



CITY OF NEWARK

RELEASED: November 17, 2015

Request for Proposals

Website Development, Hosting, Support and Maintenance

RFP No. 0415-ISD

Prospective vendors MUST register interest by contacting Will Towne, Information Systems Manager, at will.towne@newark.org on or before November 30, 2015. Failure to do so will disqualify the submitted proposal.

Proposals must be received by the City Clerk of the City of Newark at 37101 Newark Boulevard, Newark, California 94560 or city.clerk@newark.org before 2:00 p.m. on Tuesday, December 15, 2015.

All responses must be clearly marked “Proposal – Website Development, Hosting, Support and Maintenance” and include your company name, point of contact name, address, telephone number, and e-mail address.

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1.0 INTRODUCTION

The City of Newark invites your company to submit a written proposal, according to the terms and procedures defined herein, to provide website development, hosting, support and maintenance services. The redesigned website will be the official website of the City and will maintain its domain name of www.newark.org

2.0 BACKGROUND

2.1 Organization - The City of Newark covers approximately 13 square miles at the intersection of Silicon Valley and the southeast San Francisco Bay Area (aka East Bay), and serves a population of over 44,000. The City is a general law city incorporated in 1955 and operates under the Council-Manager form of government. A staff of 144 full and regular part-time employees work in six organizational departments: Administrative Services (City Manager, City Clerk, Finance and Information Systems); Community Development (Planning and Economic Development); Community Services and Recreation; Human Resources; Police; and Public Works (Building Inspection, Engineering and Maintenance). The City's fire services are provided under contract by the Alameda County Fire Department.

2.2 Current Technology – The current iteration of the City's website was launched in Summer 2009. The site runs on Expressions Engine 1.6.8 and is presently hosted by the City's Internet service provider. While the Information Systems Division has overall responsibility for the website, the task of adding, editing, and updating most content is decentralized to certain staff in each department. While the site meets many of the City's needs, it has several shortcomings, including the following: outdated and inconsistent design and appearance; not fully satisfying accessibility goals; failing to take advantage of the latest technological advances deemed important to citizens and businesses; not being designed for mobility and viewing on mobile devices; and being difficult to maintain and modify due to the content management tools and business processes currently employed. The website includes many online forms and a large number of static pages on a variety of topics. Vendors are strongly encouraged to perform a comprehensive review of the available features, functionality, and capabilities of the City's current website. It is the vendor's responsibility to include, at a minimum, the same functionality and capabilities as the current website.

The following table represents the current third-party links/integration included in the site:

App/Function/Feature	Hosted by
Recreation Activity Registration	Peak Software Systems, Inc.
Crime Reports and Statistics	Sun Ridge Systems, Inc.
Municipal Code	Municode
Streaming Meetings Video	PegCentral (Leightronix)
Job Openings	Cal Opps
Embedded Welcome Videos	Elocallink
Nixle Communication Platform	Nixle

2.3 Vendor and Service Qualities – The City seeks to identify and select a vendor with a proven record of accomplishment in the planning, design, development, implementation, support, and hosting of local government websites. The selected vendor must be capable of providing all services, including ongoing hosting, to implement a state-of-the-art website. In addition, the vendor must offer a robust content management system (CMS) that allows City staff to easily update website content with minimal training. The successful vendor will address the necessary flexibility in technology and functionality to keep the re-designed website current and relevant over time. The City prefers a single vendor for all services identified in this RFP. Subcontractors or third-party service providers may be participants in the proposed solution, however, the primary vendor takes full and final responsibility for all services proposed. The scope of services should include all software, hardware, training, and other services required to support the implementation, maintenance and ongoing hosting of the new site. At a minimum, the vendor’s services should include the following:

- ✓ Project management
- ✓ Design and configuration
- ✓ Interfaces to City data/systems
- ✓ Content migration and conversion
- ✓ Implementation consulting
- ✓ Administrative and staff training
- ✓ Testing
- ✓ Documentation
- ✓ Hosting
- ✓ Ongoing maintenance and operations support

Vendors without experience in the design, development, and implementation of local government websites should not apply.

2.4 Project Goals and Objectives – The objective of this RFP is to establish a long-term relationship with a vendor capable of supporting the City’s current and future needs and committed to the constant evolution of the proposed solution and hosting services.

