including, but not limited to pickup, delivery, preparation, conversion, OCR, indexing, compatibility, and electronic import.

If multiple vendors wish to jointly propose a solution, the vendor that will be completely and ultimately responsible for service delivery must be clearly specified in the proposal.

1.05 Existing System

The services proposed must be in operation today in a production environment for public agencies similar in size, purpose, and environment to the City of Newark. "Beta", "test" or "under development" systems or services may not be proposed.

Bidders must describe at least three (3) client agencies that contract or contracted for the same or similar services, using the same vendor(s) and types of equipment as proposed. Reference agencies similar in size, purpose, and environment to the City of Newark are preferred. Bidders must submit a list of these customers, including specific contact information, with the proposal.

1.06 Alternates

In parts of the Specifications (Section 4.00 below), where deviations may result in lower cost and/or improved performance, bidders are encouraged to describe, in writing, services in full agreement with the Specifications as well as a suggested alternate in sufficient detail to permit

evaluation. Bidders must explain why the alternate proposal will provide equivalent or improved performance and/or lower cost.

The description of the alternate and the price effect of the alternate should be described as an additional option.

1.07 Criteria for Selection

The City will evaluate proposals on a variety of quantitative and qualitative criteria.

The criteria upon which the evaluation of proposals will be based include, but is not limited to, the following:

- A. Adherence of the proposal to the guidelines specified herein
- B. Completeness of the proposal
- C. Experience and technical expertise of the vendor's staff
- D. Quality and depth of references
- E. Experience working with public agencies
- F. Quality of service and responsiveness the vendor commits to provide
- G. Financial stability and resources of the vendor
- H. Willingness and ability to negotiate a contract acceptable to the City.

The City's standard Contractual Services Agreement is attached, as Exhibit A, for review.

Before the bid is formally awarded, the selected bidder may be asked to give a presentation and/or the City may further request an initial test run of document conversion in order to evaluate the process and quality of the services rendered. The cost for this test run will be paid for by the City at the rate(s) outlined in the bidder's proposal.

1.08 Award of Contract

The award of a Contract shall be at the sole discretion of the City. The City retains the right to accept or reject any or all proposals in whole or in part, to modify the RFP, to make changes in the evaluation criteria, to weigh the evaluation criteria in an appropriate manner, and to negotiate final contract terms with any selected bidder.

It is anticipated that, following the completion of the negotiation process, a contract will be awarded to the successful bidder. The contents of the proposal of the selected vendor will serve as the basis for the contractual obligation. However, no work is to begin, nor is the City of Newark liable for any costs whatsoever, until the contract has been duly signed and certified by the appropriate parties.

2.00 Background and Operating Environment

A LaserficheNT 10.3 (client-server) document management and retrieval system currently serves all City departments. Laserfiche was implemented in 2002. Documents have been scanned directly into the system by a few departments and vendors have been used to scan and import historical documents and ongoing documents. These electronic documents may be accessed at workstations throughout the City based on security permission.

The Public Works, Fire and Community Development Departments have ongoing scanning and conversion needs. The vendor would pick up records a few times a year. Document sizes of 8 ½" x 11", 11" x 17" and 24" x 32" are what the departments typically send out.

2.01 Physical Environment

The City Administration Building, located at 37101 Newark Boulevard is where the majority of physical file storage is located. This is where the documents will be picked up and delivered.

2.02 Computing Environment

The existing LaserficheNT 10.3 (client-server) document management and retrieval system runs on a Microsoft Windows 2012 (MSSQL) server. Information regarding the LaserficheNT system can be found at www.laserfiche.com. Administration and security of the LaserficheNT document management and retrieval system is the responsibility of the City. Ensuring the successful compatibility and import of converted documents into the City's LaserficheNT system is the responsibility of the bidder.

3.00 Proposal Preparation

Section 4.00 Specifications below contains the requirements for the document scanning services sought by the City. Please address each requirement as completely and specifically as possible according to the directions provided. Be sure to include clear and detailed notes wherever further explanation of a response is necessary.

Section 4.01 Pricing and Costs below contains requirements for price quotes for various conversion and related services regarding various document and microfilm types, sizes, and formats. Provide detailed and specific pricing information for all conversion and related services for all document and film types, sizes, and formats indicated.

Failure to submit a complete proposal, including all service specifications and price quote information requested herein, may result in the disqualification of the proposal.

3.01 Proprietary Information

Any information contained in a bid that is considered proprietary by the bidder shall be clearly marked as such. Information not marked as proprietary will be considered public or generally available commercial or technical data.

3.02 Costs of Proposal Preparation

All costs incurred in the preparation of a proposal including, but not limited to, labor, travel and incidental expenses are the complete responsibility of the bidder.

3.03 Modification or Withdrawal of Proposals

Modifications to, or withdrawal of, proposals that have been submitted may take place without hindrance, at any time up to the deadline for proposal submission. After this time, no modifications to a submission may be made for any reason whatsoever.

