



## **REQUEST FOR PROPOSALS**

**Environmental Review Services for a Development Project  
Proposed at 5222 Newpark Plaza**

**PROPOSALS MUST BE RECEIVED VIA EMAIL BY:**

**FRIDAY, OCTOBER 20, 2023 at 5:00 PM**

**City of Newark**

Community Development  
37101 Newark Boulevard  
Newark, CA 94560

**Point of Contact:**

Carmelisa Lopez  
Senior Planner  
(510) 578-4215  
[carmelisa.lopez@newark.org](mailto:carmelisa.lopez@newark.org)

## **Environmental Review Services for a Development Project Proposed at 5222 Newpark Plaza**

### **1. INTRODUCTION**

The City of Newark (City) is seeking an experienced and qualified professional consultant and/or firm (Consultant) to provide environmental review services for a development project proposed at 5222 Newpark Plaza, Newark, CA 94560 (Assessor Parcel Number 901-111-5). The Consultant will be expected to act on behalf of, and as an extension to, City staff, serving in the best interests of the City and its residents.

### **2. BACKGROUND**

The City of Newark is located in Southern Alameda County at the east end of the Dumbarton Bridge, 30 miles south of Oakland 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 48,000, with an encompassed area of approximately 13 square miles. Other information regarding the City of Newark can be found on the City's website at [www.newark.org](http://www.newark.org).

The project is proposed on a 12.9-acre site located at 5222 Newpark Plaza in Newark, California and is bounded by Newpark Mall Road to the north, Balentine Drive to the northeast and southeast, Cedar Boulevard to the southwest, and a private property containing a commercial shopping center (5900 Newpark Mall Road) to the northwest. The site currently contains approximately 185,095 sq. ft. of retail space within three buildings that wrap around a large surface parking lot. Various commercial, school, and residential uses are located within the site vicinity. The site is zoned RC Regional Commercial and has a Regional Commercial designation in the City's General Plan. The site is also located within the Mixed Use II Area of the Greater NewPark Place Focus Area identified in the General Plan and is subject to the applicable regulations in the NewPark Place Specific Plan. A copy of the adopted Specific Plan can be viewed from the City's website at <http://www.newark.org/departments/community-development/specific-plans-master-plans/greater-newpark-master-plan>.



The City received an entitlement application for a mixed-use retail residential development. The developer proposes to demolish all existing buildings and site improvements and construct 1,000 residential units (20% of the units would be units affordable to low-income households) within three buildings that would each wrap around a parking structure and associated improvements. Two buildings would be four stories and one building would be five stories. Two buildings will include approximately 10,000 sq. ft. of ground-level retail space. The project does not comply with the Specific Plan because residential uses were not contemplated in the Mixed Use II area of the Greater NewPark Place Focus Area. The project would also exceed the residential development capacity analyzed in the Specific Plan.

Generally, the City has the ability to reject a proposed housing project that does not meet the City's adopted objective general plan, specific plan, or zoning standards. However, the City may not deny the project or condition it in a manner that makes it infeasible if the City does not have an adopted substantially compliant housing element and the project contains either 20% of units for low-income households or 100% of units for moderate or middle-income households. This limitation on a local jurisdiction's authority is commonly known as the "Builder's Remedy."

Since the City does not have an adopted substantially compliant housing element as of the submittal date of this application, the City must generally approve the project even if it is inconsistent with the City's adopted objective standards. However, the City may require the project to comply with applicable objective general plan, zoning, and subdivision standards and criteria, including design review standards as long as they do not make the project infeasible.

The project will therefore require a Design Review and a Tentative Map approval. The Zoning Code also requires an alternative means of compliance determination to allow the developer to provide on-site affordable rental units as an alternative to paying the Housing Impact Fee.

Since the project involves a discretionary decision, environmental review is required pursuant to the California Environmental Quality Act (CEQA), but some aspects of CEQA may be limited due to the Builder's Remedy. Staff will assist the selected Consultant with determining these limitations.

### **3. GENERAL**

The selected Consultant will work under the general direction of the Community Development Director or designee to perform services as they are required. Consultant selection will be at the sole discretion of the City.

The selected Consultant will enter into a Contractual Services Agreement which will specify the billing rates, personnel to be assigned, and other terms. No monthly retainer is anticipated.

The City understands the scope of services could change due to several factors such as, but not limited to, changes to the project description(s) and the CEQA requirements for the project. The selected Consultant shall consult with the City prior to submitting any amendment requests to the Contractual Services Agreement.

### **4. SCOPE OF SERVICES**

The scope of services from the selected Consultant will include, but is not limited to, the following:

### Task 1: Project Initiation and Management

- Kick-off meeting with City staff to discuss scope of services, CEQA analysis, issues, schedule, and budget.
- Review any background materials and information related to the project.
- Determine the environmental review process required for the project and prepare a project schedule.
- Provide recommendation to City staff on preparation of Initial Study.
- Ongoing meetings (in-person, virtually, or by phone) with City staff for check-ins, progress updates, and to gather information and address any concerns. Coordinate with external agencies and other interested parties as required.

