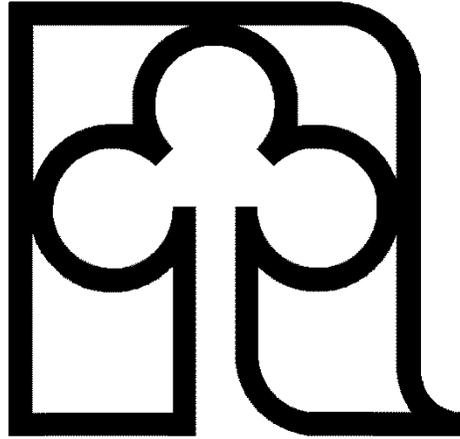


City of Newark



Request for Proposals for Professional Auditing Services

Must Be Received No Later Than:
Monday, April 22, 2019 @ 12:00PM

Deliver proposals to office or email:

Krysten Lee, Finance Manager
krysten.lee@newark.org
Finance Department (1st Floor)
37101 Newark Blvd.
Newark, CA 94560

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Attachments

- A. Schedule of Professional Fees and Expenses to Support the Total All-Inclusive Maximum Price
- B. Format for Schedule of All-Inclusive Maximum Price by Report
- C. Agreement Template

Attachments A – C (pages 17-31) to be completed and returned along with this proposal

PART 1 - AUDIT SPECIFICATIONS

I. INTRODUCTION

The City of Newark (hereinafter “City”) is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2019, and the three (3) subsequent fiscal years, with the option to renew on a year-by-year basis for two (2) additional years, subject to satisfactory performance.

These audits are to be performed in accordance with generally accepted auditing standards, the standards set forth for financial and compliance audits in the U.S. General Accounting Office’s (GAO) *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, the provisions of the Single Audit Act of 1984, as amended in 1996, U.S. Office of Management and Budget (OMB) Circular A-133, *Audits of State and Local Governments* and Governmental Accounting Standards Board (GASB) Pronouncements.

There is no expressed or implied obligation for the City to reimburse responding firms for any expenses incurred in preparing proposals in response to this request.

To be considered, one (1) soft copy and five (5) hard copies of a proposal; one marked original, must be received by Krysten Lee, Finance Manager, at City of Newark, Finance Department, 37101 Newark Blvd., Newark, CA 94560, by **12:00 p.m. on Monday, April 22, 2019.** The City reserves the right to reject any or all proposals submitted and/or waive any irregularity.

During the evaluation process, the City reserves the right, where it may serve the City’s best interest, to request additional information or clarifications from proposers, or to allow corrections of errors or omissions. At the discretion of the City, firms submitting proposals may be requested to make oral presentations as part of the evaluation process.

The City reserves the right to retain all proposals submitted and to use any ideas in a proposal regardless of whether that proposal is selected. Submission of a proposal indicates acceptance by the firm of the conditions contained in this request for proposals, unless clearly and specifically noted in the proposal submitted and confirmed in the contract between the City and the firm selected.

It is anticipated the selection of a firm will be completed by **May 6, 2019.** Following the notification of the selected firm, a recommendation and proposed contract will be prepared for review and approval by the City Council at its **May 23, 2019** meeting.

II. DESCRIPTION OF THE GOVERNMENT

A. The City of Newark

The City of Newark, incorporated in 1955, is located on the eastern shores of San Francisco Bay at the end of the Dumbarton Bridge and in the northern part of Silicon Valley, fifteen miles north of San Jose, California. The City serves an area of approximately fourteen square miles with a population of 47,467.

The City is a general law city and operates under the Council-Manager form of government. Under this form of government, policy-making and legislative authority are vested in a five-member elected City Council consisting of the Mayor and four Council members. The Mayor

and City Council are responsible for passing ordinances, adopting and amending the operating and capital budgets, appointing various committee members, a City Attorney and a City Manager. The City Manager is responsible for carrying out the policies and ordinances established by the City Council, for overseeing the day-to-day operations of the City, and for appointing the various department heads.