The primary goals of the City’s website re-design are as follows:

- ✓ Present an attractive, dynamic, and unique yet intuitive design
- ✓ Support and promote economic development
- ✓ Communicate information efficiently and effectively
- ✓ Encourage the use of self-service government options, where available
- ✓ Address any and all current and foreseeable state and federal accessibility guidelines and requirements

The new website should strengthen the relationship between the City and citizens/business by meeting the evolving expectations of the public for secure and reliable online information and services that are accessible from any operating platform (i.e. Windows, iOS, Android, etc.). The new website should also support the use of older devices so that web pages/graphics are rendered satisfactorily.

Further goals in implementing the new website include:

- ✓ Improve the website’s information architecture to provide easy and intuitive navigation and search capabilities
- ✓ Improve and expand on-line services and self-help
- ✓ Allow City staff to add new pages, documents, and complete other site modifications without having to rely on an outside resource
- ✓ Implement a consistent look and feel across all pages on the website and ensure the look is maintained regardless of the device and/or browser used to access the website
- ✓ Provide departments with tools and training to create and maintain pages to meet their department’s needs, including flexibility to create and maintain a level of uniqueness within their own sub site that best expresses the department’s functions and culture, while still maintaining enterprise-wide design requirements, navigation, and consistency
- ✓ Enable linking to other websites for special applications and functions provided by third-party vendors such as bill payment, crime statistics, class and facility registration, etc.
- ✓ Ensuring the hosting site provides secure and consistent website availability, with ample warning of upgrades and scheduled outages

3.0 REQUIREMENTS

No	REQUIREMENT	COMPLIES? (Y or N)	NOTES (Explain any "No" response here)
	Design, Functionality and CMS:		
1	Provide uniformity of design that is visually attractive, unique and intuitive		
2	Provide secure site that conforms to all known and foreseeable pending (i.e. emerging) accessibility standards		
3	Provide all features and functionality that exist on current website - vendors are strongly encouraged to carefully review the City’s existing web presence		
4	Provide homepage slideshow capability where fresh pictures can display frequently and can be quickly and easily changed by City staff		
5	Provide homepage and site-wide advertisement and news capabilities that can be quickly and easily changed by City staff		
6	Provide seasonal background/color/style themes that can be quickly and easily be changed by City staff		
7	Include search capability (i.e. Google or similar look and feel and functionality preferred). The search should allow the user to do keyword searches of the content included in PDFs and standard Microsoft Office documents		
8	Provide search capable of indexing documents that exist in third party systems		
9	Provide site map that auto-updates to reflect webpage adds/changes/deletes		

10	Provide universal sizing to accommodate monitors of various screen resolutions and sizes		
11	Consistent navigation on all pages, with the ability to change the delivered menus or navigational tools by City staff as needed		
12	Printer-friendly page capability on every page		
13	Easy creation and management of data collection forms that allow for data capture into database formats. Module that allows us to easily select pre-determined fields, but also provides the ability to customize fields as needed. Collection using SSL.		
14	Capable of providing automated notifications when visitors complete forms or other activities (e.g. job interest, contact us, etc.). Ability to route forms to the appropriate staff person or people.		
15	Ability to use E-Signatures in forms		
16	Capable of editing from all major desktop operating systems (i.e. Windows and OSX) and using current versions of all commonly used browsers (e.g., IE, Safari, Firefox, and Chrome)		
17	Capable of viewing from all major operating systems (i.e. Windows, OSX, iOS, Android, etc.) and current versions of commonly used browsers (e.g. IE, Safari, Firefox, and Chrome)		
18	Provide seamless access and rendering of the website from all major mobile devices (i.e. iPhones, iPads, Android phones, tablets, etc.). Pages should render clearly so they are easy to view and navigate on smaller screens.		
19	Ability to link to other City pages and system, external webpages, social media, and outsourced e-commerce servers from any webpage		
20	Support for content and/or page-based subscription capabilities such as RSS		
21	Support for a repository of current and archived City or Department news and videos		
22	News stories and information can be posted to one or more twitter feeds, Facebook pages, and/or other social media as they are posted to the website		
23	Ability to support City blog(s)		
24	Ability to control access to some areas of the website through user ID and password		
25	Ability to activate a banner at the top of all pages to alert citizens in case of breaking news or disaster		
26	Robust site usage and statistics tracking (to the page level) to allow the City to analyze how the public is using the website		
27	Website will render on older devices and operating systems according to accepted performance standards		

