

F.1 Adoption of the City of Newark’s Framework for Green Infrastructure Plan Development – from Assistant City Engineer Imai. (RESOLUTION)

Background/Discussion – The San Francisco Bay Regional Water Quality Control Board (RWQCB) regulates the discharge of stormwater collected in public storm drain systems through the issuance of a National Pollutant Discharge Elimination System (NPDES) Permit to the various cities and counties. In November 2015, the RWQCB reissued the Municipal Regional Stormwater NPDES Permit (MRP2) to jurisdictions within the Bay Area. In order to be in compliance with the MRP2, the City of Newark must develop and submit a Green Infrastructure Plan to the RWQCB by September 30, 2019.

“Green Infrastructure” is a term that refers to engineered structures or features that are designed to remove pollutants from stormwater runoff, such as grassy swales or permeable pavement. A Green Infrastructure Plan must demonstrate how green infrastructure features will be incorporated into both public and private storm drain systems in order to reduce the impacts urbanization has on our creeks and the San Francisco Bay.

One of the first required steps towards developing a Green Infrastructure Plan is the development and approval of a Framework document that identifies specific tasks and time frames required to complete the Green Infrastructure Plan. The RWQCB requires all jurisdictions to approve their Green Infrastructure Plan Framework document by June 30, 2017.

Newark is a member agency of the Alameda Countywide Clean Water Program (ACCWP). The ACCWP has developed a Green Infrastructure Framework template for use by its member agencies to comply with MRP2. The City of Newark’s Framework document is based on this template and includes deadlines, tasks, evaluation of funding sources, training and outreach, staffing requirements and timeframes for the development of the Green Infrastructure Plan.

There is no cost associated with adoption of the City’s Green Infrastructure Framework document. However, additional staff time and resources will be required to develop the City’s Green Infrastructure Plan and then, once it is approved, implement it over the next 23-plus years. Consultants will also likely be required to augment City staff and provide needed technical expertise. Furthermore, there will be direct cost implications to retrofit a portion of the City’s storm drain system with Green Infrastructure in order to meet the targets established by the RWQCB.

Attachment

Action – It is recommended that the City Council, by resolution, adopt the City of Newark’s Framework for Green Infrastructure Plan Development.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF NEWARK ADOPTING THE CITY OF NEWARK'S
FRAMEWORK FOR GREEN INFRASTRUCTURE
PLAN DEVELOPMENT

WHEREAS, the City of Newark's stormwater discharge requirements are regulated by the reissued Municipal Regional Stormwater Permit (MRP2) adopted by the San Francisco Bay Regional Water Quality Control Board on November 19, 2015 (Order No. R2-2015-0049); and

WHEREAS, in order to be in compliance with Provision C.3.j of MRP2, the City of Newark is required to prepare a Green Infrastructure Plan for the inclusion of low impact development drainage design into appropriate projects on public and private lands to address the adverse water quality impacts and pollutants from urban stormwater runoff and urbanization; and

WHEREAS, as a milestone in the preparation of the Green Infrastructure Plan, the City of Newark must adopt a framework for Green Infrastructure Plan development by June 30, 2017; and

WHEREAS, a Framework for Green Infrastructure Plan Development has been prepared that details specific tasks and timeframes for the development of the City of Newark's Green Infrastructure Plan;

NOW, THEREFORE, BE IT RESOLVED BY THE City Council of the City of Newark that the City Council does hereby adopt the City of Newark's Framework for Green Infrastructure Plan Development.



Framework for Green Infrastructure Plan Development

This Framework for Green Infrastructure Plan Development is organized as follows.

- Section 1: Purpose
- Section 2: Municipal Stormwater Permit Deadlines
- Section 3: Specific Tasks for Plan Development
- Section 4: Timeframe for Plan Development
- Section 5: Staffing Assignments

1. Purpose

The purpose of the Green Infrastructure Plan is to guide the identification, implementation, tracking, and reporting of green infrastructure projects. “Green infrastructure” refers to a variety of engineered structures or features that are designed to detain, retain, meter or treat stormwater runoff in order to reduce runoff rates and volumes and improve water quality. The Green Infrastructure Plan will be developed in accordance with Green Infrastructure Plan requirements in Provision C.3.j of the Municipal Regional Stormwater Permit (Regional Water Quality Control Board Order No. R2-2015-0049, adopted on November 19, 2015), which states in part:

....the [Green Infrastructure] Plan is intended to describe how Permittees will shift their impervious surfaces and storm drain infrastructure from gray, or traditional, storm drain infrastructure where runoff flows directly into the storm drain and then to the receiving water, to green—that is, to a more resilient, sustainable system that slows runoff by dispersing it to vegetated areas, harvests and uses runoff, promotes infiltration and evapotranspiration, and uses bioretention and other green infrastructure practices to clean stormwater runoff.... The Plan is intended to serve as an implementation guide and reporting tool... to set goals for reducing, over the long term, the adverse water quality impacts of urbanization and urban runoff on receiving waters.

2. Municipal Stormwater Permit Deadlines

Provision C.3.j.i.(1) of the Municipal Regional Stormwater Permit (MRP) requires the City of Newark to approve a framework to develop a Green Infrastructure Plan by June 30, 2017. The Green Infrastructure Plan must be submitted to the Regional Water Quality Control Board by September 30, 2019.

3. Specific Tasks for Plan Development

Preparation of the Green Infrastructure Plan will require the following specific tasks.

Identify Green Infrastructure Projects

Future green infrastructure projects will be identified for inclusion in the Green Infrastructure Plan. This will include documentation of existing plans for private and public development projects that would be subject to MRP Provision C.3, which requires development projects to include stormwater treatment facilities. The Green Infrastructure Plan will also document the continuing implementation and results of the City of Newark's process, initiated in Fiscal Year 2015/16, to review planned capital improvement projects that are not subject to Provision C.3 stormwater treatment requirements in order to identify the potential for incorporating green infrastructure. Additionally, a tool developed by the Alameda Countywide Clean Water Program (Clean Water Program) will be used to identify, map, and prioritize potential green infrastructure projects that may be included in the Green Infrastructure Plan.

Develop Tracking Procedures

Guidance provided by the Clean Water Program will be used to develop procedures for estimating the pollutant load reduction benefits of green infrastructure projects, and for tracking and reporting on completed projects. The procedures will be described in the Green Infrastructure Plan.

Develop Guidelines, Specifications and Typical Designs

The Green Infrastructure Plan will provide guidelines, specifications and typical details to facilitate the incorporation of green infrastructure into projects within the City of Newark. This will be based on guidelines, specifications, and standard details developed by the City of Newark as well as those developed or provided by the Clean Water Program. The City of Newark will evaluate the materials provided by the Clean Water Program for consistency with local standards, and will revise existing guidelines, standard specifications, design details, and procedures as needed.

Update Planning Documents

Planning documents will be reviewed, and relevant sections of these documents will be modified, as needed, for implementing green infrastructure in public and private development projects to support the implementation of the Green Infrastructure Plan. This will include, but may not be limited to, the following planning documents

- Newark General Plan
- Specific Plans and Master Plans
- Citywide Parks Master Plan
- Complete Streets Policy
- Capital Improvement Plan

- Pedestrian & Bicycle Master Plan
- Pavement rehabilitation work plan
- Other plans, policies and guidelines that may affect the future alignment, configuration, or design of roadways, parking lots, buildings, and other impervious surfaces.

Evaluate Funding Sources

An evaluation of funding sources for potential future public green infrastructure projects will be included in the Green Infrastructure Plan. Guidance provided by the Clean Water Program may be used to develop an in-lieu fee for private development projects that are constrained from fully meeting stormwater treatment measures onsite. This fee could be a potential funding source for future public green infrastructure projects.

Training and Outreach

Staff will receive training on green infrastructure planning, implementation, design, and maintenance at inter-departmental meetings or by attending training sessions provided by the Clean Water Program. Updates and opportunities for input on the preparation of the Green Infrastructure Plan will be provided to the City Council and Planning Commission. Outreach to the general public and development community will be conducted in coordination with the Clean Water Program.

Compile and Implement Green Infrastructure Plan

Documentation of the tasks described above will be compiled into the Green Infrastructure Plan and submitted to the City Council along with a resolution for review and recommended adoption to begin implementing the Green Infrastructure Plan.

Submit Plan to the Water Board

The Plan, and applicable policies or other legal mechanisms for Plan implementation, will be submitted to the Regional Water Quality Control Board (Water Board) with the City of Newark's 2019 Annual Report of Stormwater Program Implementation.

4. Timeframe for Plan Development

The schedule for conducting specific tasks is presented below. Adoption of the Green Infrastructure Plan is scheduled to occur by June 30, 2019. The Plan, and applicable policies or other legal mechanism for Plan implementation, must be submitted to the Regional Water Board by September 30, 2019.

Schedule of Specific Tasks

Task	FY 2016-17		FY 2017-18				FY 2018-19				FY 2019-20	
	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2
Identify Projects	█											
Develop Tracking Procedures			█									
Incorporate Guidelines				█								
Update Planning Documents				█								
Evaluate Funding Sources			█									
Training and Outreach	█											
Compile Plan								█				
Adopt Plan										█		
Submit Plan to Water Board												◆

5. Staffing Assignments

Staff from the Public Works Department Engineering Division will direct the preparation of the Green Infrastructure Plan.

F.2 Authorization for the City Manager to sign Task Order No. 13 to the Joint Powers Agreement with the City of Fremont for Paratransit Services – from Recreation and Community Services Director Zehnder. (RESOLUTION)

Background/Discussion – Door-to-door shared ride transportation services are an essential service offered to Newark residents who are 70 years of age and older or those who are unable to access public transit independently due to a medical or disabling health condition. These paratransit services are provided to elderly and disabled Newark residents in order to improve their access to health care, shopping, errands and social and recreational activities. Funding for Newark Paratransit services is provided through Measure B and Measure BB sales tax and administered through the Alameda County Transportation Committee.

The size and scope of Fremont’s program provides Newark residents with expanded and efficient services. The following table provides a summary of services to be provided through the City of Fremont under a contract for services with MV Transportation:

FY17/18 Service Parameters	Fremont/Newark Paratransit
Service Hours	Monday – Friday, 8 am – 6 pm *Saturday and Sunday, 9 am – 3 pm *limited Sat./Sun. service within Newark
Service Area	All of Fremont, Newark and Union City.
Fares	\$2.50 per one-way trip within Newark, Fremont and Union City
Reservation Hours	Monday – Friday, 8 am – 5 pm Centralized reservations and dispatch with our contracted service provider that ensures that riders can reach a live person to make reservations and to check on the status of a ride (weekdays and weekends).
Enrollment processing time	On the same day of receipt of application. Expedited access to transportation can also be arranged on the same day or the next day as scheduling capacity allows.

In addition to the expanded paratransit service, Newark residents benefit from the high level of service coordination and customer service provided by the City of Fremont’s paratransit services team. City of Fremont staff ensure that elderly and disabled residents have expedited access to transportation services (applications can be processed within hours and urgent need transportation can be scheduled on the next day and sometimes even on the same day). Paratransit enrollment packets are sent out within a day or two of receipt of a completed application.

A same day ride request with taxi companies is an additional service made available for Newark Paratransit riders ages 80 and above. The City of Fremont coordinates the Tri-City Taxi Voucher program. The City of Newark contributes a portion of Measure B and Measure BB funds based on the total number of taxi vouchers redeemed by Newark Paratransit program registrants. Staff projects that there are ample funds available within the fiscal year 2017-2018 paratransit budget to cover this additional expense.

The City has contracted for paratransit services with the City of Fremont since September 1, 2013. Due to anticipated increased demand for same day taxi voucher services and associated administrative fees, for fiscal year 2017-2018, staff is recommending funding in the amount of \$229,020.

City staff and the City Attorney have reviewed the agreement and recommend that it be approved.

Attachment

Action - It is recommended that the City Council, by resolution, authorize the City Manager to sign Task Order No. 13 to the Joint Powers Agreement with the City of Fremont for Newark Paratransit services.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE CITY MANAGER TO SIGN
TASK ORDER NO. 13 TO THE JOINT POWERS AGREEMENT
WITH THE CITY OF FREMONT FOR NEWARK
PARATRANSIT SERVICES

WHEREAS, the City entered into an agreement entitled Joint Powers Agreement between the City of Newark and the City of Fremont on August 17, 2009; and

WHEREAS, the City of Fremont agreed to perform services in accordance with the Task Orders issued by the City of Newark; and

WHEREAS, the City of Newark wishes to request paratransit services for the 2017-2018 program year;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager of the City of Newark be and is hereby authorized to sign Task Order No. 13 to the Joint Powers Agreement with the City of Fremont for paratransit services, said agreement on file in the Office of the City Clerk.