B. Services and Departments

The City provides a full range of municipal services to its residents including law enforcement; construction and maintenance of streets, parks, storm drains and other infrastructure; recreational activities and cultural events; planning, zoning and other community development activities; and administrative services including information systems, finance and human resources. Fire protection services are contracted from Alameda County Fire Department.

The City's financial report includes all funds and activities of the City as the primary government and its component units. These component units are the Newark Public Financing Authority and the Newark Betterment Corporation. The Newark Public Financing Authority is a blended component unit because the governing board consists of the all five members of the City Council. The Newark Betterment Corporation is a discrete component unit and funds are not blended in with City funds.

C. Fund Structure

The City uses the following fund types in its CAFR reporting:

Fund Type/Account Group	Number of Funds
General Fund	1
Special Revenue Fund	13
Debt Service Fund	1
Capital Projects	5
Enterprise Funds	0
Internal Service Funds	6
Agency Funds	1

D. Budgetary Basis of Accounting

The City prepares its budgets on a basis consistent with generally accepted accounting principles. A biennial operating budget and capital improvement plan is adopted by City Council resolution prior to July 1 of even number years.

E. The Finance Staff

The Finance Department is headed by a Finance Manager and consists of 7 employees. The Finance Department responsibilities include Financial Reporting, Accounting, Treasury, Payroll, Accounts Payable, Purchasing, Accounts Receivable, Business and Animal License Fee billing and collections, Operating Budget, and Capital Improvement Budget.

F. Computer System

The City's financial management system (comprised of general ledger, budget, accounts payable, purchasing, payroll, cash receipts, accounts receivables, business licenses, animal licenses, and human resources applications) is Harris SELECT, wIntegrate. Harris SELECT was installed in 1995 and runs on a Linux platform (Red Hat version 6.2) branded HP server.

G. Contact Persons

The auditor's principal contacts with the City will be Krysten Lee, Finance Manager (510) 578-4288, krysten.lee@newark.org and Michelle Villanueva, Accountant (510) 578-4279, michelle.villanueva@newark.org, who will coordinate the interim and year-end audits and provide assistance to the auditor.

H. Availability of Prior Reports and Work Papers

Badawi and Associates conducted the City's most recent audit. The work papers of the previous audits are the property of the previous auditor and can be reviewed by the successful Proposer. The City's audited Financial Statements and/or CAFR are available for review on the City's website at:

<http://www.newark.org/departments/administrative-services/finance>

III. NATURE OF SERVICES REQUIRED

A. General

The City is soliciting the services of qualified firms of certified public accountants to audit its financial statements for the fiscal year ending June 30, 2019, and three (3) subsequent fiscal years, with the option to renew on a year-by-year basis for two (2) additional years. These audits are to be performed in accordance with the provisions contained in this request for proposals. In addition, the City may require on-going, infrequent consulting services for financial issues that may occur throughout the year. No additional charges are to be made by the selected audit firm for these financial consulting services.

B. Scope of Work to be Performed

1. The City desires the auditor to express an opinion on the fair presentation of its basic financial statement in conformity with generally accepted accounting principles.
2. The City also desires the auditor to express an opinion on the fair presentation of its combining and individual fund statements and schedules in conformity with generally accepted accounting principles. The auditor is not required to audit the supporting schedules contained on the comprehensive annual financial report. However, the auditor is to provide an "in-relation-to" opinion on the supporting schedules based on the auditing procedures applied during the audit of the basic financial statements and the combining and individual fund financial statements and schedules. The auditor is not required to audit the statistical section of the report. The City's Financial Statements will be prepared and processed by the audit firm.