### Task 2: Background Research and Preparation of Project Description

- Conduct a full review of all available information on the project site and vicinity including a records search of relevant documents, history, and past uses of the site, and all applicable regulations.
- Perform site visit(s) to document site conditions and identify any environmental resources or concerns that may be present.
- Identify any required reviews and approvals for environmental agencies or other applicable agencies.
- Prepare a CEQA-compliant project description that describes the proposed project.

### Task 3: Technical Studies

- Review all technical studies and reports prepared for the project to ensure the analyses are adequate for CEQA purposes, conclusions rely on sound assumptions, and that appropriate methodologies are utilized.
- Identify any revisions to the technical studies and reports required and any additional technical studies or reports required. Recommend peer review of any technical studies or reports if necessary.
- Integrate results of the technical studies into the CEQA document.

### Task 4: Administrative Draft and Public Review Draft of Initial Study (If Required)

- Conduct an Initial Study to determine if the project may have a significant effect on the environment.
- Prepare Administrative Draft and Public Review Draft for review by City staff.
- Address comments from City staff and incorporate revisions into applicable drafts. Prepare additional drafts prior to completion of the Public Draft if necessary.
- Prepare a Negative Declaration or Mitigation Negative Declaration for review by City staff.

### Task 5: Final Initial Study (If Required)

- Review and prepare responses to all comments received during public comment period.
- Prepare Final Initial Study for review by City staff.
- Address comments from City staff and incorporate revisions into the Final Initial Study. Prepare additional drafts prior to completion of the Final Initial if necessary.

### Task 6: Administrative Draft and Public Review Draft of Required CEQA Analysis

- Prepare the required CEQA analysis.

- Provide an Administrative Draft and Public Review Draft for the review of City staff.
- Address comments from City staff and incorporate revisions into applicable drafts. Prepare additional drafts prior to completion of the Public Review Draft if necessary.

#### Task 7: Final Draft of CEQA Analysis

- Review and prepare responses to all comments received on the Public Review Draft for the required CEQA analysis during the public comment period.
- Prepare Final Draft of the required CEQA Analysis for review by City staff.
- Address comments from City staff and incorporate revisions into the Final Draft. Prepare additional drafts prior to completion of the Final Draft if necessary.

#### Task 8: Mitigation Monitoring and Reporting

- Prepare a draft Mitigation Monitoring and Report Program (MMRP) for review by City staff.
- Address comments from City staff and incorporate revisions into the final MMRP.

#### Task 9: Administrative Responsibilities

- Perform all filing and notification requirements in accordance with the CEQA Guidelines and applicable City regulations including, but not limited to, mailings to the public and any required environmental agencies, and filing with the County Clerk and the State Clearinghouse.
- Perform all requirements for notifying environmental agencies, sending out referrals, and carrying out notifications such as, but not limited to, notifications in accordance with Assembly Bill (AB) 52 and SB 18.

#### Task 10: Public Meetings

- Attend all required public meetings including, but not limited to, scoping meetings and public hearings to receive comments on the CEQA analysis and for project approval in-person and/or virtually to assist City staff with any CEQA-related questions or concerns.
- Prepare staff reports for scoping meetings and public hearings to receive comments on the CEQA analysis.
- Assist City staff with preparation of public meetings.

### **5. QUALIFICATIONS**

The minimum qualifications of the selected Consultant shall include, but is not limited to, the following:

- i. Experience in Environmental Planning and CEQA – Strong background and experience in environmental planning, research and analysis, and ability to comprehend all CEQA regulations, requirements, and processes.
- ii. Communication and Schedules – Ability to communicate effectively, meet schedules and deadlines, coordinate activities with multiple parties, work closely and collaboratively with City staff, provide clear and comprehensive technical advice related to CEQA, and adhere to schedule limitations.
- iii. Presenting and Writing – Proficiency in writing detailed and thorough reports and documents with minimal oversight and presenting to decision-making bodies.

## 6. STATEMENT OF PROPOSAL FORMAT AND CONTENT

The proposal shall be brief, precise, and shall not include unnecessary promotional material. The proposal shall not exceed 15 pages, excluding resumes and example project write-ups which may be included as appendices.