**TASK ORDER NO. 13 TO JOINT POWERS AGREEMENT BETWEEN
THE CITY OF NEWARK AND THE CITY OF FREMONT
(PARATRANSIT SERVICES FY 2017/18)**

This Task Order No. 13 ("Task Order") is made and entered into by and between the City of Newark, a municipal corporation ("Newark"), and the City of Fremont, a municipal corporation ("Fremont").

RECITAL

A. Newark and Fremont entered into an agreement entitled Joint Powers Agreement between the City of Newark and the City of Fremont ("Agreement"), by which Fremont agreed to perform services in accordance with Task Orders issued by Newark.

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Agreement.
- 2. SCOPE OF TASK ORDER.** Fremont shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
- 3. PAYMENT.** For services performed by Fremont in accordance with this Task Order, Newark will compensate Fremont in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$229,020 (two hundred twenty-nine thousand and twenty dollars), as described in Exhibit "B," attached hereto and incorporated by reference.
- 4. SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Newark and Fremont.

IN WITNESS WHEREOF, the Newark and Fremont do hereby agree to the full performance of the terms set forth herein.

CITY OF FREMONT

Signature: _____

By: Jessica von Borck

Title: Assistant City Manager

Date: _____

CITY OF NEWARK

Signature: _____

By: John Becker

Title: City Manager

Date: _____

APPROVED AS TO FORM:

Signature: _____

By: Nellie Ancel

Title: Senior Deputy City Attorney

APPROVED AS TO FORM:

Signature: _____

By: David Benoun

Title: City Attorney

EXHIBIT A TO TASK ORDER NO. 13
SCOPE OF SERVICES
Paratransit Services for FY 2017-2018

1. GENERAL DESCRIPTION

The City of Fremont will provide door-to-door, shared-ride transportation services to Newark residents who are 70 years of age and older or who are unable to access public transit independently due to a medical or disabling health condition. Supplemental subsidized taxi service will be provided to Newark residents who are 70 years of age and older or who are unable to access public transit independently due to a medical or disabling health condition. These transportation services are provided to elderly and disabled Newark residents in order to improve their access to health care, shopping, errands and social and recreational activities. Services will be provided from July 1, 2017 through June 30, 2018.

2. PERSONNEL

- a. Personnel working on this program will include members of the City of Fremont's Transportation and Mobility Services team. The Fremont team consists of a Program Manager, Program Coordinator, Office Support Specialist and Public Services Assistant.
- b. The City of Fremont has contracted with MV Public Transportation, Inc. and local taxi companies to provide paratransit services for the specified period.

3. SERVICE REQUIREMENTS

a. Program Parameters:

- (1) Paratransit rides through MV Transportation will be offered during the following hours:
 - Monday – Friday, 8 am – 6 pm
 - Saturday and Sunday (limited service access), 9 am – 3 pmNo services will be provided on the following holidays:
 - New Year's Eve, New Year's Day, Martin Luther King Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Day following Thanksgiving, Christmas Eve, Christmas Day.

Paratransit rides provided by taxi companies will be available 24

hours a day, seven days a week.

- (2) Rides will be provided within Fremont, Newark and Union City.
- (3) Fares for rides through MV Transportation: \$2.50 per one-way trip within Newark, Fremont and Union City. Fares to be paid with a pre-paid paratransit voucher. Paratransit program participants can purchase pre-paid voucher books (8 pre-paid vouchers per book) from the City of Fremont at a cost of \$20 per book.

Fares for taxi rides: Depends on distance traveled. Riders will purchase taxi vouchers from the City of Fremont at a cost of \$4 per taxi voucher. Each taxi voucher subsidizes up to \$16 in taxi meter fare. Riders are responsible for fares beyond the voucher subsidy.

- (4) Ride Requests with MV Transportation:
Ride reservations will be taken: Monday – Friday, 8 am – 5 pm
Reservations are taken up to 7 days in advance. Rides are reserved on a first call, first served basis and are subject to vehicle space availability. Reservations and dispatch are provided through MV Transportation during the hours specified above. Standing order requests are processed and approved by the City's Transportation and Mobility Services team.

Ride Requests with Taxi Companies:

Ride requests are made on the same day. Riders will be picked up within 45 minutes of their call or within 10 minutes of a time order request.

- b. Services to be provided by the Transportation and Mobility Services Team include:

- (1) Service Eligibility Screening & Program Enrollment

Staff will review applications, determine eligibility and enroll eligible individuals for paratransit services. A Rider's Guide will be provided to each enrolled participant. Pre-paid paratransit vouchers books and taxi vouchers will be sold to program participants by mail or in person at Fremont City Hall.

- (2) Consumer Education and Service Coordination

Staff will provide one-on-one assistance to program participants who are experiencing difficulties in accessing or using the City's transportation services.

(3) Program Monitoring

Fremont's Program Manager will be responsible for the ongoing monitoring and evaluation of paratransit service operations. Staff from Fremont and Newark will meet quarterly to evaluate program and make adjustments as necessary to service operations.

(4) Service Documentation and Monthly Invoicing

Documentation of paratransit services provided to each client will be kept in a manner consistent with the City of Fremont's existing practice. Service statistics will be maintained and submitted to City of Newark staff on a monthly basis, and as otherwise requested. The City of Newark will be responsible for all required reporting to the Alameda County Transportation Commission.

Fremont's Program Manager will submit a monthly invoice to the City of Newark for paratransit services provided. Monthly invoice will include the City of Fremont's administrative fee and reimbursement for the paratransit services provided to Newark residents through the City's contract with MV Public Transportation, Inc. and/or local taxi companies.

**EXHIBIT B TO TASK ORDER NO. 13
BUDGET
Paratransit Services for FY 2017-2018**

The FY 2017-2018 budget for Task Order No. 13 is:

Paratransit Services: Up to a maximum of \$200,000

Administrative Fee: Up to a maximum of \$29,020

TOTAL BUDGET \$229,020

Monthly invoicing to Newark will be broken down as follows:

- **Cost per trip billing for all one-way trips provided to Newark residents:**
 - a) Total monthly charge for door-to-door paratransit services (based on each invoice received from MV Public Transportation) divided by the total number of one-way trips provided and multiplied by the number of one-way trips provided to Newark residents.
 - b) Total number of taxi vouchers redeemed by Newark residents multiplied by \$19 per voucher redeemed.
- **The administrative fee (14.51% of total cost per trip billing amount) will be billed monthly.**
- **Any revenues from pre-paid paratransit voucher sales to Newark residents will be deducted from the monthly invoice.**

The City of Newark will reimburse the City of Fremont for service provision and administrative costs associated with the Paratransit Program. The City of Fremont shall submit an invoice to Newark within twenty (20) days after the end of each service month. Newark shall make payments to Fremont within thirty (30) days of receipt of an invoice.

F.3 Approval of Investment Policy – from Accounting Manager Lee.

(RESOLUTION)

Background/Discussion – State law requires that the City’s Investment Policy be reviewed and approved by the City Council at least annually. The City’s current Investment Policy will remain the same and provides for all of the standard and material issues that an Investment Policy should include. The Investment Policy’s primary objective is the safety of principal balances, with liquidity and return on investment as the second and third priorities respectively.

Attachment

Action - It is recommended that the City Council, by resolution, approve the Investment Policy.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING THE CITY'S INVESTMENT POLICY

BE IT RESOLVED by the City Council of the City of Newark that the following Investment Policy is hereby set forth as follows:

1.0 PURPOSE

The purpose of this policy is to provide an overall guideline to the officers of the City of Newark (City) charged with the responsibility for the management and investment of unexpended funds under authority granted by the City Council. This policy is in compliance with the provision of the California Government Code, Sections 53600 through 53659, authority governing investments for municipal governments.

The City Treasurer, under the direction of the City Manager, is responsible for administering the City's investments and deposits.

2.0 POLICY

It is the policy of the City to invest public funds in a manner which will provide the highest investment return with the maximum security while meeting the daily cash flow demands of the City and conforming to all State and local statutes governing the investment of public funds.

3.0 SCOPE

The investment policy applies to all funds and investment activities under the direct authority of the City.

4.0 PRUDENCE

Investments shall be made with judgment and care - under circumstances then prevailing - which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by City investment officials shall be the "prudent person" standard and shall be applied in the context of managing an overall portfolio. City investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

5.0 OBJECTIVE

The primary objectives, in priority order, of the City's investment activities shall be:

- 5.1 Safety: Safety of principal is the foremost objective of the investment program. Investments shall be undertaken in a manner that seeks to ensure the preservation of capital in the overall portfolio. To attain this objective, diversification is required in order that potential losses on individual securities do not exceed the income generated from the remainder of the portfolio.
- 5.2 Liquidity: The City's investment portfolio will remain sufficiently liquid to enable the City to meet all operating requirements, which might be reasonably anticipated.
- 5.3 Yield: The City's investment portfolio shall be designed with the objective of attaining a market rate of return throughout budgetary and economic cycles, commensurate with the City's investment risk constraints and the cash flow characteristics of the portfolio.

6.0 DELEGATION OF AUTHORITY

Management responsibility for the investment program is delegated to the City Treasurer. No person may engage in an investment transaction except provided under the terms of this policy established by the City. The City Treasurer shall be responsible for all transactions undertaken and shall establish control system to regulate the activities of subordinate officials. The City may contract for the use of investment management services subject to the provisions of this policy and state law.

7.0 ETHICS AND CONFLICTS OF INTEREST

Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with proper execution of the investment program, or which could impair their ability to make impartial investment decisions. Employees and investment officials shall disclose to the City Manager any material financial interests in financial institutions that conduct business within this jurisdiction, and they shall further disclose any large personal financial/investment positions that could be related to the performance of the City, particularly with regard to the time of purchases and sales.

8.0 AUTHORIZED FINANCIAL INSTITUTIONS AND DEALERS

The Treasurer will maintain a list of financial institutions and dealers authorized to provide investment services to the City. Financial institutions and dealers who desire to become qualified bidders for investment transactions will be required to provide, at the Treasurer's discretion, the following:

- Most current audited financial statements

- Most current State and national certification and registration
- Certification of having read, and to recommend investments that are consistent with the City's most current investment policy.

These documents, among other factors, will be used by the Treasurer to determine whether to authorize a financial institution or dealer to provide investment services to the City.

9.0 AUTHORIZED AND SUITABLE INVESTMENTS

The City is empowered by state law to invest in the following types of securities.

- Bankers' Acceptances (BA)

These are short-term credit arrangements to enable businesses to obtain funds to finance commercial transactions. They are time drafts drawn on a bank by an exporter or importer to obtain funds to pay for specific merchandise. By its acceptance, the bank becomes primarily liable for the payment of the draft at its maturity. Bankers' acceptances may not exceed 180 days to maturity.

- Certificates of Deposit (CD)

These are issued by banks or savings and loan associations, also known as time deposits. The first \$250,000 is guaranteed by the Federal Deposit Insurance Corporation (FDIC) in the case of banks, and the Federal Savings and Loan Insurance Corporation (FSLIC) in the case of savings and loan associations. Deposits in excess of \$100,000 must meet collateral requirements as provided by law.

- Commercial Paper

An unsecured short-term promissory note issued by corporations, with maturities ranging from 2 to 270 days. Commercial paper must be rated in the highest tier (e.g., A-1, P-1, F-1, or D-1 or higher) by a nationally recognized rating agency.

- Local Agency Investment Fund (LAIF)

State law established the Local Agency Investment Fund. This fund enables local governmental agencies to remit money to the State Treasurer for the purpose of investment. The State Treasurer has elected to invest these monies with State monies as a part of the Pooled Money Investment Account. Each local governmental agency has the exclusive determination of the length of time its money will be on deposit with the State Treasurer. At the end of each calendar quarter, all earnings derived from investments are distributed by the State Controller to the participating government agencies in proportion to each agency's respective amounts deposited in the Fund and the length of time such amounts remained therein. Prior to the

distribution, the State's costs of administering the program are deducted from the earnings.

- Negotiable Certificates of Deposit (NCD)

These are unsecured obligations of the financial institution, bank, or savings and loan bought at par value with the promise to pay face value plus accrued interest at maturity. These investment instruments are traded in secondary markets, thus they have more liquidity than a CD.

- Obligations issued by the United States Government Agencies such as the Government National Mortgage Association (GNMA), the Federal Farm Credit Bank System (FFCB), the Federal Home Loan Bank Board (FHLB), the Federal National Mortgage Association (FNMA), the Student Loan Marketing Association (SLMA), and the Tennessee Valley Authority (TVA).