3. The auditor will express an opinion on the City's compliance with the Single Audit Act and the provisions of OMB Circular A-133 and other applicable laws and regulations. In addition to the audit of federal awards, the auditor will review any materials included in the reporting package accompanying the data collection form. The City will prepare the Schedule of Expenditures of Federal Awards. The auditors will prepare the single audit report and provide one (1) electronic copy in PDF format and three (3) bound copies each year. The auditors will complete the data collection form and required filing with the Federal Audit Clearinghouse and provide the City with one (1) electronic copy in PDF format of the data collection form each year.
4. The auditor will prepare the Annual Report of Financial Transaction (State Controller's Report) for the City.
5. The auditor will perform Agreed-Upon Procedures in connection with the annual calculation of the appropriation limit (Gann), as required by Section 1.5 of the Article XIIB of the California Constitution. The auditor will be responsible for rendering their opinion and provide the City with one (1) electronic copy in PDF format.
6. The auditor will examine the City's internal accounting controls and accounting procedures and render written reports of their findings and recommendations to the City Council and a brief presentation to City Council.
7. If the auditor finds indications of defalcation or other circumstances requiring an extension of procedures beyond the scope of the examination, which would be sufficient under ordinary circumstances, the auditors will provide the Finance Manager with all readily ascertainable facts relative to such extraordinary circumstances together with an estimate for the additional cost of investigating same. Fees relating to such additional services are not contemplated as being within the scope of services to be performed under the paragraphs above and will be subject to approval by the City Council.
8. Irregularities and illegal acts. Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

David Benoun, City Manager
Kristopher Kokotaylo, Interim City Attorney
9. The auditor will meet regularly with the Finance Manager as needed to discuss preliminary audit findings and/or progress. **This part of the auditor involvement is essential to make sure the City clearly understands rollup issues, auditor entries, and groupings made by the auditor in the CAFR.** Prior to issuing their final reports, the auditor will meet with representatives of the Finance Department in an exit conference format. All audit reports will be addressed to the City Council. The auditor may be consulted occasionally throughout the year as an information resource. The auditors may be asked to provide guidance on implementation of Government Accounting Standards Board (GASB) requirements and specifics of federal and state regulations as they may affect local government accounting.
10. The auditors will format and produce 15 copies of the CAFR and 10 copies of other component reports. The City will provide at their expense all necessary binder covers, tabs, spines along with chosen theme to accommodate auditor's production of the CAFR.

In addition, the auditors will provide **a camera- ready PDF version** of the CAFR so that the City may upload to its website and provide to outside parties electronically, including GFOA for award purposes.

C. Specific Deliverables for the City (May be subject to change as agreed upon by City and Firm)

1. Audit of the basic financial statements and deliver opinion letter for the CAFR by **December 15.**
2. Produce the CAFR to meet the GFOA **December 31** deadline for the Excellence in Financial Reporting award program.
3. Testing programs for compliance with the Single Audit Act and applicable laws and regulations and issuance of an audit report by **March 1.**
4. Testing of compliance for Transportation Development Act programs and preparation of required audit report by **December 1.**
5. Audit of the Vehicle Registration Fee Program (VRF) and preparation of required audit report by **December 1.**
6. Testing of compliance with the Agreement for Distribution of Measure B and Measure BB Transportation Improvement Funds and issuance of required audit report by **December 1.**
7. Audit of the component unit financial statements for the Newark Public Financing Authority by **December 1.**
8. Audit of the Measure GG financial statements and preparation of required audit report by **December 1.**
9. Audit of the Utility User Tax (UUT) financial statements and preparation of required audit report by **December 1.**
10. Perform procedures and issue agreed upon procedures opinion by **December 1** to comply with Proposition 111 Appropriation Limit increment requirements.
11. The audit firm shall issue a separate Management letter and recommendations for improvements to internal control, accounting procedures, and other significant observations that are considered to be non-reportable conditions and deliver by **December 1.**
12. Prepare and submit State Controller's Report by **January 15.**

IV. CITY'S RESPONSIBILITIES

- A. City staff will prepare the final closing of the books. The City will provide combining balance sheets for all funds and groups and statements of revenue and expenditures for all funds as well as detailed subsidiary ledgers. The ideal method of providing general ledger information will be in electronic form (Text file) for uploading to the auditor spreadsheet in Excel or Access as well as a hard copy.

- B. City staff will produce the confirmation letters prepared by the auditor.
- C. City staff will be available to assist the auditors in locating records or preparing audit schedules. All requests will first be directed to the Finance Manager.
- D. The City will provide the auditor with reasonable workspace, desks, and chairs. The auditors will also be provided access to telephones, internet, facsimile, and copying machines.