28	Ability to link to social networking sites, including multiple accounts in each service. Sites desired include: Facebook, Twitter, Youtube, Vimeo, Flickr, Nixle, Instagram, Next Door, and Pinterest.		
29	Ability to embed content from social media site directly into website. Examples: Twitter Feeds, Pinterest Boards, etc.		
30	Ability to enlarge photo with one click within a sub-window so users are not forced to leave current page		
31	Support “breadcrumb” type navigation		
32	Provide an interactive calendar		
33	Ability to support calendaring via iCal or similar technology. Allows user to import event into own calendar application such as Outlook.		
34	Support a citywide master calendar and sub-calendars that include events, meetings, holidays, etc. The calendars should allow management from a main calendar and allow for embedding across the website by content/subject matter category. (Example: Embed only scheduled council meetings on council page)		
35	Calendar should have the ability to be searchable, share events on social media, have category filters, have locations (with maps), and include images.		
36	Ability to interface or integrate with City identified systems in section 2.2		
37	The website uses images that are copyright clear or owned by the City of Newark		
38	URL’s should be meaningful for better bookmarking and search engine use. Example: http://www.Newark.org/council/members.html is preferred to http://www.Newark.org/index.asp?sid=23939		
39	The website includes a page of contacts at the City of Newark. This directory should include a position, name of current person in that position, phone number, and email address. The email address should be a live email link to directly email a question and/or a form to allow the user to submit a question.		
40	Custom Favicon		
41	Custom Favicon by department		
42	A feature like “How do I?” or quick links to allow users to quickly find popular topics		
43	Provide a comprehensive “full function”, easy to use CMS solution that includes, but is not limited to, template creation, security and approval levels, WYSIWYG content editor, versioning, content scheduling, etc.		

44	Ability to set system to automatically update content upon approval of edited page		
45	Ability to schedule system to automatically add/update/delete content upon approval of edited page and schedule		
46	Ability to give a City staff member/group both edit and approval for their designated areas of responsibility as well as to assign proxies during periods of absences		
47	Prevent deleted pages from being accessible via search		
48	Provide spell-check and grammar correction functionality		
49	Support allowing staff to post various file types on web pages for viewing and/or downloading (e.g. doc, xls, jpg, pdf, etc.)		
50	Support viewing of video and/or photo galleries from City-provided content or allow links to photo galleries and videos hosted on another site		
51	Support the posting of maps and allow dynamic linking to the City GIS website or Google Maps		
52	Allow content editors flexibility in determining size and position of page features such as photographs		
53	Provide comprehensive audit capability to see who is modifying what and when		
54	Automatic replication of navigation and menu changes to all related pages with no additional data entry		
55	Ability to add, change, and/or delete links between pages and/or to other websites as needed, with no vendor intervention required		
56	Provide the ability to archive outdated documents, images, and videos		
57	Ability to optimize uploaded pictures and graphic files for quickest page loading		
58	Ability to create and manage document, picture and video galleries to organize and publish according to subject matter		
59	Ability to specify a publishing schedule for specific content		
60	Support for versioning and indexing of content to meet legal and policy-based Records Retention and Retrieval requirements		
61	Provide multi-lingual Content Integration with website content translation capabilities		
62	Ability to reorganize content to different sections of the website without manually changing content links		
63	Ability to apply customized look and feel within different departments/services while maintaining global navigation and website common look and feel		

64	CMS provides version control that allows a page, section or the whole website to be rolled back to a previous revision or point in time		
65	CMS handles file storage to maintain historical, existing and future records, press releases and with version control		
	Training, Support and Hosting:		
66	Provide comprehensive training for administrators and content contributors with user help documentation		
67	Provide warranty on all services following implementation		
68	Provide hosted website in secure, state-of-the-art data centers with redundancy and high-availability features incorporated at each		
69	Provide hosted website in vendor owned and operated data centers. If not, please identify 3 rd party that is providing the hosting and the specific data center locations.		
70	Provide hosted website in redundant facilities in the event the primary facility is inaccessible		
71	Provide hosted website in at least one data center located within California		
72	Provide hosted website in at least one data center located a minimum of 50 miles from all known earthquake fault lines		
73	Provide website access on a 24x7 basis. Provide clear description of guaranteed availability		
74	Site monitored for outages 24 x 7 x 365		
75	Provide telephone support with a 4 hour response 24 x 7 x 365		
76	Technical support for system outages responds to priority service calls 24 x 7 with 2 hours guaranteed response time		
77	Provide City access to separate development and production environments		
78	Ensure full system backups and provide recovery services to minimize impact to the City		
79	Provide measures that prevent security breaches and access to confidential data collected and stored		
80	Provide immediate notification of any known or suspected breach and follow on investigation to assess breach and implement changes to reduce or eliminate risk		
81	Maintenance/downtime scheduled outside of normal business hours (Mon-Fri 7:00 a.m. to 5:00 p.m. Pacific), with at least 2 weeks advance notice to City. If not, please provide clear description of process for scheduling downtime and notifying City		

4.0 FURTHER INFORMATION

Interested vendors shall contact Will Towne, Information Systems Manager (see contact information below) on or before Monday, November 30, 2015 to register for project participation and further information. Once registered, vendors will receive any subsequently released project information and may obtain clarification of this proposal by submitting inquiries via e-mail to Will Towne on or before December 7, 2015. Answers to inquiries will be distributed via e-mail to all registered vendors through December 11, 2015.