- Repurchase (RP or REPO) and Reverse Repurchase Agreement

Repurchase agreements are the sale by a bank or dealer of a government security with a simultaneous agreement to repurchase the security on a later date. The security "buyer" in effect lends the "seller" money for the period of the agreement, and the terms of the agreement are structured to compensate the buyer for this. As their name implies, reverse repurchase agreements are the mirror image of a REPO.

- Securities of the U.S. Government

Includes United States Treasury notes, bonds, bills, certificates of indebtedness, and those for which the faith and credit of the United States are pledged for the payment of principal and interest.

- Sweep Account

This is a short-term income fund into which all uninvested cash balances from non-interest bearing accounts are automatically transferred overnight into a commercial paper investment account, authorized by this policy.

Investments and deposits as a percentage of the City's total portfolio and their maximum maturities shall be within legally prescribed limits. To the extent possible, the City will attempt to match its investments with anticipated cash flow requirements. Unless matched to a specific cash flow, the City will not directly invest in securities maturing more than 5 years from the date of purchase.

10.0 COLLATERALIZATION

Amount of securities placed with agent of depository shall at all times be maintained as specified in California Government Code Section 53652 and pursuant to Sections 53656 and 53658.

The purchases of Certificates of Deposit require the depository to secure public funds. If the collateral is government securities, 110 percent market value to the face amount of the deposit is required. Promissory notes secured by first mortgages and first trust deeds used as collateral require 150 percent of market value to the face amount of the deposit. An irrevocable Letter of Credit issued by the Federal Home Loan Bank of San Francisco requires 105 percent of market value to the face amount of the public deposit.

Collateral is also identified as the underlying marketable securities provided by a broker/dealer under a repurchase agreement transaction of the marketable securities provided by the Governmental Agency under a reverse repurchase agreement.

Marketable securities, which are provided as collateral under a repurchase agreement with a broker/dealer, should be held by the safekeeping agent at a market value greater than 102 percent. Request for collateral substitutions and releases should always be subject to the City Treasurer's approval.

11.0 SAFEKEEPING AND CUSTODY

All security transactions, including collateral for repurchase agreements, entered into by the City shall be conducted on a delivery-versus-payment (DVP) basis. Securities will be held by a third party custodian designated by the Treasurer and evidenced by safekeeping receipts as specified in California Government Code Section 53608.

12.0 DIVERSIFICATION

The City will diversify its investments by security type and institution. The purpose of diversification is to reduce overall portfolio risks while attaining market average rates of return.

With the exception of U.S. Treasury securities and authorized pools, no more than 50 percent of the City's total investment portfolio will be invested in a single security type or with a single financial institution.

Investments in bankers' acceptances, commercial papers, and negotiable certificates of deposits, as a percentage of City's total portfolio, shall at all times be maintained on percentage limitations specified by California Government Code Section 53601.

13.0 INTERNAL CONTROL

The City Treasurer will require independent auditors to review and perform testing of cash and investments as part of the City's annual financial audit. The review and testing are designed to ensure that there is no material misstatement of cash and investment balances in the financial statements and to provide internal control assuring compliance with the policies and procedures.

14.0 PERFORMANCE STANDARDS

The investment portfolio shall be designed with the objective of obtaining a rate of return throughout budgetary and economic cycles, commensurate with the investment risk constraints and the cash flow requirements.

15.0 INVESTMENT ALLOCATION

The City Treasurer shall allocate interest from the General Fund to other funds with average daily cash balances in excess of \$10,000. All interest earnings not otherwise allocated shall be allocated to the General Fund.

16.0 INVESTMENT REVIEW COMMITTEE

The Investment Review Committee shall be made up of the City Manager, City Treasurer, and City Clerk and shall meet as deemed necessary by the City Manager to review the execution of this Investment Policy. The Committee may determine that temporarily idle monies be invested in only certain selected securities from those permitted by state law as listed under Item 9.0 above.

17.0 REPORTING

The City Treasurer shall report monthly to the City Council and City Manager the following:

Type of Investment

Financial Institution Name

Date of Investment and Maturity

Principal Amount of Investment

Current Market Value, where possible, for all securities with the maturity of
more than 12 months

Rate of Interest or Yield

18.0 INVESTMENT POLICY ADOPTION

The City's investment policy shall be adopted by resolution of the City Council of the City of Newark. The investment policy shall be reviewed annually and be approved by the City Council of the City of Newark.

F.4 Authorization for the Mayor to sign a three-year cooperation agreement for fiscal years 2018-2020 with Alameda County for participation in the Alameda County Urban County for the Community Development Block Grant (CDBG) Program – from Associate Planner Mangalam. (RESOLUTION)

Background/Discussion – Because the City of Newark has a population of less than 50,000, the City needs to be included as part of the Alameda County Urban County in order to qualify for annual funding under the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. As part of that process, Newark and Alameda County need to execute a three- year cooperation agreements for fiscal years 2018-2020.

This agreement generally provides that the City and County will work together to undertake community renewal and housing assistance activities, that the City will receive a share of Urban County CDBG funds each year, that both the City and the County will follow the rules established by HUD, and that the County will administer the program for the City. A copy of three-year agreement between Newark and Alameda County is attached.

Attachment – Three year agreement between City of Newark and Alameda County.

Action – It is recommended that the City Council, by resolution, authorize the Mayor to sign a three-year cooperation agreement with Alameda County for participation in the Alameda County Urban County Community Development Grant (CDBG) Program.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE MAYOR TO SIGN A THREE
YEAR COOPERATION AGREEMENT WITH ALAMEDA
COUNTY FOR PARTICIPATION IN THE ALAMEDA
COUNTY URBAN COUNTY COMMUNITY DEVELOPMENT
BLOCK GRANT (CDBG) PROGRAM

BE IT RESOLVED by the City Council of the City of Newark that the Mayor of the City of Newark is hereby authorized to sign a three year cooperation agreement with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program, said agreement on file in the Office of the City Clerk.

AGREEMENT

This Agreement is made and entered into this ____ day of _____ by and between the CITY OF NEWARK, hereinafter called "CITY" and the COUNTY OF ALAMEDA, hereinafter called "COUNTY", regarding their cooperation with respect to Community Development Block Grant funding.

WHEREAS, the Congress of the United States has enacted the Housing and Community Development Act of 1974, and subsequent amendments to such Act, hereinafter called "ACT"; and,

WHEREAS, Title I of ACT consolidates previously separate grant programs for open space, public facility loans, water and sewer grants, urban renewal, model cities, rehabilitation loans, and affordable housing; and,

WHEREAS, Title I makes available entitlement grants to:

- (1) cities whose 2010 Census population exceeds 50,000 persons; and
- (2) counties which qualify as an urban county; and

WHEREAS, the term "urban county" means any county within a metropolitan area which:

- (1) is authorized under state law to undertake essential community development and housing assistance activities in its incorporated areas which are not units of general local government; and,

- (2) has a combined population of 200,000 or more in such unincorporated areas and in its included units of local government:

- (A) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded; or,

- (B) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities; and,

WHEREAS, five cities (Albany, Dublin, Emeryville, Newark and Piedmont) in Alameda County have a 2010 Census population of less than 50,000 and desire to participate in the Alameda County Urban County; and,

WHEREAS, the participating cities, combined with the unincorporated portions of the County of Alameda, form a combined 2010 Census population of 200,000 or more persons, thereby qualifying as an urban county, and becoming eligible for an entitlement of Community Development Block Grant (CDBG) and HOME Investment Partnership (HOME) funds; and,

WHEREAS, the participating cities agree that by executing these cooperative agreements they may not apply for grants under the Small Cities or State CDBG Program from appropriations for fiscal years during the period in which it is participating in the Urban County's CDBG program; and

WHEREAS, the COUNTY and CITY cannot withdraw from the cooperative agreement while the Program Year 2018-2020 Agreement remains in effect.

THEREFORE, it is agreed that:

1. CITY agrees that by executing this Agreement, CITY may not apply for grants from appropriations under the Small Cities or State CDBG Program from appropriations for fiscal years during the period in which it is participating in the Urban County's CDBG program.

CITY agrees that by executing this Agreement, it may only receive a portion of the formula allocation under the HOME Program through the Urban County. If the Urban County does not receive a portion of the HOME formula allocation, the CITY cannot form a HOME Consortium with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for HOME funds, if the State allows.

2. CITY agrees that by executing this Agreement, it may only receive the formula allocation under the Emergency Solutions Grant (ESG) Program through the Urban County. If the Urban County does not receive the ESG formula allocation, the CITY cannot form an Urban County with other local governments. An Urban County or a unit of government participating with the Urban County may apply to the State of California for ESG funds, if the State allows.

3. The Department of Housing and Urban Development, hereinafter called "HUD", has made a determination that the COUNTY has the essential powers to operate as an urban county.

4. CITY and COUNTY will cooperate to undertake, or assist in undertaking, community renewal and lower income housing assistance activities, specifically urban renewal and publicly assisted housing, hereinafter called "PROGRAM", to be carried out with annual Community Development Block Grant and HOME Investment Partnership funds, hereinafter called "CDBG/HOME FUNDS", from Federal fiscal years 2018, 2019 and 2020 appropriations and from any program income generated from the expenditure of such funds. Community renewal and lower income housing assistance activities shall be those designated or referred to within Title I of the ACT and Title II of the Cranston-Gonzalez National Affordable Housing Act and the regulations issued pursuant thereto.

5. To carry out community renewal and lower income housing activities, COUNTY shall distribute to CITY a portion of the CDBG funds received under the ACT from Federal fiscal years 2018, 2019 and 2020 appropriations. The funds distributed to CITY shall be determined in accordance with such needs, objectives, or strategies, as COUNTY shall decide. In preparing the needs, objectives or strategies, COUNTY shall consult with CITY before making its determinations. The distribution of HOME funds to the Urban County is based on the review and recommendations of proposals received in response to an annual RFP.

6. It is expressly understood that as a recipient of the CDBG/HOME/ESG Funds from HUD, COUNTY and CITY must take all actions necessary to assure compliance with the Urban County's certification required by Section 104(b) of Title I of the Housing and Community Development Act of 1974, as amended, regarding Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and to affirmatively further fair housing. COUNTY and CITY must comply with Section 109 of Title I of the Housing and Community Development Act of 1974, which incorporates Section 504 of the Rehabilitation Act of 1973 and the Age Discrimination Act of 1975, and other applicable laws, and all regulations issued pursuant thereto. Further, urban county funding for activities in or in support of any city that does not affirmatively further fair housing within its own jurisdiction or that impedes the county's actions to comply with its fair housing certification is prohibited.

a. COUNTY and CITY must have a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individual engaged in non-violent civil rights demonstrations; and

b. COUNTY and CITY must have a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

7. CITY may not sell, trade, or otherwise transfer all or any portion of the CDBG/HOME FUNDS to a metropolitan city, urban county, unit of general local government, or Indian tribe or insular area that directly or indirectly receives CDBG funds in exchange for any other funds, credits or non-federal considerations, CITY must use the CDBG/HOME FUNDS for activities eligible under Title I of the Housing and Community Development Act of 1974, as amended and Title II of the Cranston-Gonzalez National Affordable Housing Act.

8. Pursuant to 24 CFR 570.501(b), CITY is subject to the same requirements applicable to sub-recipients, including the requirement of a written agreement set forth in CFR 570.503.

9. CITY shall inform COUNTY of any income generated by the expenditure of CDBG funds received by the CITY. CITY shall pay any such program income to COUNTY or CITY may retain program income subject to requirements set forth in this Agreement and with written approval of the COUNTY. Any program income CITY is authorized to retain may only be used for eligible activities in accordance with all CDBG requirements as may then apply. COUNTY has the responsibility for monitoring and reporting to HUD on the use of any such program income thereby requiring appropriate record keeping and reporting by CITY as may be needed for this purpose. In the event of close-out or change in status of CITY, any program income that is on hand or received subsequent to the close-out or change in status shall be paid to COUNTY.

10. In regard to real property that is in within the control of CITY due to being acquired or improved in whole or in part using CDBG funds, CITY must give timely notification to COUNTY for any modification or change in the use of the real property from that planned at the time of acquisition or improvement including disposition. CITY must reimburse COUNTY in an amount equal to the current fair market value (less any portion thereof attributable to expenditures of non-CDBG funds) of property acquired or improved with CDBG funds that is sold or transferred for a

use which does not qualify under the CDBG regulations. Any program income generated from the disposition or transfer of property prior to or subsequent to the close-out, change of status or termination of the cooperation agreement between COUNTY and CITY shall be paid to COUNTY.