V. BASIS FOR COMPENSATION

- A. The City will pay the auditors for those services described in Part I, Section III (Nature of Services Required) the not-to-exceed amount contained in the agreement. For additional services required after the inception of the agreement, written approval by the City is required in advance of such services being rendered, for which a fee will be paid based on the auditor's quoted hourly rates.
- B. The auditors may submit itemized bills for their services at the end of each calendar month period in which accumulated unbilled charges exceed \$1,000.00. The City will promptly review and act upon these bills.
- C. Unless otherwise agreed to by the City, the City will withhold, and the auditors shall forfeit, ten (10) percent of the contracted fees if the reports required by the contract are not completed and filed by the specified contract dates.

VI. ADDITIONAL PROVISIONS

- A. The auditors shall be an independent contractor and their officers, agents, and employees shall not be deemed officers, agents, or employees of the City.
- B. No officer, agent, or employee of the City and no member of its governing bodies shall have any pecuniary interest, direct or indirect, in this agreement or the proceeds thereof. No officer, agent, or employee of the auditors shall serve on a City committee, or hold any such position which is incompatible with such person's duties or obligations or other relationship to this agreement.
- C. The auditors shall not assign or transfer or subcontract this agreement, any interest therein, or claim thereunder without the prior written approval of the City.
- D. The City, the City's cognizant agency under the Single Audit Act of 1984, as amended in 1996, and the state audit agencies under terms of its assistance agreement with the City shall have access to the auditors' work papers for purposes of review. Such records shall be complete and available for review for a period of five (5) years from the date of the audit report. The auditors shall make their work papers available to successors.
- E. The City may terminate this agreement at any time by giving the auditors not less than thirty- (30) days prior written notice of such termination. Nothing herein shall be deemed a limitation upon the City's right to terminate for cause or otherwise to pursue such legal or equitable rights or remedies which may accrue to the City hereunder. The City will pay the auditor an amount that bears the same ratio to the maximum contract price as the work delivered to the City bears to completed services contemplated under this Agreement, unless such termination is made for cause, in which event, compensation, if any, shall be adjusted in light of the particular facts and circumstances involved in such termination.

- F. Time is of the essence in each and all the provisions of this agreement.
- G. No alteration or variation of the terms of this agreement shall be valid unless made in writing and signed by the parties hereto.
- H. Auditors will warrant that it is an equal opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Auditor does not and shall not discriminate against persons employed or seeking employment with them, nor discriminate in the provision of services, on the basis of age, sex, color, race, marital status, sexual orientation, ancestry, physical or mental disability, national origin, religion, or medical condition, unless based upon a bona fide occupational or service qualification pursuant to the California Fair Employment & Housing Act.
- I. All working papers and reports must be retained, at the auditor's expense, for a minimum of five (5) years, unless the firm is notified in writing by the City of the need to extend the retention period. The auditor will be required to make working papers available, upon request, to the following parties or their designees:
- City of Newark
 - Department of Housing and Urban Development
 - U.S. General Accounting Office (GAO)
 - Any and all parties designated by the federal or state governments or by the City as part of an audit quality review process.
 - Auditor of entities of which the City is a sub-recipient of grant funds
 - Auditor of entities of which the City is a component unit
 - In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review working papers relating to matters of continuing accounting significance.

PART 2 - INSURANCE REQUIREMENTS FOR CONSULTANTS

I. VERIFICATION OF COVERAGE

Auditor shall furnish the City with original certificates and endorsements affecting coverage required in Part 3, Section II, C-H. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be received and approved by the City before work commences.

II. INDEMNIFICATION AND HOLD HARMLESS

The auditors hereby agree to defend, indemnify and save harmless the City, their Council, boards, commissions, officers, employees, and agents from and against any and all claims, suits, actions, liability, loss, damage, expense, costs (including, without limitation, costs and fees of litigation) of every nature, kind and description, which may be brought against, or suffered or sustained by the City, its Council and their respective boards, commissions, officers, employees or agents caused by, or alleged to have been caused by, the negligence, intentional tortuous act or omission, or willful misconduct of the auditors, its officers, employees or agents in the performance of any services or work pursuant to this agreement.