The proposal should contain the following elements in the exact order and segmentation listed below:

- A. Cover Letter – Describe your firm’s interest and commitment in providing the requested services to the City. The letter shall be signed by a person authorized to negotiate a contract with the City.
- B. Project Approach & Understanding of Requested Services – Provide a detailed discussion demonstrating your firm’s understanding of the services to be provided and the approach by which your firm intends to perform the work set forth in the Scope of Services section above. The approach provided may elaborate on the tasks described above or identify additional or alternative tasks. Your firm may also identify any anticipated constraints, potential problems or issues that may occur during the execution of the required services and provide suggested approaches to resolving them.
- C. Experience Providing Similar Services – Present significant evidence of successful completion of similar services provided for local government clients over the past five years. Information shall include a description of the work performed by your firm, date of completion, and reference information (name of reference, agency, title, address, and telephone number). Example project write-ups may be included as an appendix.
- D. Staffing and Team Experience – Describe the qualifications and experience of your firm and the key staff expected to be assigned to this contract. Qualifications and experience shall highlight previous experience with similar projects. It is expected that designated key staff will remain on the contract for the duration of the agreement. Key staff substitution will only be allowed after consultation and concurrence with the City. Single page resumes of key staff members may be included as an appendix.
- E. References – Provide at least three (3) references including the name of reference, agency, title, address, and telephone number for recent similar or related work. If the references provided under Project Approach & Understanding of Requested Services are the same, a separate reference section is not required.
- F. Schedule – Provide a projected project schedule that includes required tasks to be performed and corresponding durations, milestones, and dates of key deliverables.
- G. Cost Proposal and Compensation – Present a cost proposal and proposed compensation rate schedule for services.
- H. City’s Standard Contractual Services Agreement – A sample of the City’s Standard Contractual Services Agreement (Agreement), including insurance requirements, is provided as **Attachment A**. If your firm would like to request amendments or exceptions to the Agreement and/or insurance requirements, these shall be specifically noted in the Statement of Proposal. Otherwise, provide confirmation of your firm’s ability to meet the City’s Standard Contractual Services Agreement and insurance requirements. Requested

amendments and exceptions will be taken into consideration in evaluating the Statement of Proposal. Requests for amendments and/or exceptions to the Agreement will not be considered if not included in the submitted Statement of Proposal.

- I. Other Relevant Information – Provide additional relevant information that may be helpful in the selection process.

## **7. SELECTION CRITERIA AND SELECTION PROCESS WITH ESTIMATED DATES**

Proposals will be screened and the top candidates will be reviewed 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:

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

The City retains sole discretion to evaluate proposals and may make an award to the Consultant. Receipt of proposals in response to this RFP does not obligate the City in any way to engage any Consultant 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 Consultant, 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:

Release of RFP:	Thursday, October 5, 2023
Deadline to submit questions on RFP due to City:	Friday, October 13, 2023
Electronic RFPs due:	Friday, October 20, 2023
Interview of top candidate(s), if required:	TBD
Services Agreement scheduled for City Council approval:	TBD

## **8. SUBMITTAL GUIDELINES**

Interested Consultants shall e-mail an electronic pdf file of their Statement of Proposal to Carmelisa Lopez, Senior Planner, at [carmelisa.lopez@newark.org](mailto:carmelisa.lopez@newark.org).

The subject of the e-mail and the electronic pdf file shall be named using the following format:

“[Consultant Name] – Statement of Proposal for Environmental Review Services RFP”

The City assumes no responsibility for failure or delays in delivery caused by electronic delivery service (e-mail). All interested Consultants are advised that the City limits receipt of e-mail attachments to approximately 15 MB. **It is strongly suggested that larger electronic PDF files be sent via a file sharing service such as Dropbox or Box.** Every attempt will be made to send a confirmation e-mail to Consultants responding to this RFP; however, it may not be possible for City staff to respond in a timely manner to e-mails sent just prior to the stated deadline.

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 does not influence the competitive nature of the proposal, to request additional information concerning any statement for purposes of clarification, to accept or negotiate any modification to any statement following the deadline for receipt of all statements, and to waive any irregularities if such would serve the best interests of the City.

All inquiries regarding the RFP should be directed to Carmelisa Lopez, Senior Planner, by telephone at (510) 578-4215, or preferably by email at [carmelisa.lopez@newark.org](mailto:carmelisa.lopez@newark.org).

#### **Additional Submittal Information**

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

If awarded a contract, the Consultant 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. Consultants are liable for all errors or omissions contained in their Statement of Proposal. By submitting a Statement of 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 firms' 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 Consultant 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 \_\_\_\_\_, 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: \_\_\_\_\_

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**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 \_\_\_\_\_ and No/100 Dollars (\$\_\_\_\_\_.00) 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: 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.

**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. **RESERVED.**

13. **RESERVED.**

14. **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:<br>(including products and completed operations, property damage, bodily injury, and personal and advertising injury) | <b>\$2,000,000</b> 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. |
| 2. Automobile Liability:  | <b>\$1,000,000</b> 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 14 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 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.

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".

**15. 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.

**16. 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.

**17. 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.

## **18. 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 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.

**19. 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.

**20. 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**

\_\_\_\_\_  
**Administrator**

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

**21. 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.

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

**23. 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.

**24. 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.

**25. 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.

**26. 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.

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

**28. 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.

**29. 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.

**30. 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.

**31. 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***