11. CITY shall provide COUNTY with all information concerning CITY and the activities CITY carried out under this agreement which COUNTY requires to prepare 1) documents required to be submitted to HUD, 2) annual performance report, 3) such other documents as COUNTY may require to carry out community renewal and lower income housing activities or meet Federal requirements. All information shall be submitted on forms prescribed by COUNTY. In addition, CITY agrees to make available upon request all records concerning the activities carried out under this Agreement for inspection by COUNTY or Federal officials during regular business hours.

12. CITY designates City Administrator or his/her designee as the official to whom all notices and communications from COUNTY shall be directed. COUNTY's duty to notify CITY shall be complete when the communication is sent to the designated official or deputy. It is the exclusive duty of the designated official or deputy to notify the correct individuals or departments within CITY.

13. CITY shall defend, indemnify and hold harmless COUNTY, its officers, employees and agents from liability for any fines, penalties, or damage of any type accruing to COUNTY by virtue of CITY's failure to comply with any requirement of the ACT and the regulations issued pursuant thereto, or failure to comply in any respect with the PROGRAM described herein. Further, CITY shall defend, indemnify and hold harmless COUNTY, its officers, employees, and agents against any and all liability for injury or damage caused by any act or omission of CITY or any of CITY's employees or volunteers in the performance of the contract or PROGRAM and CITY shall hold COUNTY harmless from any and all loss occasioned in the performance of, or otherwise arising out of, this Agreement or PROGRAM.

14. This Agreement shall go into effect immediately upon the signature of both parties and shall continue in full force and effect until the CDBG/HOME/ESG Funds and program income received with respect to activities carried out during the three-year qualification period (Federal fiscal years 2018, 2019 and 2020) are expended and the funded activities completed. CITY will be included in the urban county for the entire three years period funded by CDBG/HOME/ESG Funds from Federal fiscal years 2018, 2019 and 2020. Appropriations may not be withdrawn from the urban county during this agreement period. During the three year qualification period, Federal fiscal years 2018, 2019 and 2020, CITY and any other included unit of general local government shall not withdraw from nor be removed from the Urban County and cannot terminate or withdraw from the cooperation agreement.

15. CITY agrees that it has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations and a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such non-violent civil rights demonstrations within jurisdictions.

16. CITY agrees that COUNTY has final responsibility for selecting CDBG, ESG and HOME activities and annually filing the Annual Action Plan with HUD, although if the County is a member of a HOME Consortium, the Consortium submits the Plan developed by the County.

17. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

CITY OF NEWARK

COUNTY OF ALAMEDA

Mayor

President, Board of Supervisors

ATTEST: _____
City Clerk

ATTEST: _____
Clerk, Board of Supervisors

DATE: _____
APPROVED AS TO FORM:

DATE: _____
APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

City Attorney

By: _____
Heather M. Littlejohn, Deputy County Counsel

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

F.5 Authorization for the purchase of two (2) 2017 Toyota Siennas as replacement vehicles for the Police Department from Freeway Toyota and outfitting by Telepath – from Maintenance Supervisor Connolly. (RESOLUTION)

Background/Discussion – The Newark Police Department is in need of two (2) replacement vehicles that have reached the end of their useful lives. The 2016-2018 Biennial Budget and Capital Improvement Plan includes funding for vehicle replacements in the amount of \$84,000 as part of the Equipment Replacement Budget. Staff requested a quote from Fremont Toyota for fleet pricing and determined that the pricing was cost prohibitive. Authorization is requested to participate in an intergovernmental procurement process for the purchase of two (2) 2017 Toyota Siennas.

An intergovernmental procurement process (also known as a “piggybacking”) is an alternative option to Newark’s formal bidding process. By piggybacking onto another agency’s contract, the City would save the cost and time associated with the formal bid process but be able to be assured of competitive set prices established by another agency’s formal bidding process. Upon completion of a formal bidding process, the State of California entered into a master contract and a procurement contract with Freeway Toyota for the purchase of new vehicles. This contract is in effect through February 21, 2018, and includes a provision to allow other agencies to participate.

The competitive process used by the State of California has been reviewed by the Public Works Department and satisfies the City’s requirements for the proposed vehicle purchases.

Based upon the State of California contract with Freeway Toyota, the combined purchase cost for the two (2) vehicles will be \$74,000. The purchase cost does not include outfitting of the vehicles which is estimated not to exceed \$10,000 combined for both vehicles. The outfitting is based on specialized vendor quotes for the installation of emergency response equipment, window tinting, speakers, antennas, and specialized wiring.

Action - It is recommended that the City Council, by resolution, authorize the purchase of two (2) 2017 Toyota Siennas as replacement vehicles for the Police Department from Freeway Toyota and outfitting by Telepath.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE PURCHASE OF TWO (2) 2017
TOYOTA SIENNAS AS REPLACEMENT VEHICLES FOR
THE POLICE DEPARTMENT FROM FREEWAY TOYOTA
AND OUTFITTING BY TELEPATH

WHEREAS, the 2016–2018 Biennial Budget and Capital Improvement Plan includes funding for replacement of police vehicles that have reached the end of their useful lives; and

WHEREAS, the City of Newark will be participating in an intergovernmental procurement process (also known as “piggybacking”) with Freeway Toyota as the holder of the State of California procurement contract to purchase two (2) new 2017 Toyota Siennas at a total combined cost of \$74,000; and

WHEREAS, the two (2) proposed replacement vehicles will require additional equipment outfitting not to exceed an additional combined total cost of \$10,000.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark authorizes the purchase of two (2) 2017 Toyota Siennas as replacement vehicles for the Police Department from Freeway Toyota and outfitting by Telepath.

F.6 Approval of plans and specifications, acceptance of bid, award of contract for the Base Bid and Additive Alternate Bid No. 2 to G. Bortolotto & Company, Inc. for Enterprise Drive Complete Streets and Road Diet, Project 1066, and amendment of the 2016-2018 Biennial Budget for Fiscal Year 2017-2018 – from Associate Civil Engineer Cangco. (MOTION)(RESOLUTION)

Background/Discussion – The Enterprise Drive Complete Streets and Road Diet Project will implement the City of Newark’s Complete Streets Policy to provide room for other modes of transportation. The project will rehabilitate Enterprise Drive, reduce the number of vehicle travel lanes from two in each direction to a single lane in each direction with a center two-way left-turn lane, and add Class II bike lanes in each direction. The project includes two Additive Alternate Bids for reimbursable work on behalf of Alameda County Water District (ACWD) and Union Sanitary District (USD).

The project bid opening occurred on June 8, 2017. Only one bid was submitted and the bid amounts are as follows:

Bidder	Base Bid	Alt Bid No. 1	Alt Bid No. 2
G. Bortolotto & Company, Inc.	\$937,987.87*	\$19,417.00	\$ 10,006.00
Engineer’s Estimate	\$ 880,255.00	\$ 14,750.00	\$10,500.00

*Mathematically Corrected

After review of the bids received from G. Bortolotto & Company, Inc. for Additive Alternate Bid No. 1, ACWD does not recommend adding their item to the contract. However, USD recommends adding Additive Alternate Bid No. 2 to the contract. The scope of work for USD includes grade adjustment and alterations of existing facilities along with associated insurance requirements. The City would be reimbursed for all work performed by the contractor on behalf of USD. Staff recommends that the City Council accept the bid and award the contract to G. Bortolotto & Company, Inc., for the Base Bid and Additive Alternate Bid No. 2 in the amount of \$947,993.87.

The Enterprise Drive Complete Streets and Road Diet Project will commence with construction activity in July 2017. The project includes \$760,000 in approved funding in the 2016-2018 Biennial Budget for Fiscal Year 2016-2017 through an approved federal grant and matching gas tax funds. A budget amendment in the amount of \$187,993.87 is necessary to appropriate additional gas tax funds anticipated in fiscal year 2017-2018 to provide the total project funding amount of \$947,993.87.

Attachment

Action - It is recommended that the City Council, by motion, approve the plans and specifications and, by resolution, accept the bid and award the contract for the Base Bid and Additive Alternate Bid No. 2 to G. Bortolotto & Company, Inc. for the Enterprise Drive

Complete Streets and Road Diet, Project 1066 and amend the 2016-2018 Biennial Budget for Fiscal Year 2017-2018.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACCEPTING THE BID AND AWARDING THE CONTRACT FOR THE BASE BID AND ADDITIVE ALTERNATE BID NO. 2 TO G. BORTOLOTTO & COMPANY, INC. FOR ENTERPRISE DRIVE COMPLETE STREETS AND ROAD DIET, PROJECT 1066, AND AMENDING THE 2016-2018 BIENNIAL BUDGET FOR FISCAL YEAR 2017-2018

BE IT RESOLVED that the City Council of the City of Newark does hereby find that G. Bortolotto & Company, Inc. was the lowest responsible bidder for the Enterprise Drive Complete Streets and Road Diet, Projects 1066, in the City of Newark.

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the Mayor of the City of Newark to sign an agreement with said company for the construction of Enterprise Drive Complete Streets and Road Diet, Project 1066, according to the plans, specifications, and terms of said bid for the Base Bid and Additive Alternate Bid No. 2.

BE IT FURTHER RESOLVED that the City Council does hereby amend the 2016-2018 Biennial Budget for fiscal year 2017-2018 as follows:

Increase to Gas Tax Revenue:	206-0000-3430	+\$188,000
Increase Expenditure Budget:	206-5600-5280-1066	+\$188,000

F.7 Approval of Contractual Services Agreements with various consultants for Building Inspection and Plan Check Services, Fuel Supply, Geologic and Geotechnical Engineering Services, and Traffic Signal and Street Light Maintenance – from Assistant City Engineer Imai. (RESOLUTION)

Background/Discussion – In accordance with the City’s Purchasing Rules and Regulations, staff prepared and initiated an open and competitive Request for Qualifications (RFQ) and formal bidding process for various contractual services. A Notice Inviting Bids and RFQs were sent to firms previously under contract with the City and firms that expressed interest in receiving such notices and RFQs. The RFQs specified that selection would be made based on quality and completeness of submissions as well as a firm’s experience with engagements of similar scope and complexity, satisfaction of previous clients, and proposed rate schedules.

Professional services sought through the RFQ process include: Building Inspection Plan Check and Field Inspection Services, Geologic and Geotechnical Engineering Services, and Traffic Signal and Street Light Maintenance. Contractual services sought through a formal bidding procedure included Gasoline and Diesel Fuel Supply.

Building Inspection Plan Check and Field Inspection Services

The selected consultants may provide services that include the review of development plans and permit applications; inspection of commercial, industrial and residential construction projects; permit technician duties; fire sprinkler review; inspections related to the California Fire Code; and Public Works inspections.

Gasoline and Diesel Fuel Supply

The scope of services includes the supply and delivery of unleaded fuel and undyed/clear diesel fuel. The capacity of Newark’s fuel tanks, located at Newark’s Service Yard (37440 Filbert Street), is 12,000 gallons for unleaded fuel and 4,000 gallons for diesel. The City of Newark uses an estimated 20,000 gallons of unleaded fuel and 10,000 gallons of diesel fuel annually.

Geologic and Geotechnical Engineering Services

The selected consultants may provide services that include geologic and geotechnical peer review services; geotechnical investigation; geological hazards evaluation; construction observations and testing; observations during remedial grading; review or development of mitigation recommendations; and attendance at meetings.

Traffic Signal and Street Light Maintenance

Traffic signal and street light maintenance services include the preventative and routine maintenance, responsive maintenance, and emergency repair of equipment associated with the City of Newark’s traffic signal and street light system. The selected firm will provide these services for all traffic signals, street lights and associated equipment owned and operated by the City of Newark.

Staff received a total of sixteen statements of qualifications and evaluated and ranked them based on completeness and responsiveness to the RFQs. A total of one proposal from Bosco Oil, Inc. dba Valley Oil Company was received in response to the notice inviting bids for gasoline and diesel fuel supply. Valley Oil Company is experienced in this type of service, is a responsible contractor and submitted a responsive bid.

Staff is recommending the approval of Contractual Services Agreements with nine different consultant firms, each with a not to exceed amount as indicated below.

Building Inspection Plan Check and Field Inspection Services

- 4LEAF, Inc. – \$52,300
- Bureau Veritas North America, Inc. – \$100,000
- CEL Consulting, Inc. – \$50,000
- TRB & Associates, Inc. – \$50,000

Gasoline and Diesel Fuel Supply

- Bosco Oil, Inc. dba Valley Oil Company – \$150,000

Geologic and Geotechnical Engineering Services

- Cal Engineering & Geology, Inc. – \$25,000
- Cotton Shires and Associates, Inc. – \$25,000

Traffic Signal and Street Light Maintenance

- Cal West Lighting & Signal Maintenance, Inc. – \$67,500
- St. Francis Electric, LLC – \$67,500

All agreements will be for a one-year term, beginning on July 1, 2017 and expiring on June 30, 2018, renewable for two (2) additional one (1) year terms upon mutual consent of the City and selected consultant, subject to available funding.