The duty of the auditors to indemnify and save harmless, as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code; provided, however, that nothing herein shall be construed to require Consultant to indemnify City, its Council and their respective boards, commissions, officers, employees and agents against any responsibility or liability in contravention of Section 2782 of the California Civil Code.

PART 3 - PROPOSAL REQUIREMENTS AND INFORMATION

I. PROPOSAL PROCESS AND CALENDAR

A. Proposal Submission

Proposals for the City's audit must be submitted by 12:00 p.m. on **Monday, April 22, 2019**. Proposals submitted via facsimile will not be accepted. A total of one (1) soft copy and five (5) identical copies, one (1) marked as the original, must be submitted to the following:

Krysten Lee, Finance Manager
City of Newark
Finance Department (1st Floor)
37101 Newark Blvd.
Newark, CA 94560

Proposals must be sealed and show the following information outside: auditor's name and address and the due date for submission of audit services proposal.

B. Proposal Review and Notification

The City will send or email written notification, or may also contract by phone, only to those firms selected for an interview.

C. Interviews

The City will schedule interviews with finalists on **Monday, April 29, 2019 (preferred) or Tuesday, April 30, 2019 (if needed)**. Firms selected for interviews are requested to prepare a short presentation for the committee.

D. Last Day for Questions:

The last day to submit questions in regards to this proposal shall be **Friday, April 12, 2019 at 3:00PM**. This will allow sufficient time for any addenda responses to be issued to all bidders by **Monday, April 15, 2019**. All questions must be submitted in writing via email to:

krysten.lee@newark.org
and copy sent to:
michelle.villanueva@newark.org

E. Final Selection Notification

The City anticipates sending written notification or contacting by phone on **May 6, 2019** to finalists of their status.

F. Recap of Key Dates

April 12, 2019	Deadline for RFP clarification questions
April 15, 2019	Responses to clarification questions will be made available to all firms
April 22, 2019	Deadline for proposal submission
April 29th or 30th, 2019	Interviews with top finalists
May 6, 2019	Finalist selected on this date
May 23, 2019	Council meeting award contract

II. PROPOSAL REQUIREMENTS

A. Independence

The firm should provide an affirmative statement that it is independent of the City as defined by generally accepted auditing standards. Moreover, the firm must have no conflict of interest with regard to any other work performed for the entity being audited. It is understood that the services performed by the auditors are in the capacity of independent contractors and not as an officer, agent, or employee of the City.

B. License to Practice in California

An affirmative statement should be included indicating that the firm and all assigned key professional staff are properly licensed to practice in California.

C. Minimum Scope of Insurance

1. Consultant will have and maintain, for the duration of the contract, General Liability insurance policies insuring him/her and his/her firm to an amount not less than: one million dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
2. Consultant will have and maintain for the duration of the contract, an Automobile Liability insurance policy ensuring him/her and his/her staff to an amount not less than one million dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
3. Consultant shall provide to the City all certificates of insurance, with original endorsements effecting coverage. Consultant agrees that all certificates and endorsements are to be received and approved by the City before work commences.
4. Consultant will have and maintain, for the duration of the contract, professional liability insurance in amounts not less than two million dollars (\$2,000,000) which is sufficient to insure Consultant for professional errors or omissions in the performance of the particular scope of work under this agreement.

General Liability

1. The City, its officers, officials, employees and volunteers are to be covered as insured as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of Consultant, premises owned or used by the

Consultant. This requirement does not apply to the professional liability insurance required for professional errors and omissions.

2. The Consultant's insurance coverage shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance or self-insurances maintained by the City, its officers, officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its officers, officials, employees or volunteers.
4. The Consultant's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

All Coverages: Each insurance policy required in this item shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Current certification of such insurance shall be kept on file at all times during the term of this agreement with the City Clerk.

In addition to these policies, Consultant shall have and maintain Workers' Compensation insurance as required by California law and shall provide evidence of such policy to the City before beginning services under this Agreement. Further, Consultant shall ensure that all subcontractors employed by Auditor provide the required Workers' Compensation insurance for their respective employees.