All inquiries should be directed to:

Will Towne, Information Systems Manager
E-mail: will.towne@newark.org
Direct: (510) 578-4283

Vendors are expressly instructed that the above contact is the only authorized source of information. Unauthorized contact with any other personnel may result in disqualification of the vendor.

5.0 DELIVERY OF PROPOSAL

Proposals must be delivered to the City Clerk of the City of Newark at 37101 Newark Boulevard, Newark, California 94560, or city.clerk@newark.org **before 2:00 p.m. on Tuesday, December 15, 2015**. Proposals received after the deadline will not be accepted. Proposals will become part of the official files of the City of Newark and cannot be returned.

All responses must be clearly marked "PROPOSAL – Website Development, Hosting, Support and Maintenance" and include your company name, point of contact name, address, telephone number, and e-mail address.

Responses to this RFP shall be done at the sole cost and expense of each proposing vendor with the understanding that no claims against the City for reimbursement will be accepted.

6.0 SELECTION PROCESS

City staff will review and evaluate all proposals submitted prior to the deadline. Proposals will be evaluated to assess the experience, knowledge, and qualifications of each firm and to determine the level of responsiveness to this Request for Proposal. The decision for selection will be made on a combination of criteria, including the following:

- ✓ The qualifications (including education, training, licenses, experience and past performance) of the vendor and its agents, employees and sub-consultants in completing projects of a similar type, size and complexity
- ✓ Reputation of vendor and evaluation of references and reference sites to verify a proven ability to plan, design, develop, implement and support the website, and a demonstrated ability to work in a cooperative and collaborative manner with clients
- ✓ Quality and completeness of proposal

- ✓ Vendor's proposed project methodology and timeline
- ✓ Total cost (including on-going operating costs)
- ✓ City's perception of vendor's stability
- ✓ Results of interviews and demonstrations
- ✓ Reasonableness of proposed terms and conditions of draft legal agreement
- ✓ Ability to negotiate and execute a contract in a timely and agreeable manner

The City reserves the right, at its sole discretion, to request clarifications of proposals or to conduct discussions for the purpose of clarification with any or all vendors. The purpose of any such discussions shall be to ensure full understanding of the proposal. Discussions shall be limited to specific sections of the proposal identified by the City and, if held, shall be after initial evaluation of proposals are complete. If clarifications are made as a result of such discussion, the vendor shall put such clarifications in writing.

The initial evaluation of proposals will allow the City to identify a short-list of qualified vendors. The short-list of qualified vendors will then be invited to an on-site interview and solution demonstration. It is anticipated that interviews/demonstrations will be scheduled during the second week of January 2016.

Submittal of a proposal does not guarantee a vendor will be invited to demonstrate nor does it obligate the City to purchase or contract for a website and/or related services either now or in the future. In the event that no vendor has submitted what the City deems to be an acceptable proposal the City reserves the right to reject all proposals.

After the evaluation of on-site interviews and demonstrations has been completed, the City will select the finalist vendor as determined by the City in its sole discretion. The City and the finalist vendor will enter into contract negotiations using the City's standard Contractual Services Agreement (CSA), attached here as Exhibit A, as the base document. Any legal agreement(s) or terms and conditions provided by the finalist vendor may be reconciled as part of a successful negotiation process and included as exhibits to the CSA. The negotiations are intended to result in a contract which is deemed by the City, in its sole discretion, to be in the City's best interests. After the final negotiations the City will make a recommendation to the City Council regarding contract award. In the event that the City determines in its sole discretion that a satisfactory agreement cannot be entered into with the finalist vendor, the City reserves the right to enter into contract negotiations with an alternate vendor.

The City also reserves the right to identify more than one finalist vendor, to enter into contract negotiations with more than one finalist vendor simultaneously, and/or to award the contract to any such finalist vendor with whom it is negotiating.