Under the terms of the agreements, the selected firms will provide the requested services based upon the adopted compensation rates. The 2016-2018 Biennial Budget includes sufficient funds in the respective division operating budgets to fund the requested services for Fiscal Year 2017-2018.

Attachments

Action – It is recommended that the City Council, by resolution approve Contractual Service Agreements with various consultants for Building Inspection and Plan Check Services, Fuel Supply, Geologic and Geotechnical Engineering Services, and Traffic Signal and Street Light Maintenance.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING CONTRACTUAL SERVICE
AGREEMENTS WITH VARIOUS CONSULTANTS FOR
BUILDING INSPECTION AND PLAN CHECK SERVICES,
FUEL SUPPLY, GEOLOGIC AND GEOTECHNICAL
ENGINEERING SERVICES, AND TRAFFIC SIGNAL AND
STREET LIGHT MAINTENANCE

WHEREAS, the Public Works Department issued Requests for Qualifications for building inspection and plan check services, geologic and geotechnical engineering services, and traffic signal and street light maintenance; and

WHEREAS, a total of sixteen statements of qualifications were received and evaluated by staff based on the quality and completeness of submissions, experience with engagements of similar scope and complexity, satisfaction of previous clients, and proposed rate schedules; and

WHEREAS, based on staff's evaluation, 4Leaf, Inc., Bureau Veritas North America, Inc., Cal Engineering & Geology, Inc., Cal West Lighting & Signal Maintenance, Inc., CEL Consulting, Inc., Cotton Shires and Associates, Inc., St. Francis Electric, LLC, and TRB & Associates, Inc. were determined to be the most qualified firms to provide the requested services; and

WHEREAS, the Public Works Department issued a notice inviting bids for gasoline and diesel fuel supply; and

WHEREAS, a total of one bid proposal was received from Bosco Oil, Inc. dba Valley Oil Company and evaluated for responsiveness and responsibility;

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby find that Bosco Oil, Inc. dba Valley Oil Company is the lowest responsible bidder for gasoline and diesel fuel supply and does hereby accept said bid.

BE IT FURTHER RESOLVED that the City Council does hereby approve Contractual Services Agreements with 4Leaf, Inc. in an amount not to exceed \$52,300; Bureau Veritas North America, Inc. in an amount not to exceed \$100,000; Bosco Oil Company, Inc. dba Valley Oil Company in an amount not to exceed \$150,000; Cal Engineering & Geology, Inc. in an amount not to exceed \$25,000; Cal West Lighting & Signal Maintenance, Inc. in an amount not to exceed \$67,500, CEL Consulting, Inc. in an amount not to exceed \$50,000; Cotton Shires and Associates, Inc. in an amount not to exceed \$25,000; St. Francis Electric, LLC for a not to exceed amount of \$67,500; and TRB & Associates, Inc. in an amount not to exceed \$50,000 for building inspection and plan check services, fuel supply, geologic and geotechnical engineering services, and traffic signal and street light maintenance.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the Mayor of the City of Newark to sign the Contractual Services Agreements, attached hereto.

BE IT FURTHER RESOLVED that the Public Works Director is hereby authorized to renew each aforementioned Contractual Services Agreement for up to two (2) additional one (1) year terms upon mutual consent of the City and the selected consultant, subject to prior funding approval by the City Council.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **CAL ENGINEERING & GEOLOGY, INC.**, a California Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform on-call geologic and geotechnical engineering services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; 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 the Proposal, 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 Twenty Five Thousand and No/100 Dollars (\$25,000.00) 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 and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or \$10,000, whichever is greater for such Additional Services.

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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, 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.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's

accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates 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: **\$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.
(including products-completed operations, personal and advertising injury)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim.

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 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, except professional liability, 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:VII, 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the extent permitted by law, Consultant shall defend and indemnify the City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type to the extent caused by Consultant's performance of Services, or any negligent act or omission of Consultant or Consultant's officers, employees, agents, or subcontractors. Liabilities subject to the duty to defend include, all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; reimbursement of reasonable defense costs, including but not limited to reimbursement of reasonable attorneys' fees; court costs; and costs of alternative dispute resolution.

With regard to any claim alleging Consultant's negligent performance of professional services, Consultant's defense obligation under this indemnity paragraph means only the reimbursement of reasonable defense costs to the proportionate extent of its actual indemnity obligation hereunder.

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.

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.

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 on June 30, 2018. At the end of the term, the City may

renew this Agreement for two one-year terms as authorized by the Public Works Director, City Manager, or City Council.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

CAL ENGINEERING & GEOLOGY, INC.

CITY OF NEWARK

MARK MYERS

PUBLIC WORKS DIRECTOR

Contract Manager

Administrator

Address: Cal Engineering & Geology, Inc.
330 Village Lane
Los Gatos, CA 95030

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

22. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance

with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Alameda.

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

CAL ENGINEERING & GEOLOGY, INC.
a California corporation

By _____
City of Newark

By _____

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Consultant services shall include, but not be limited to the following tasks:

Geologic and Geotechnical Peer Review

Geologic and geotechnical peer review services may be required for: 1) proposed projects subject to the Alquist-Priolo Earthquake Fault Zoning Act; 2) proposed projects subject to the Seismic Hazards Mapping Act; and 3) other projects within the City as deemed necessary by the City Engineer or the Building Official.

Such peer review services may include: (1) review of the proposed geologic and geotechnical scope of studies; (2) field reviews; (3) review of geologic and geotechnical reports; (4) preparation of a written review letter; and (5) attendance at meetings as needed.

Review of the Proposed Geologic and Geotechnical Studies: The City may request peer review of the preliminary geologic and geotechnical scopes of work.

Field Review: The field review phase of peer review may include the following tasks:

- *Review of available geologic and geotechnical data*, including State records and previously prepared technical maps and reports
- *Field mapping of current site conditions* for proposed construction (including upslope and downslope areas with potential impacts to the proposed development area)
- *Geologic examination of fault trenches* completed for projects located within the Earthquake Fault Zones
- *Geologic and geotechnical engineering evaluation* of the project location and available data with respect to proposed construction
- *Photographs of field conditions* acquired during site inspections will be maintained in the peer reviewer's project archives and shall be provided to the City upon request.

Review of the Geologic and Geotechnical Reports: The review of Geologic and Geotechnical Reports may include the following evaluation:

- *The project report* conforms to State guidelines
- *Site conditions* have been properly characterized
- *The supporting geotechnical data* are adequate and consistent with conclusions concerning site conditions
- *The constraints* to the proposed development have been identified and evaluated
- *The geotechnical design criteria and construction recommendations* are appropriate for the proposed development
- *The provisions of the Newark Municipal Code* and pertinent policies are satisfied.

Preparation of a Written Review Letter: The Review Letter may include the following:

- *Summarize* site conditions, potential constraints to proposed development, and recommended action to investigate and mitigate site constraints
- *Recommend* either *approval* or *non-approval* of a particular development application
- *Describe* the conditions that need to be satisfied prior to specific development steps (e.g., issuance of permits, certificates of occupancy)
- *Recommend* supplemental investigation, technical analysis or design criteria to be provided in an addendum report.

Meetings: Attendance at meetings may be needed.

The above list is not intended to be exclusive; other services may be sought as the need arises.

Geotechnical Investigations

Geotechnical investigation services may including the following scope elements:

- Development of a field exploration program
- Drill and sample from exploratory test borings to depths appropriate for the project to determine near surface soil stratigraphy and depth to groundwater
- Perform laboratory tests on collected samples from boring program, including, but not limited to, strength tests, index properties, soil classification, gradation, consolidation and R-Value
- Identify presence and effects of expansive soils
- Estimation of static settlements
- Development of mitigation and design recommendations
- Report preparation
- Seismic hazard/liquefaction analysis per State requirements
- Slope stability analysis
- Percolation tests
- Plan reviews to verify compliance with geotechnical and geological recommendations
- Observation and testing during grading operations

EXHIBIT B

PAYMENT

RATE SCHEDULE

SCHEDULE OF CHARGES 2017-2020

Professional Services. These are "all-up" rates, and include direct salary cost, overhead, general and administrative costs not separately accounted for, and profit. They shall remain in

effect through December 31, 2019. Ongoing work continuing beyond December 31, 2020 will be invoiced at the applicable new year's rate.

Personnel	2017	2018	2019	2020	Rates/Units
Principal Engineer/Geologist	\$ 225	\$ 230	\$ 235	\$ 240	per hour
Associate Engineer/Geologist	\$ 200	\$ 205	\$ 210	\$ 215	per hour
Senior Engineer/Geologist	\$ 184	\$ 188	\$ 193	\$ 199	per hour
Project Engineer/Geologist	\$ 147	\$ 151	\$ 155	\$ 160	per hour
Staff Engineer/Geologist	\$ 131	\$ 135	\$ 139	\$ 143	per hour
Technician (Straight rate prevailing wage)	\$ 118	\$ 120	\$ 123	\$ 127	per hour
GIS/CADD Specialist	\$ 110	\$ 113	\$ 117	\$ 121	per hour
Project Assistant	\$ 84	\$ 86	\$ 88	\$ 91	per hour
Administration/Clerical	\$ 79	\$ 81	\$ 83	\$ 85	per hour
Special Inspector (Straight rate prevailing wage)	\$ 121	\$ 124	\$ 127	\$ 131	per hour

- Travel time will be charged at regular hourly rates, not to exceed eight (8) hours per day.
- All direct costs will be billed at actual cost plus 10%, unless there is explicit agreement otherwise.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **CAL-WEST LIGHTING & SIGNAL MAINTENANCE, INC.**, a California Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform on-call traffic signal and street light maintenance services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; 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 the Proposal, 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 Sixty Seven Thousand Five Hundred and No/100 Dollars (\$67,500.00) 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 and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or \$10,000, whichever is greater for such Additional Services.

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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, 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.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's

accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates 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: **\$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.
(including products-completed operations, personal and advertising injury)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim.

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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 on June 30, 2018. At the end of the term, the City may renew this Agreement for two one-year terms as authorized by the Public Works Director, City Manager, or City Council.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

**CAL-WEST LIGHTING & SIGNAL
MAINTENANCE, INC.**

CITY OF NEWARK

CRAIG GEIS
PRESIDENT

PUBLIC WORKS DIRECTOR
Administrator

Address: Cal-West Lighting & Signal
Maintenance
530 N. Marburg Way
San Jose, CA 95133

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

CAL-WEST LIGHTING &
SIGNAL MAINTENANCE, INC.
a California corporation

By _____
City of Newark

By _____

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Consultant services shall include, but not be limited to the following tasks:

- **Preventative and Routine Maintenance:** Periodic inspection, testing, record keeping, cleaning, repair and replacement of all traffic signal equipment in order to prevent or reduce the occurrence of potential malfunctions and extend the useful life of the equipment. Preventative and routine maintenance of the City's traffic signal systems shall include, but may not be limited to, the following:

Preventative Service of Traffic Signals

- Clean all signal lenses and Emergency Vehicle Pre-Emption (EVP) units
- Strobe test EVP system with an emitter for all approaches
- Check all vehicular detector units for tuning and operation
- Check all pedestrian push buttons for functional operation
- Test battery back-up system
- Check cabinet ventilation fan for thermal control and operation
- Vacuum cabinet and replace filter

- **Responsive Maintenance & Emergency Repair:** Responsive maintenance and emergency repairs to damaged or malfunctioning equipment shall be performed by the selected firm(s) at the direction of the Engineer and shall constitute work made necessary due to damage due to collision, Acts of Nature, malicious mischief or replacement of obsolete or malfunctioning equipment.