Acceptability of Insurers Insurance is to place with insurers with a Best's rating of no less than A- and authorized to do business in the State of California.

Verification of Coverage. Upon execution of this Agreement, Consultant shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by the City. All certificates and endorsements are to be received and approved by the City before any work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

D. Firm Qualifications and Experience

1. The proposal should state the size of the firm, the size of the firm's governmental audit staff, the location of the office from which the work on this engagement is to be performed, and the number and nature of the staff to be so employed on a part-time basis. Please indicate whether any members of the audit team assigned to the City are reviewers in the GFOA Certificate of Achievement for Excellence in Financial Reporting program.
2. The firm is also required to submit a copy of the report on its most recent external quality control review, with a statement whether that quality control review included a review of specific government engagements.
3. The firm shall also provide information on the results of any federal or state desk reviews or field reviews of its audits during the past three- (3) years. In addition, the firm shall

provide information on the circumstances and status of any disciplinary action taken or pending against the firm during the past three (3) years with state regulatory bodies or professional organizations.

E. Partner, Supervisory and Staff Qualifications and Experience

The firm shall identify the principal supervisory and management staff, including engagement partners, managers, other supervisors and specialists, who would be assigned to the engagement and indicate whether each such person is licensed to practice as a certified public accountant in California. The firm also should provide information on the governmental auditing experience, including the scope of audit services requested by the City, of each person, and information on relevant continuing professional education for the past three (3) years and membership in professional organizations relevant to the performance of this audit.

The firm should provide as much information as possible, including resumes, regarding the number, qualifications, experience and training of the specific staff to be assigned to this engagement. The firm also should indicate how the quality of staff over the term of the agreement will be assured.

Engagement partners, managers, other supervisory staff and specialists may be changed if those personnel leave the firm, are promoted, or are assigned to another office. These personnel may also be changed for other reasons with the express prior written permission of the City. However, in either case, the City retains the right to approve or reject replacements.

Consultants and firm specialists mentioned in response to this request for proposals can only be changed with the express prior written permission of the City, which retains the right to approve or reject replacements.

Other audit personnel may be changed at the discretion of the proposer provided that replacements have substantially the same or better qualifications or experience.

F. Similar Engagements with Other Government Entities

For the firm's office that will be assigned responsibility for the audit, list the most significant engagements (maximum of 10) performed in the last five years that are similar to the engagement described in this request for proposals. These engagements should be ranked on the basis of total staff hours.

Indicate the scope of work, date, engagement partners, total hours, and the name and telephone number of the principal client contact.

G. Specific Audit Approach

The proposal should set forth a work plan, including an explanation of the audit methodology to be followed, to perform the services required in Part I, Section III of this request for proposals.

H. Identification of Anticipated Potential Audit Problems

The proposal should identify and describe any anticipated potential audit problems, the firm's approach to resolving these problems and any special assistance that will be requested from the City.

I. Total All-Inclusive Maximum Price

The bid should contain all pricing information relative to performing the audit engagement as described in this request for proposals. The total all-inclusive maximum price to be bid is to contain all direct and indirect costs including all out-of-pocket expenses.

J. Rates by Partner, Specialist, Supervisory and Staff Level Times Hours Anticipated for Each

The bid should include a schedule of professional fees and expenses, presented in the following format that supports the total all-inclusive maximum price.

See Attachment A
See Attachment B

K. Ownership of City-Related Documents

All property rights, including publication rights of all reports produced by proposer in connection with services performed under this agreement shall be vested in the City. The proposer selected shall not publish or release any of the results of its examinations without express written permission.

L. Acceptance of Proposal Contents

After auditors are selected by the City, the contents of the submitted proposal will become a contractual obligation. The successful proposer will be required to execute a standard consultant agreement with the City. Failure of the auditors to agree to include the proposal as part of the contractual agreement may result in cancellation of the award. The City reserves the right to reject those parts that do not meet with the approval of the City.