7.0 AWARD OF CONTRACT

The City of Newark reserves the right to accept or reject any and all proposals in whole or in part; to waive any irregularity in any proposal and to determine which, in its sole judgment, best meets the needs of the City; to reject the proposal of any vendor who has been delinquent or unfaithful in any former contract with the City; and to award the contract to the selected vendor only after

successful contract negotiations. The contract, if let, will be awarded by the City Council at a subsequent time.

8.0 CONTRACT REQUIREMENTS

The selected consultant will be required to enter into the City's standard Contractual Services Agreement or "CSA" (Exhibit A). The City's standard insurance and indemnification requirements are included in the CSA along with requirements related to the ownership of all generated work products. This is a standard agreement and is subject to modification.

Vendors should review the terms and conditions contained in the CSA and must note in their response any proposed exceptions, additions or modifications for consideration by the City. Blanket substitution of the Vendor's standard contract or terms and conditions for the City Agreement will not be permitted.

9.0 REQUIRED FORMS AND CERTIFICATES

The City will require certain legal forms and affidavits to be included in the final negotiated agreement.

9.1 Contractor's Certificate Regarding Workers' Compensation

The vendor shall maintain Workers' Compensation Insurance as required by statute and shall submit a certificate of such insurance at final contract signing.

9.2 Certificates of Insurance

Workers' Compensation Insurance is required by the Labor code of the State of California and Employers Liability Insurance.

Workers' Compensation and Employers Liability: Workers' Compensation limits as required by the Labor Code of the State of California and Employers Liability limits of \$1,000,000 per accident.

In addition, City shall be named as additional insured on all relevant policies and shall be notified by the insurance carrier of any change in or cancellation of coverage.

10.0 PROJECT SCHEDULE

RFP Released: November 17, 2015

Vendor Registration Deadline: on or before November 30, 2015

Vendor Inquiry Deadline: on or before December 7, 2015

Proposal Deadline: **2:00 p.m. on December 15, 2015**

Interviews/demonstrations Scheduled: *(TENTATIVE) Second week of January 2016*

Finalist Selection: *(TENTATIVE) Third week of January 2016*

Contract Negotiations: *(TENTATIVE) End of January through first week of February 2016*

City Council Approval: *(TENTATIVE) February 11, 2016*



**CONTRACTUAL SERVICES AGREEMENT
DESIGN PROFESSIONALS**

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”.

WITNESETH:

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 (\$_____.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
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 the 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.

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 work and will provide proof of compliance to the City.

In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the removal of any of Consultant's designated personnel or subconsultants, Consultant shall,

immediately upon receiving notice from City of such desire of City, cause the removal of such person or persons.

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

12. INSURANCE. Consultant shall procure and maintain for the duration of the contract 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, 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
Risk Manager
37101 Newark Blvd.
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 any auto (Code 1), or Code 8 (hired) and 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 any Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

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|---|--|
| 1. General Liability:
(including products-completed operations, personal and advertising injury) | \$2,000,000 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 the City Risk Manager. At the option of City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its officers, officials, directors, employees, contractors, agents, and volunteers; or (2) Consultant shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration, and defense expenses in an amount specified by the City Risk Manager or designee.

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

H. Acceptability of Insurers.

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

Commissioner of the State of California to transact the business of insurance in the State of California.

I. Other Insurance Provisions.

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers (“Additional Insureds”) are to be covered as insureds as respects: 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, subconsultants, agents, 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 by this clause 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 Civil Code.

5. Self-Insured Retentions (SIR). All 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 insured 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 the City, its officers, officials, employees, agents, and volunteers for losses arising from work performed by Consultant for the City.

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

Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in those 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 17, hereinbelow) a written report (in a form acceptable to the 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 and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, 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 its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

The duty to defend is a separate and distinct obligation from Consultant's duty to indemnify. Consultant shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Consultant of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination of comparative active negligence or willful misconduct by an indemnified party does not relieve 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 willful misconduct of an indemnified party,

Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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

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

16. TERM/TERMINATION.

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

B. Notwithstanding the provisions of paragraph 16 section A above, either party may terminate this Agreement without cause by giving written notice thereof not less than ten (10) days prior to the effective date of termination, which date shall be included in said notice. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

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

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

<hr/> Consultant Address: _____ _____ _____ _____	<hr/> Administrator City of Newark Attn: _____ 37101 Newark Boulevard Newark, CA 94560
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19. PARAGRAPH HEADINGS. Paragraph headings used herein are for convenience only and shall not be deemed to be a part of such paragraphs and shall not be construed to change the meaning thereof.

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

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

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

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

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

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

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

27. ENTIRE AGREEMENT. This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the services described herein. 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.

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