Responsive Maintenance

- Traffic signal and street light repairs may be provided at the City's request or in response to a condition noted by the Contractor, with authorization from the City
- Vehicle and pedestrian signal indications to be re-lamped on an as-needed bases rather than all at once. Location list to be provided by the City
- Street lights and safety lighting at traffic signals to be re-lamped as burnouts occur, when spotted by the Contractor and confirmed by the City, or when reported to the Contractor by the City

Emergency Repair

- 24-hour callout service for pole knockdowns, accident damage or other situations that may create a safety concern.
- Accident damage repair includes cleanup of equipment debris, erection of barricades or signs, hookup of a temporary signal controller, temporary poles and signals if necessary, traffic control, and any other work required to safeguard against any or all injury or damage to the public and reduce to a minimum any inconvenience to the traveling public
- Replacement of burned-out signal indications shall be performed immediately when requested by the City

EXHIBIT B

PAYMENT

F. RATE SCHEDULE:

Hourly labor and equipment rates for various personnel, equipment, vehicles:

General Service Ladder Truck and Man	(1-3 day response)	\$130.00 per hour
General Service Ladder Truck and Man	(4 hours response)	\$130.00 per hour
Crane & Man Pole Knockdown Service	(1-3 day response)	\$130.00 per hour
Crane & Man Pole Knockdown Service	(4 hours response)	\$130.00 per hour
Second Man for Knockdown Service		\$130.00 per hour

Hourly labor and equipment rates for various personnel, equipment, vehicles (overtime):

General Service Ladder Truck and Man	(4 hours response)	\$195.00 per hour
Crane & Man Pole Knockdown Service	(4 hours response)	\$195.00 per hour
Second Man for Knockdown Service		\$195.00 per hour

Repair Parts (each):

70 watt HPSV	\$13.00 each	100 watt HPSV	\$13.00 each
150 watt HPSV	\$13.00 each	200 watt HPSV	\$15.00 each
250 watt HPSV	\$15.00 each	Photocell	\$8.00
Ignitor	\$25.00	Starter	\$25.00

Traffic Signal Preventative Maintenance (per intersection)

1. Routine Traffic Signal Maintenance rates are set under the assumption of Routine services being performed within one (1) hour or less per-intersection.
2. **Traffic Signals & Signalized Intersections:** Routine Maintenance of Traffic Signals and Signalized Intersections shall cost the rate of *Seventy-five dollars (\$75.00)* per-intersection per-monthly inspection.

Material Rates

MATERIALS: All material rates shall be set at invoice cost plus an overhead mark-up of: **10%**

Labor and Equipment Billing

- A. Normal Straight-Time rates apply between the day-time hours of: 0700hrs to 1600hrs
Over-time rates apply between the Evening hours of: 1600hrs to 0700hrs
- B. Normal Straight-Time rates apply during normal business hours Monday-thru-Friday
Over-Time rates apply after normal business hours, Weekends, and Holidays
- C. There shall be **no half hour or hour minimum charge** on day-time calls
Labor and Equipment charges for Day-Time calls shall be billed in fifteen (15) minute increments
- D. There shall be a two (2) hour minimum charge for Emergency calls in the Evening hours
Evening calls, after the two (2) hour minimum, shall be billed in fifteen (15) minute increments

Labor:

	<u>Straight-Time</u>	<u>Over-Time</u>
Traffic Signal Technician:	\$ 100.00 / hr	\$ 165.00 / hr
General Laborer:	\$ 65.00 / hr	\$ 95.00 / hr

Equipment:

	<u>Straight-Time</u>	<u>Over-Time</u>
Service (Bucket) Truck:	\$ 30.00 / hr	\$ 30.00 / hr
Crane (Boom) Truck:	\$ 30.00 / hr	\$ 30.00 / hr
Dump Truck:	\$ 25.00 / hr	\$ 25.00 / hr

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **COTTON, SHIRES AND ASSOCIATES, INC.**, a California Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform on-call geologic and geotechnical engineering services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; 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 the Proposal, 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 Twenty Five Thousand and No/100 Dollars (\$25,000.00) 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 and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or \$10,000, whichever is greater for such Additional Services.

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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, 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.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's

accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates 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: **\$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.
(including products-completed operations, personal and advertising injury)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim.

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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, including compliance with California Civil Code Section 2782.8, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 on June 30, 2018. At the end of the term, the City may renew this Agreement for two one-year terms as authorized by the Public Works Director, City Manager, or City Council.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

COTTON, SHIRES AND ASSOCIATES, INC.

CITY OF NEWARK

TED SAYRE

PUBLIC WORKS DIRECTOR

PRESIDENT

Administrator

Address: Cotton Shires and Associates
330 Village Lane
Los Gatos, CA 95030

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

COTTON, SHIRES AND ASSOCIATES, INC.
a California corporation

By _____
City of Newark

By _____

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Consultant services shall include, but not be limited to the following tasks:

Geologic and Geotechnical Peer Review

Geologic and geotechnical peer review services may be required for: 1) proposed projects subject to the Alquist-Priolo Earthquake Fault Zoning Act; 2) proposed projects subject to the Seismic Hazards Mapping Act; and 3) other projects within the City as deemed necessary by the City Engineer or the Building Official.

Such peer review services may include: (1) review of the proposed geologic and geotechnical scope of studies; (2) field reviews; (3) review of geologic and geotechnical reports; (4) preparation of a written review letter; and (5) attendance at meetings as needed.

Review of the Proposed Geologic and Geotechnical Studies: The City may request peer review of the preliminary geologic and geotechnical scopes of work.

Field Review: The field review phase of peer review may include the following tasks:

- *Review of available geologic and geotechnical data*, including State records and previously prepared technical maps and reports
- *Field mapping of current site conditions* for proposed construction (including upslope and downslope areas with potential impacts to the proposed development area)
- *Geologic examination of fault trenches* completed for projects located within the Earthquake Fault Zones
- *Geologic and geotechnical engineering evaluation* of the project location and available data with respect to proposed construction
- *Photographs of field conditions* acquired during site inspections will be maintained in the peer reviewer's project archives and shall be provided to the City upon request.

Review of the Geologic and Geotechnical Reports: The review of Geologic and Geotechnical Reports may include the following evaluation:

- *The project report* conforms to State guidelines
- *Site conditions* have been properly characterized
- *The supporting geotechnical data* are adequate and consistent with conclusions concerning site conditions
- *The constraints* to the proposed development have been identified and evaluated
- *The geotechnical design criteria and construction recommendations* are appropriate for the proposed development
- *The provisions of the Newark Municipal Code* and pertinent policies are satisfied.

Preparation of a Written Review Letter: The Review Letter may include the following:

- *Summarize* site conditions, potential constraints to proposed development, and recommended action to investigate and mitigate site constraints
- *Recommend* either *approval* or *non-approval* of a particular development application
- *Describe* the conditions that need to be satisfied prior to specific development steps (e.g., issuance of permits, certificates of occupancy)
- *Recommend* supplemental investigation, technical analysis or design criteria to be provided in an addendum report.

Meetings: Attendance at meetings may be needed.

The above list is not intended to be exclusive; other services may be sought as the need arises.

Geotechnical Investigations

Geotechnical investigation services may including the following scope elements:

- Development of a field exploration program
- Drill and sample from exploratory test borings to depths appropriate for the project to determine near surface soil stratigraphy and depth to groundwater
- Perform laboratory tests on collected samples from boring program, including, but not limited to, strength tests, index properties, soil classification, gradation, consolidation and R-Value
- Identify presence and effects of expansive soils
- Estimation of static settlements
- Development of mitigation and design recommendations
- Report preparation
- Seismic hazard/liquefaction analysis per State requirements
- Slope stability analysis
- Percolation tests
- Plan reviews to verify compliance with geotechnical and geological recommendations
- Observation and testing during grading operations

EXHIBIT B

PAYMENT

GEOLOGIC AND GEOTECHNICAL RATE SCHEDULE

Cotton, Shires and Associates, Inc.

2017-2018

for the

CITY OF NEWARK

Personnel Charges

Principal Geologist/Engineer	Peer Review \$180.00/hr.	Investigation/Design \$235.00/hr.
Supervising Geologist/Engineer	\$165.00/hr.	\$195.00/hr.
Senior Geologist/Engineer	\$130.00/hr.	\$170.00/hr.
Staff Geologist/Engineer	\$115.00/hr.	\$150.00/hr.
Word Processor/Clerical	No Charge	\$80.00/hr.
Vehicle Mileage (or Current IRS Rate)	\$0.54/mile	\$0.54/mile

The indicated fees reflect an average 20 percent reduction from our 2017 Schedule of Charges for private clients. We are able to offer the City this discount because the ongoing work generated from a City Geotechnical Consultant Agreement typically proceeds without significant proposal costs. In addition, such consulting work does not involve us directly as a design professional for propose structures, and consequently results in somewhat reduced liability exposures.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **ST. FRANCIS ELECTRIC, LLC.**, a Limited Liability Company ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform on-call traffic signal and street light maintenance services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; 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 the Proposal, 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 Sixty Seven Thousand Five Hundred and No/100 Dollars (\$67,500.00) 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 and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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. City Manager shall have approval authority up to a maximum of 10% of the Not to Exceed Compensation or \$10,000, whichever is greater for such Additional Services.

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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, 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.

B. **Consultant's Accounting Records.** Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's

accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates 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: **\$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.
(including products-completed operations, personal and advertising injury)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
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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 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
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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 City.

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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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 on June 30, 2018. At the end of the term, the City may renew this Agreement for two one-year terms as authorized by the Public Works Director, City Manager, or City Council.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

ST. FRANCIS ELECTRIC, LLC

CITY OF NEWARK

GUY SMITH
PRESIDENT

PUBLIC WORKS DIRECTOR
Administrator

Address: St. Francis Electric, LLC
975 Carden Street
San Leandro, CA 94577

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

ST. FRANCIS ELECTRIC, LLC
a Limited Liability Company

By _____
City of Newark

By _____

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Consultant services shall include, but not be limited to the following tasks:

- **Preventative and Routine Maintenance:** Periodic inspection, testing, record keeping, cleaning, repair and replacement of all traffic signal equipment in order to prevent or reduce the occurrence of potential malfunctions and extend the useful life of the equipment. Preventative and routine maintenance of the City's traffic signal systems shall include, but may not be limited to, the following:

Preventative Service of Traffic Signals

- Clean all signal lenses and Emergency Vehicle Pre-Emption (EVP) units
- Strobe test EVP system with an emitter for all approaches
- Check all vehicular detector units for tuning and operation
- Check all pedestrian push buttons for functional operation
- Test battery back-up system
- Check cabinet ventilation fan for thermal control and operation
- Vacuum cabinet and replace filter

- **Responsive Maintenance & Emergency Repair:** Responsive maintenance and emergency repairs to damaged or malfunctioning equipment shall be performed by the selected firm(s) at the direction of the Engineer and shall constitute work made necessary due to damage due to collision, Acts of Nature, malicious mischief or replacement of obsolete or malfunctioning equipment.

Responsive Maintenance

- Traffic signal and street light repairs may be provided at the City's request or in response to a condition noted by the Contractor, with authorization from the City
- Vehicle and pedestrian signal indications to be re-lamped on an as-needed bases rather than all at once. Location list to be provided by the City
- Street lights and safety lighting at traffic signals to be re-lamped as burnouts occur, when spotted by the Contractor and confirmed by the City, or when reported to the Contractor by the City

Emergency Repair

- 24-hour callout service for pole knockdowns, accident damage or other situations that may create a safety concern.
- Accident damage repair includes cleanup of equipment debris, erection of barricades or signs, hookup of a temporary signal controller, temporary poles and signals if necessary, traffic control, and any other work required to safeguard against any or all injury or damage to the public and reduce to a minimum any inconvenience to the traveling public
- Replacement of burned-out signal indications shall be performed immediately when requested by the City

EXHIBIT B

PAYMENT

Item Specification	Bid Price
<i>Hourly Labor and Equipment Rates (Regular Time):</i>	
General Service - Ladder Truck and Man (1-3 days response)	\$135.00/hr
General Service - Ladder Truck and Man (4 hours response)	\$135.00/hr
Crane and Man Pole Knockdown Service (1-3 days response)	\$150.00/hr
Crane and Man Pole Knockdown Service (4 hours response)	\$150.00/hr
Second Man for Knockdown Service	\$135.00/hr
<i>Hourly Labor and Equipment Rates (Over Time):</i>	
General Service - Ladder Truck and Man (4 hours response)	\$185.00/hr
Crane and Man Pole Knockdown Service (4 hours response)	\$190.00/hr
Second Man for Knockdown Service	\$185.00/hr
<i>Repair Parts (each):</i>	
Lamps	
70 Watt HPSV	\$11.00/each
100 Watt HPSV	\$11.00/each
150 Watt HPSV	\$11.00/each
200 Watt HPSV	\$12.00/each
250 Watt HPSV	\$12.00 each
Photocell	\$11.00/each
Ignitor	\$25.00/each
Starter	\$25.00/each
Travel Time hourly rate(s) - If different from hourly rate	Same as above
Traffic Signal Preventative Maintenance (per Intersection)	\$70.00 each
Material Mark up	15%
Minimum time charged for typical, routine repair, such as lamp or photocell replacement when handling calls	1/4 hour
Minimum charge for emergency calls after hours	2 hours

CONTRACTUAL EQUIPMENT AND SERVICES AGREEMENT

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **BOSCO OIL INC. DBA VALLEY OIL COMPANY**, a California corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to supply unleaded and diesel fuel services ("Services") to City as described in Exhibit "A", attached hereto and incorporated herein.