M. Acceptance or Rejection and Negotiation of Proposals

The City reserves the right to reject any or all proposals, to waive non-material irregularities or information in the request for proposal, and to accept or reject any item or combination of items. By requesting proposals, the City is in no way obligated to award a contract or to pay expenses of the proposing firms in connection with the preparation or submission of a proposal. Furthermore, the City reserves the right to reject any and all proposals prior to the execution of the contract(s), with no penalty to the City. If the City elects to reject all proposals, it reserves the right to continue with its current services arrangement.

III. EVALUATION PROCESS

The proposals for the City's audit will be evaluated by the Finance Manager and staff. Proposers may be asked to make oral presentations to supplement proposals. These presentations would only be held subsequent to the receipt of the proposals and will be part of the process for determining the qualifications of the auditors.

The City has scheduled the days of **April 29, 2019 and April 30, 2019** at the City for each oral presentation that it requests at a mutually convenient time. Should a proposer refuse to honor the request for an oral presentation or interview, it may result in the rejection of the proposal by the City. Evaluation considerations will include the following:

- A. Responsiveness of the proposal in clearly stating the understanding of the work to be performed and in demonstrating the intention and ability to perform the work.
- B. Cost. Although a significant factor, cost and other factors will be considered.
- C. Auditors' experience in conducting audits of cities of similar nature, size, and complexity, and the auditors' commitment to maintaining technical expertise in the municipal financial environment.
- D. Technical experience and professional qualifications of the audit team. The number of key and supervisory personnel who will directly participate in the audit will be a consideration. Another consideration will be the auditors' commitment to keeping the same team assigned to this job for each successive year the auditor is awarded the contract.
- E. Size and structure of the firm's office from which the audit work is to be done. The City is looking for a highly qualified team that is able to meet the due dates specified in this document, and it expects that same team (wherever possible) to complete any successive year's engagements.
- F. Auditor's experience in complying with applicable federal and state regulations relating to non-discrimination of an affirmative action program for equal employment opportunity.
- G. Ability of the firm in providing optional services such as special studies, system review and other services. Examples of such services performed for other client cities will be helpful.

IV. REQUIRED FORMAT AND CONTENT OF PROPOSAL

In order to simplify the review process and to obtain the maximum degree of comparability, proposers are asked to organize their proposals in the following manner:

A. Title Page

Show the request for proposal subject, the name of the proposer's firm, email, local address, telephone number, name of the contact person, and the date.

B. Table of Contents

Include a clear identification of the material by section and by page number.

C. Letter of Transmittal

1. State whether the firm is local, national, or international.
2. Give the location of the office from which the work is to be done and the number of partners, managers, supervisors, seniors, and other professional staff employed at that office.
3. Describe the range of activities performed by the local office such as audit, accounting, or management services.
4. Describe the local office's information technology (IT) audit capabilities, including the number and classifications of personnel skilled in IT auditing who will work on the audit.

5. Describe the local office's recent auditing experiences similar to the type of audits requested and give the names and telephone numbers of client officials responsible for five of the audits listed.
6. Describe the document publication technology and staff formatting and proofreading expertise.

D. Audit Team

1. Describe the composition of the audit team, including staff from other than the local office, and consultants. Describe the commitment of the firm to providing the same audit team on subsequent audits. Include resumes of each person so identified.
2. Identify the supervisors and consultants who will work on the audit and include resumes of each person so identified.
3. Identify any members of the audit team who are certified CAFR reviewers in the GFOA's Certificate of Excellence in Financial Reporting program.

E. Audit Scope and Provisions

Describe the scope of the required services to be provided and outline a plan on how such services will be provided. Please include depth of work, staffing, and time estimates. Proposers should list all reports including management letters that are to be issued, the points to be addressed by reports, and the estimated completion dates.

F. Cost Data

Indicate the total hours and hourly rates by staff classification and the resulting all-inclusive maximum fee for which the requested work will be done for each of the specific deliverables identified in this Request for Proposal. Fees must include all anticipated costs including travel, per diem, and out-of-pocket expenses.

G. Additional Data

Data not specifically requested should not appear in the foregoing sections, but any additional information considered essential to the proposal may be presented at this section.