4.00 Specifications

Proposals must provide the following information and acknowledge the following requirements:

Please indicate the designated account or project manager for this proposal:

NAME:

TITLE:

ORGANIZATION:

ADDRESS:

PHONE:

EMAIL:

If the proposal includes multiple vendors, indicate the primary vendor responsible for the overall service delivery. **PRIMARY VENDOR:**

If using subvendors, identify their specific responsibilities.

Indicate in the proposal that you have read and acknowledge the following statements:

- This RFP is for ongoing document scanning services.
- All documents removed from City facilities must be inventoried and accounted for using a mutually agreed upon auditing process.
- Unless otherwise specified by an authorized representative of the City, all scanned documents are to be returned to the City of Newark after conversion.
- Specific document indexing, OCR, and processing time criteria and instructions will be determined after the bid is awarded and in consultation with the winning bidder.
- Conversion output must be fully compatible with the City's existing LaserficheNT document management and retrieval system.

Provide a statement of qualifications and experience in conversion processes, imaging, and scanning, including any expertise related to LaserficheNT.

Provide a concise statement of understanding of the project and how the project will be accomplished. Clearly indicate the technical approach for the performance of these services.

Provide a concise statement of the vendor's proposed process for all steps of this process from picking up the documents to the final import into the LaserficheNT system, including expectations of the services and data to be provided by City staff. Address how you will ensure the security of documents while in your possession.

Detail any other important considerations that may not be addressed by the requirements specified in this RFP.

Provide contact information for at least three client agencies that contracted for the same or similar services, using the same vendor(s) and types of equipment as proposed. Reference agencies similar in size, purpose, and environment to the City of Newark are preferred.

ORGANIZATION:

CONTACT NAME:

CONTACT TITLE:

ADDRESS:

PHONE:

EMAIL:

BRIEF PROJECT DESCRIPTION:

Detail any objections or required amendments or modifications to the City's standard Contractual Services Agreement, attached as Exhibit A.

Indicate the expiration date for your proposal. Proposals must be valid for a minimum of ninety (90) days. **PROPOSAL EXPIRES:**

4.01 Pricing and Costs

Using the spreadsheet below (or similar format), quote all services and formats specified per specific unit, as shown in the example entry. Be sure to include any price incentives by volume (e.g., quantity breaks), where applicable.

In the case of some documents, the City may require the quickest possible pickup, processing and delivery schedule from potential bidders. For each document type (and using the sample quantity of 10,000 units), please specify the quickest possible turnaround time to which your company will commit.

Also include any general costs not directly associated with each image but part of the overall costs (travel costs, postage costs, materials costs, etc.). All costs associated with this proposal must be identified within the proposal.

Service	Format/dpi	Unit Cost	Unit Description	Volume Incentives	Best Turnaround Time (10,000 units)	Notes
<i>Scanning Example</i>	<i>8.5"x11" 200dpi</i>	<i>0.054</i>	<i>per page</i>	<i>.051 after 10,000 pages 0.49 after 40,000 pages</i>	<i>10 business days total</i>	<i>Example</i>
Document Pickup and Delivery						
Document Preparation and Restoration						
Scanning	8.5"x11" 8.5"x14" 11"x17"					
Engineering Scanning	A Size B Size C Size D Size E Size					
Indexing						
Media how will the files be transferred for import and indicate image file type						

Exhibit A

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this day of _____, 20____ by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and _____, a [Enter business type here] ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: Ongoing Document Scanning and Conversion Services Project 884C.

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:

1. 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.

2. 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.

3. COMPENSATION.

A. “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 of Dollars (\$) 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.

B. 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: City Clerk
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.

C. 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.

D. 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).

4. 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.

5. 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.

6. 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.

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

8. INFORMATION AND DOCUMENTATION.

A. 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.

B. 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.

C. 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.

9. 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.

10. 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.

11. 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.

12. 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.

A. 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.

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. 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
2. 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
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and
4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. 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 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.
(including products and completed operations, property damage, bodily injury, and personal and advertising injury)
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.

D. 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.

E. 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.

F. Wasting Policies.

No policy required by this paragraph 12 shall include a “wasting” policy limit (ie. limit that is eroded by the cost of defense).

G. 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.

H. 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.

I. Other Insurance Provisions.

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

1. 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.
2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 12 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.

9. 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".

13. 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 18, hereinbelow) 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.

14. 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.

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.

15. 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.

16. TERM/TERMINATION.

A. 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.

B. Notwithstanding the provisions of paragraph 16 Section A above, either party may terminate this Agreement without cause by giving written notice thereof not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. 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.

17. CONTRACT ADMINISTRATION. This Agreement shall be administered by Sheila Harrington, City Clerk of the City of Newark (“Administrator”). All correspondence shall be directed to or through the Administrator or his/her designee.

18. 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

SHEILA HARRINGTON
Administrator

Address: _____

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

19. 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.

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

21. 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.

22. 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.

23. 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.

24. 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.

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

26. 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.

27. 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.

28. 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.

29. 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

By _____
City of Newark

By _____
Consultant

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

EXHIBIT B

PAYMENT

EXHIBIT C
QUALIFICATIONS