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to provide Equipment and 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 its proposal and 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 provide and perform the 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 provision of 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 the 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 provided and 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 One hundred and fifty thousand dollars and No/100 Dollars (\$150,000.00) 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.** Consultant shall submit all billings for said services to City in the manner specified in Exhibit “B”; or, if no manner is specified in Exhibit “B”, then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Service Center
37440 Filbert Street
Newark, CA 94560

C. **Payment.** Upon receipt of an invoice, City shall verify that the invoice has been properly prepared and that the conditions of payment have been fulfilled. If the payment conditions have been fulfilled, the invoice shall be processed and paid by City within thirty (30) days after City’s receipt thereof.

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

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within the Services described in Exhibit “A”, 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 accomplished services rendered pursuant to this Agreement.

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

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

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

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

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

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

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

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:

1. General Liability: **\$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
(including products and completed operations, property damage, bodily injury and personal and advertising injury.)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.
4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim, **\$2,000,000** aggregate.

D. Deductibles and Self-Insured Retentions.

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

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

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to

indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

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

6. Subconsultants. Consultant shall include all subconsultants as 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 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 16 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interest 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 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, and its officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to

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

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

The review, acceptance or approval of Consultant's work or work product by any indemnified party shall not affect, relieve or reduce Consultant's indemnification or defense obligations. This paragraph survives completion of the 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 on June 30, 2018. At the end of the term, the City may renew this Agreement for two one-year terms as authorized by the Public Works Director, City Manager, or City Council.

B. Notwithstanding the provisions of paragraph 17 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 Tonya Connolly of the City of Newark (“Administrator”). All correspondence shall be directed to or through the Administrator or his/her designee.

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

Bosco Oil Inc. DBA Valley Oil Co.

CITY OF NEWARK

Consultant

Administrator

Address: 785 Yuba Drive
Mountain View, CA 94042

City of Newark

37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

Bosco Oil Inc. DBA Valley Oil Co.
a California corporation

By _____
City of Newark

By _____
Consultant

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

Using the OPIS San Jose CA, Area Daily Rack Average as a basis for price comparison, Bosco Oil Inc. DBA Valley Oil Company will deduct \$.016 per gallon for regular unleaded and \$.014 for undyed/clear diesel.

Services will include:

- Supply and delivery of unleaded fuel – the capacity of Newark’s tank is 12,000 gallons;
- Supply and delivery of undyed/clear diesel – the capacity of Newark’s tank is 4,000 gallons;
- Delivery location is Newark’s Service Yard at 37440 Filbert Street, Newark, CA; and
- Estimated annual usage for unleaded fuel is 20,000 gallons and estimated annual usage for diesel fuel is 10,000 gallons. Actual quantities of gallons to be provided during the term of this contract may differ from these estimates; the City reserves the right to increase or decrease the estimated quantities during the term of the contract.

EXHIBIT B

PAYMENT

Thirty days after receipt of invoice.

EXHIBIT C
QUALIFICATIONS

Over the past 70 years, Valley Oil Company has developed into the Western United States premier on-site fueling services, with over 20 trucks servicing retail gas stations, construction sites, commercial and industrial accounts, municipalities, hospitals, and private residences within the greater Bay Area.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and 4LEAF, Inc., a Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "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 the Proposal, 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 52,300 and No/100 Dollars (\$52,300.00) unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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.

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates 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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 in one (1) year from said date or the Agreement may be extended up to two (2) additional one (1) year terms as authorized by the Public Works Director.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

4LEAF, INC.

CITY OF NEWARK

Craig Tole, Director of Development Services

Administrator (Public Works Director)

Address: 4 LEAF,INC
2110 Rheem Dr,
Suite A
Pleasanton CA 94588

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

4LEAF, INC
a California corporation

By _____
City of Newark

By _____
Craig Tole, Director of
Development Services

Date _____

Date _____

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A
SCOPE OF SERVICES

The Scope of Services shall include the following:

- Plan Checking—The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The type of improvements to be checked include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.
- Field Inspection—The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The City of Newark is on a 9/80 schedule and is closed every other Friday.
- Miscellaneous Support Services: The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

The above list is not intended to be exclusive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

See attached Rate Schedule.



Section F: Rate Schedule

NATURE OF BUILDING SERVICES	COST STRUCTURE
Plan Review & CASp Services	Plan Review Percentage: 65% City Plan Review Fee

Staff Augmentation Services*

Interim Chief Building Official.....	\$135/hour
Structural Plan Review (Structural Engineer)	\$125/hour
Structural Plan Reviewer (Professional Engineer)	\$120/hour
Fire Protection Engineer (Professional Engineer)	\$140/hour
Certified Plan Reviewer (Bldg/Fire Review).....	\$95/hour
Senior Lead Inspector	\$105/hour
Code Enforcement Officer.....	\$90/hour
Certified Building Inspector I	\$75/hour
Certified Building Inspector II	\$85/hour
Commercial Inspector/Building Inspector III.....	\$95/hour
Permit Technician.....	\$65/hour
Public Works Inspector.....	\$145/hour
OSHPD Inspector	\$135/hour
CASp Consultation	NO CHARGE
CASp Inspection.....	\$150/hour
Hourly overtime charge per inspector	1.5 x hourly rate

*Rates will be communicated with the City Management at time of request. Rates will vary based on the qualifications and experience of the personnel.

BASIS OF CHARGES

Rates are inclusive of “tools of the trade” such as forms, telephones, and consumables.

- All invoicing will be submitted monthly.
- Staff Augmentation work (excluding plan review) is subject to 4 hour minimum charges unless stated otherwise. Services billed in 4 hour increments.
- Most plan reviews will be done in 10 business days or less and 5 business days or less for re-checks. This is not inclusive of holidays or the day of the pick-up of plans.
- Expedited reviews will be billed at 2x the hourly rates listed in Section F, Rate Schedule.
- All plan review services will be subject to 2-hour minimum fee.
- 4LEAF assumes that these rates reflect the 2017-2018 contract period. 3% escalation for 2019 and 2020 is negotiable per market conditions.
- Overtime and Premium time will be charged as
 - *Overtime (over 8 hours M-F or Saturdays)* *1.5 x hourly rate*
- Mileage, driven during the course of Inspections will be charged at cost plus 20%.
- Payment due on receipt. All payments over 30 days will be assessed a 1.5% interest charge.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and Bureau Veritas North America Inc., a Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "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 the Proposal, 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 100,000 and No/100 Dollars (\$100,000.00) unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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.

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates 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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 shall expire in one (1) year from said date or the Agreement may be extended up to two (2) additional one (1) year terms as authorized by the Public Works Director.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

Bureau Veritas North America, Inc.

CITY OF NEWARK

Craig Baptista, Director of Operations

Administrator

Address: Bureau Veritas North America, Inc.
180 Promenade Circle
Suite 150
Sacramento CA 95834

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

Bureau Veritas North America
a California corporation

By _____
City of Newark

By _____
Craig Baptista, Dir.of Operations

Date _____

Date _____

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services shall include the following:

- **Plan Checking**—The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The type of improvements to be checked include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.
- **Field Inspection**—The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The City of Newark is on a 9/80 schedule and is closed every other Friday.
- **Miscellaneous Support Services:** The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

The above list is not intended to be exclusive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

See attached Rate Schedule.

City of Newark
 On-Call Building Inspection Plan Check and Field Inspection Services
 RATE SCHEDULE

F. Rate Structure

Bureau Veritas North America, Inc. (BVNA) hourly rates are show below. Our pricing reflects our commitment to the success of your project by helping you maintain significant quality and cost saving benefits moving forward.

These benefits include:

- Reduced plan review turnaround times
- Commitment to maintain a proposed rate structure for the life of the initial contract period
- Highly qualified staff
- Confidence of working with a well-established consultant in business for 180+ years
- Option for % of fees for plan review

Item	Bid Price*
1. Complete or partial review of private or public construction projects regulated by state and local building codes as requested by the City.	48 % of the plan review fee collected by the City OR \$ 105/hour for plan review not covered by a percentage of City collected plan review fees
2. Field inspection services of private or public construction projects regulated by state and local building codes as requested by the City.	\$85/hour for field inspections
3. Miscellaneous building, housing and zoning enforcement services as requested by the City.	\$85/hour

*Overtime and expedited plan reviews will be an additional 25% of the rates shown above.

The rates shown above are applicable for the contract period.



**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and CEL Consulting Inc., a California corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "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 the Proposal, 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 50,000 and No/100 Dollars (\$50,000.00) unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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.

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates 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: **\$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.
(including products-completed operations, personal and advertising injury)
2. Automobile Liability: **\$1,000,000** per accident for bodily injury and property damage.
3. Employer's Liability: **\$1,000,000** per accident for bodily injury or disease.

4. Errors and Omissions Liability: **\$1,000,000** per occurrence or claim.

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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 shall expire in one (1) year from said date or the Agreement may be extended up to two (2) additional one (1) year terms as authorized by the Public Works Director.

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 the Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

CEL Consulting Inc.

CITY OF NEWARK

Abby Obligacion, Director of Code Resource

Administrator

Address: CEL Consulting, INC
2001 Crow Canyon Rd
Suite 100
San Ramon CA 94583

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

CEL Consulting, Inc.
a California corporation

By _____
City of Newark

By _____
Consultant (Signature & Title)

Date _____

Date _____

Printed Name

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

The Scope of Services shall be as follows:

- **Plan Checking**—The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The type of improvements to be checked include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.
- **Field Inspection**—The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The City of Newark is on a 9/80 schedule and is closed every other Friday.
- **Miscellaneous Support Services:** The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

The above list is not intended to be exclusive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

See attached Rate Schedule.



SECTION F

Rate Schedule

Plan Review Services (Standard Turnaround Time)	Unit Rate	Unit
Complete Building and Safety Plan Review Services (first submittal plus two (2) additional subsequent submittals)	55% of Plan Review Fee*	
All other Building, Safety Plan Review Submittals	\$110.00	Hour
In-House Plan Review Assistance (plan review, OTC plan review, response to public inquiries, support and training staff)	\$120.00	Hour
CASp Plan Review	\$130.00	Hour
Fire Plan Review	\$150.00	Hour
Civil On-Site / Grading Plan Review	\$150.00	Hour
Expedited Plan Review Premium	Add 1.5x Plan Review Fee	
Inspection Services	Unit Rate	Unit
Residential Building Inspector	\$80.00	Hour
Commercial Inspector	\$90.00	Hour
Senior Combination Building Inspector	\$100.00	Hour
Fire Inspector	\$100.00	Hour
Basis of Charges	Unit Rate	
Work over 8 hours a day	Time and One-Half	
Work over 12 hours, Monday through Friday	Double Time	
Work on Saturdays	Time and One-Half	
Work over 8 hours on Saturday	Double Time	
Work on Sundays/Holidays	Double Time	
Reimbursables	Cost	

* Percentage may be decreased based on larger projects.

Plan Review Timeline

The Code Resources Group will be able to cater to your Building and Safety plan review needs, which includes attending meetings and workshops when necessary. We also are able to meet or exceed the following timelines for plan review services:

Small to Mid-Scale Projects		Larger to More Complex Projects	
Standard Turnaround Times:		Standard Turnaround Times:	
First Submittals:	10 days	First Submittals:	15 days
Subsequent Submittals:	5 days	Subsequent Submittals:	10 days
Expedited Turnaround Times**:		Expedited Turnaround Times**:	
First Submittals:	5 days	First Submittals:	10 days
Subsequent Submittals:	3 days	Subsequent Submittals:	7 days

** Expedited Turnaround Times will be subject to discussion by all concerned parties to ensure milestones are met and completed on-time and on-schedule.

**CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS**

This Service Agreement (hereinafter "Agreement") is made and entered into this 22nd day of June, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and TRB & Associates, Inc., a Corporation ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "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 the Proposal, 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.**

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Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of 50,000 and No/100 Dollars (\$50,000.00) unless the performance of services pursuant to City Council Resolution No. _____, and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

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
Public Works 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). 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.

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

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

A. Verification of Coverage.

Consultant shall furnish City with original certificates 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 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 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, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or 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 the Consultant from its separate and distinct obligation to defend City. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if Consultant asserts that liability is caused in whole or in part by the negligence or willful misconduct of the indemnified party. If it is finally adjudicated that liability was caused by the sole active negligence or sole willful misconduct of an indemnified party, Consultant may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

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.

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 shall expire in one (1) year from said date or the Agreement may be extended up to two (2) additional one (1) year terms as authorized by the Public Works Director.

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 Public Works Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

TRB & Associates, Inc.