END OF SECTION

Attachment A

Schedule of Professional Fees and Expenses				
	Hours	Standard Hourly Rates	Quoted Hourly Rates	Total
Partner		\$	\$	\$
Manager				
Supervisory Staff				
Staff Auditors				
Administrative				
Other (Specify):				
Sub-Total				\$
Out-of-Pocket Expenses				\$
Total				\$

Attachment B

All-Inclusive Maximum Price by Report			
Service	2019-2020	2020-2021	2021-2022
Audit City Basic Financial Statements including GASB 34 assistance and Management Letter			
Annual Report of Financial Transactions (State Controller's Office)			
Single Audit and related reports.			
Successor Agency and related disclosures.			
Audit Transportation Development Act Program (TDA)			
Audit Measure B- Alameda County Transportation Commission			
Audit Measure BB- Alameda County Transportation Commission			
Audit Vehicle Registration Fee (VRF)			
Audit Utility User Tax (UUT)			
Audit Measure GG			
Prop 111 Appropriations Limit			
Audit Newark Betterment Corporation (NBC)			
Preparation/ production of CAFR and other audit reports including camera ready PDF version			
Print all related reports			
Total			

Attachment C

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this _____ day of _____, 2019 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and _____, a California corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including:

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", 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 (\$_____) 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
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 billing, 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).

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.

In the event of an audit is conducted by the State Controller's Office and upon notification by City, Consultant shall assist City in defending its claim(s). One day of on-site audit assistance shall be included in the scope of this contract. A total of twenty four (24) Consultant hours shall be included in the scope of this contract. Additional time shall be paid for on a time and materials basis if requested by City.

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.

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.

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. City will provide all information needed to complete the claims two weeks prior to the established due date or two weeks after the data has been requested by the Consultant, whichever is first. If information has been received in a timely manner, Consultant agrees to complete and file the claim(s) on or before the date established for submitting such claims to the State of California.

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. Computerized claim forms and other proprietary software and materials are the sole ownership of the Consultant, and shall not be used or distributed in any way by 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 and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements that affect the coverage required by these specifications at any time. 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 Commercial General Liability coverage (occurrence Form CG 0001).
2. Insurance Services Office Form Number CA 0001 covering Automobile Liability, Code 1 (any auto), or Code 8 (hired) and 9 (non-owned) if Consultant has no owned autos.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
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.

Consultant shall maintain limits no less than:

- | | |
|---|--|
| 1. General Liability:
(including products-completed operations, personal and advertising injury) | \$1,000,000 per occurrence for bodily injury, personal injury, and property damage. If Commercial General Liability insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. |
| 2. Automobile Liability: | \$1,000,000 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. |

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

For all "claims made" coverage, in the event that Consultant ceases operation 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 (i.e. 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- , unless otherwise acceptable to City.

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 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 Insurance. For any claims related to these 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.
3. Notice of Cancellation. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to City. Similarly, no major change in coverage, expiration, or nonrenewal will be made during the term of this Agreement.

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. Qualifications. 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.

6. SubConsultants. Consultant shall include all subConsultants as insured under its policies or shall furnish separate certificates and endorsements 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, agents, 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 Risk Manager of City 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, 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.

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 negligent or wrongful acts or omission of Consultant or Consultant's officers, employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, 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.

15. LIMITATION OF LIABILITY. Liability of Consultant to City with regard to all work and services performed or provided by Consultant including attorney's fees and duty to defend for City under this Agreement shall be limited to the total fee actually paid by City to Consultant under the applicable Proposed Scope of Work. Under no circumstances shall Consultant have any liability to City in excess of the amount of such fees or compensation. City acknowledges and agrees that but for the above limitation

of liability, Consultant would not be able to provide the services for City under this Agreement for the prices applicable to the Agreement, and that this limitation of liability is reasonable.

16. 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.

17. 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.

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

19. 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:

(Consultant).

CITY OF NEWARK

Consultant

Administrator

Address: _____

City of Newark
37101 Newark Boulevard
Newark, CA 94560

20. 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.

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

22. **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.

23. **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.

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

(CONSULTANT)
a California corporation

By _____
City of Newark

By _____
Consultant

Date _____

Date _____

Printed Name

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
PAYMENT

EXHIBIT C
QUALIFICATIONS