CITY OF NEWARK

Todd Bailey, Principal

Administrator

Address: TRB & Associates, Inc
3180 Crow Canton Pl
Suite 216
San Ramon, CA 94583

City of Newark
Attn: Public Works Director
37101 Newark Boulevard
Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

TRB and Associates, Inc.
a California corporation

By _____
City of Newark

By _____
Todd Bailey, Principal

Date _____

Date _____

Attest:

City Clerk

Date _____

Approved as to form:

City Attorney

Date _____

EXHIBIT A
SCOPE OF SERVICES

The Scope of Services shall include the following:

- **Plan Checking**—The consultant shall provide all services and work required to review development plans and permit applications, including, but not limited to, major building permit site plans and improvement plans. The type of improvements to be checked include but are not limited to: commercial, industrial, and residential construction drawings for new construction, additions, tenant improvements, or alterations.
- **Field Inspection**—The consultant shall provide a variety of inspection services under building permits that could include, but is not limited to: inspection of commercial, industrial, and residential construction projects governed by state and local construction codes. The City of Newark is on a 9/80 schedule and is closed every other Friday.
- **Miscellaneous Support Services:** The consultant shall provide various services, if offered, for permit technician, fire sprinkler review, inspections relating to the California Fire Code, temporary building official, and public works inspections.

The above list is not intended to be exclusive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

See attached Rate Schedule.

Rate Schedule

TRB+ Associates, Inc. offers the following fixed-fee and hourly rate schedules for services provided. Please note that Building Plan Review services may be rendered on either a fixed fee or hourly rate basis, as noted below; Building Inspection, Permit Processing, Staff Augmentation and Other services (e.g. CASp consulting, fire plan review) would be provided on an hourly basis at rates shown in the provided Schedule of Hourly Rates and Reimbursables.

Plan Review Services

Our plan review fees may be calculated as a percentage of the Building Plan Review Fee collected by the City. The fee compensation shown covers three total plan review cycles – the initial plan review and up to two rechecks. Any further review cycles which become necessary and reviews of revisions to approved plans would be billed based upon a negotiated hourly rate. Please note that the turnaround timeframe for providing expedited plan reviews would be negotiated/mutually agreed upon prior to commencement of the review.

Turnaround Timeframe (in business days)	Structural Only Review	Complete Review (Structural, Life Safety, E/M/P, Green, Title 24 Energy)
Standard - 10 days first check (15 days if complex) - 5 days rechecks (10 days if complex)	45%	65%
Expedited* Generally half the time of Standard Review Turnaround	Standard fee plus an additional 50 percent	Standard fee plus an additional 50 percent

* Turnaround timeframe would be mutually agreed upon prior to commencement of work.

** Note: For other review scope combinations not specifically identified in the above table (e.g. Electrical Only, Mechanical/Plumbing Only, etc.), the fee compensation would be on an hourly basis.

Please note that the pickup, shipment, and delivery of hardcopy and/or electronic plan documents and other relevant correspondence to the City is included in the above-noted cost.

F.8 Amendment of the 2016-2018 Biennial Budget and Capital Improvement Plan for Fiscal Year 2016-2017 for General Revisions – from Administrative Services Director Woodstock. (RESOLUTION)

Background/Discussion – Fiscal Year 2016-2017 is the first year in the City’s two-year budget cycle. As a part of the year-end closing, a number of general revisions are proposed to the annual budget. These revisions affect activities where savings or deficiencies have been identified. Savings are usually realized when there are staffing vacancies or reduction in expenditures for services or supplies. Deficiencies occur as a result of unforeseen increases in cost or need for services or supplies. A typical situation having no fiscal impact on the overall budget but requires a budget revision or amendment, is a reallocation of resources from one activity to another. The redistribution of resources may be necessary in order to respond to changing demands and needs.

The year-end financial audit requires that necessary transfers be approved by the City Council. The transfers for the PERS Reserve Policy, the Fund Balance Policy and the Debt Service payments have all been identified on Exhibit A along with the year-end Amendments.

The expenditure modifications to the General Fund operating budget for Fiscal Year 2016-2017 include increases in legal fees and an increase in cost for part-time staff due to minimum wage increases. These two items increase the operating budget by \$315,000.

In other funds, expenditure modifications are all offset by existing balance in each of those funds. The adjustments to those funds include an increase in Workers Compensation costs, addition of revenue and expenditures related to reimbursable Risk Management activities and increases in Building Maintenance expenses.

Exhibit A lists the adjustments to the budget expenditures and transfers.

Attachments

Action - It is recommended that the City Council, by resolution, amend the 2016-2018 Biennial Budget and Capital Improvement Plan for Fiscal Year 2016-2017.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AMENDING THE 2016-2018 BIENNIAL BUDGET
AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR
2016-2017

BE IT RESOLVED by the City Council of the City of Newark that the certain document entitled "2016-2018 Biennial Budget and Capital Improvement Plan of the City of Newark" for Fiscal Year 2016-2017 is hereby amended as set forth in Exhibit A attached.

Exhibit A - Year-End Budget Amendments and Transfers

<u>Department</u>	<u>Account</u>	<u>To</u>	<u>From</u>	<u>Description</u>
<u>General Fund:</u>				
City Attorney	010-1012-5271	\$ 215,000		Additional Litigation Services
Recreation	030-Var-4310	\$ 100,000		Increase part-time staff budget
	010		\$ 315,000	Unallocated General Fund
<u>Other Funds</u>				
Workers Compensation	703-9210-5280	\$ 70,000		Increase in Workers Compensation Cost
	701		\$ 70,000	From funds in Equipment Maintenance
Risk Management	708-1012-3995		\$ 30,000	Reimbursement Revenue
Risk Management	708-1012-5480	\$ 30,000		ABAG Reimbursable Expenditures
Building Maintenance	709-9413-5120	\$ 7,000		Building Maintenance Supplies
Building Maintenance	709-9413	\$ 35,000		Utilities
Building Maintenance	709-9413-5280	\$ 3,000		Contractual Landscaper services
Building Maintenance	709		\$ 45,000	From 709 Fund Balance
<u>Transfers:</u>				
			<u>Upto:</u>	
PERS Reserve:	010-1012-4110		\$ 55,000	Salary Surplus
	010-1021-4110		\$ 127,000	Salary Surplus
	010-1025-4110		\$ 105,000	Salary Surplus
	010-1030-4110		\$ 800,000	Salary Surplus
	010-1031-4110		\$ 360,000	Salary Surplus
	010-1033-4110		\$ 30,000	Salary Surplus
	020-2014-4100		\$ 100,000	Salary Surplus
	008-0000-2992	\$ 1,577,000		PERS Reserve Fund
General Transfers:	001		\$ 150,000	Paramedic Tax
	003		\$ 147,000	Alameda County Fire Fees
	010 and 030		\$ 1,022,300	General Fund
	301	\$ 114,000		Debt Service 2002 COP Interest only
	302	\$ 755,300		Debt Service 2012 COP & Refunding
	401	\$ 250,000		To Capital Reserves
	010	\$ 200,000		To Equipment Replacement Reserves

F.9 Establishment of the Fiscal Year 2017-2018 Appropriations Limit – from Accounting Manager Lee. (RESOLUTION)

Background/Discussion – State law requires the adoption of the Appropriations Limit by resolution prior to the beginning of each fiscal year and a recorded vote of the Council regarding which of the annual adjustment factors have been selected to calculate the Appropriations Limit each fiscal year. On June 23, 2016, the City Council adopted Resolution No. 10528 establishing the Fiscal Year 2016-2017 Appropriations Limit to \$331,204,526.

The State Constitution specifies the annual adjustment factors that the City may choose to calculate the Appropriations Limit. These adjustment factors are comprised of: (1) either the California per capita income or the percentage change in the local assessment roll due to the addition of local nonresidential construction in the City and (2) either the city’s population growth or the population growth of the entire county. The two percentage increases are multiplied together to determine the final percentage by which the prior year’s limit is increased.

The City chooses to use the percentage change in California personal income for the inflationary adjustment. Local assessment roll data necessary to calculate the percentage change in the nonresidential assessed valuation is generally not available from the County Assessor’s Office until well into the fiscal year. In the absence of final information on this important factor, it is recommended that the known California per capita personal income of 3.69 percent be adopted for Fiscal Year 2017-2018. For the population adjustment factor, it is recommended that the County’s percentage change in population of 1.04 percent be adopted for Fiscal Year 2017-2018 since the higher percentage change in the County’s population is most advantageous to the City.

Based on the above information, the proposed Fiscal Year 2017-18 Appropriations Limit is \$346,345,094. The 2017-2018 Biennial Budget contains appropriations subject to the limit and the budget is well below that limit.

Attachment

Action - It is recommended that the City Council, by resolution, updating the Fiscal Year 2017-2018 Appropriations Limit and annual adjustment factors for Fiscal Year 2017-2018.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK UPDATING THE APPROPRIATIONS LIMIT AND
ANNUAL ADJUSTMENT FACTORS FOR FISCAL YEAR
2017-2018

WHEREAS, pursuant to Article XIII-B of the Constitution of the State of California, the City Council of the City of Newark has established an "Appropriations Limit" for Fiscal Year 2017-2018; and

WHEREAS, an Appropriations Limit has been determined in accordance with the Uniform Guidelines for implementation of Article XIII-B of the California Constitution prepared by the League of California Cities dated April 1980 and as revised March 1991, and pursuant to the provision of Chapter 1205 of the statutes of 1980 and modified by Proposition 111 and SB 88, Chapter 60 of the Statutes of 1990; and

WHEREAS, Proposition 111 requires a recorded vote of the Council regarding which of the annual adjustment factors have been selected;

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark, establishes the County of Alameda's population change of 1.04 percent and the California per capita personal income change of 3.69 percent as the factors in calculating the Appropriations Limit for Fiscal Year 2017-2018;

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby establishes the amount of \$346,345,094 as the Appropriations Limit for Fiscal Year 2017-2018.

F.10 Approval of plans and specifications, acceptance of bid, and award of contract to G. Bortolotto & Company, Inc. for the 2017 Asphalt Concrete Street Overlay Program, Project 1141 – from Associate Civil Engineer Tran.

(MOTION)(RESOLUTION)

Background/Discussion – The annual pavement maintenance overlay and patch paving projects are typically combined into one project to encourage better unit prices. The combined project scope of work includes localized patch paving, pavement grinding, placement of new asphalt concrete pavement, and re-striping on various City streets.

Patch paving consists of the removal and replacement of localized pavement failures. The project includes work on streets that will be resurfaced with a slurry seal under a separate contract, Project 1142, anticipated to be awarded in July. It also includes streets where a localized pavement failure is too severe to correct with a surface (skin) patch, but the entire street does not need structural upgrading with an asphalt overlay.

Asphalt overlays involve the placement of an additional layer of asphalt concrete pavement on streets showing a relatively uniform distress pattern over most of the pavement surface. This condition indicates that the pavement needs structural upgrading to accommodate current and future traffic loads. A structural upgrade will prevent complete failure of the street pavement and avoid the very expensive process of complete reconstruction. The increased structural strength extends the life of the streets at least ten years.

The streets on the asphalt overlay project include: Bonnie Street, Christine Court, Christine Street, Deborah Street, George Avenue, Jennifer Street, Leone Street, Noel Avenue, Wilma Avenue, and Zulmida Avenue.

Bids for the project were opened on June 6, 2017 with the following results:

Bidder	Amount
G. Bortolotto & Company, Inc.	\$ 979,979.79
Engineer's Estimate	\$ 850,000.00

The 2016-2018 Biennial Budget includes sufficient funding for this project in Fiscal Year 2016-2017 through a combination of Alameda County Measure B/BB Sales Tax funds, Vehicle Registration Fee funds, and the Traffic Congestion Relief Fund.

Staff recommends that this project be awarded to the lowest responsible bidder, G. Bortolotto & Company, Inc.

Attachment

Action – It is recommended that the City Council, by motion, approve the plans and specifications and by resolution, accept the bid and award the contract to G. Bortolotto & Company, Inc. for the 2017 Asphalt Concrete Street Overlay Program, Project 1141.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK ACCEPTING THE BID AND AWARDING THE
CONTRACT TO G. BORTOLOTTO & COMPANY, INC. FOR
THE 2017 ASPHALT CONCRETE STREET OVERLAY
PROGRAM, PROJECT 1141

BE IT RESOLVED that the City Council of the City of Newark does hereby find that G. Bortolotto & Company, Inc. was the lowest responsible bidder for the 2017 Asphalt Concrete Street Overlay Program, Project 1141, in the City of Newark;

BE IT FURTHER RESOLVED that the City Council does hereby accept said bid of said company and does hereby authorize the Mayor of the City of Newark to sign an agreement with said company for the construction of the 2017 Asphalt Concrete Street Overlay Program, Project 1141, according to the plans, specifications, and terms of said bid.