



# **REQUEST FOR PROPOSAL**

## **Project Management Services**

**PROPOSALS MUST BE RECEIVED BY:**

**2:00 PM (Pacific Standard Time), Monday, December 8, 2025**

**City of Newark**  
Department of Public Works  
37101 Newark Boulevard  
Newark, CA 94560

**Points of Contact:**  
Miki Tsubota  
City Engineer  
(510) 518-5344  
[miki.tsubota@newarkca.gov](mailto:miki.tsubota@newarkca.gov)

---

# **REQUEST FOR PROPOSAL (RFP) PROJECT MANAGEMENT SERVICES**

## **1. INTRODUCTION**

The City of Newark (City) seeks an experienced professional and qualified firm to provide project management services (Services) for the Fire Station #27 and Fire Station #29 Replacement Project (Project).

## **2. BACKGROUND**

Information about the City of Newark and Alameda County Fire Department (ACFD) can be found at the following websites respectively:

<https://www.newarkca.gov>      <https://alamedacountyfire.gov>.

The City owns and maintains Fire Station 27 (FS27) located at 39039 Cherry Street, Newark CA and Fire Station 29 (FS29) located at 35775 Ruschin Drive, Newark CA. Both FS27 and FS29 are operated by ACFD. FS27 was built in 1981 and houses a crew of three firefighters who staff one engine. FS27 also has a training facility (including a training tower). FS 29 was built in 1962 and houses a crew of three firefighters who staff one engine.

The Project consists of replacing the existing stations with new stations on the current sites to meet the latest applicable codes and standards. Both stations are anticipated to be approximately 7,500 to 8,000 square feet buildings (subject to ACFD review) with associated site development. In addition, FS27 will incorporate training facility components. The Project includes interim stations that will house the firefighters, engines, and equipment during the construction phase. The location of the interim stations have not been determined to-date.

## **3. GENERAL PROJECT DESCRIPTION**

The Project generally consists of the following:

- Effectively manage overall cost, planning, design and construction delivery as well as expectations thereof.
- Demolish existing buildings, site improvement and facilities.
- Remediate any environmental, geotechnical or other site concerns.
- Design and construct new fire stations and associated furnishings, utilities, site and frontage improvements, including possible roadway and/or nearby signal improvements necessary for proper operations and undergrounding of existing frontage overhead utility lines.
- Design and construct interim fire station facilities to be used during construction of FS27 and FS29.
- Design and construct training facility components at FS27.

## **4. CONSTRUCTION MODEL**

It is currently anticipated that the Project will be delivered using the Design-Build model.

## **5. SCOPE OF SERVICES**

The Services include, but is not be limited to, the following:

- Assist the City and ACFD in overall project management, including evaluating and securing funding sources; assisting in meetings, presentations, and public outreach efforts; and maintaining and managing a risk register, cost control, schedule control, and partnering process through the duration of the Project.
-

- Assist the City and ACFD in overall planning and preliminary design management, including procuring all consultants as necessary to obtain title reports; detailed site, topographic, boundary, utility and frontage surveys; geotechnical survey; CEQA reviews and documentation; Phase 1 and 2 environmental assessments; regulatory permitting; preliminary architectural, civil, and structural design sufficient to prepare necessary bridging documents for the design-build procurement; and value engineering.
- Assist the City and ADFD to manage all aspects of construction, including preparing solicitation materials for design-build services; selection and coordination with the design-build entity; review of all Project plans and documentation, inspections, special inspections, environmental compliance, invoice reviews, safety compliance, site security, prevailing wage compliance, processing requests for information, daily records, photo-documentation, procuring building furnishings and equipment, facility training and testing, as-built files, resolving warranty issues, etc.

## **6. SELECTION CRITERIA AND SELECTION PROCESS**

Consultant shall be selected based on:

- Demonstrated alignment with the City's and ACFD's goals for Project success.
- Qualifications and experience of consultant team on similar projects.
- Demonstrated ability to effectively manage risks, costs, schedule and quality.
- Proposed fee and hourly rates.
- Satisfaction of previous clients.

The City retains sole discretion to evaluate proposals and may make an award to the Consultant the City deems to offer the City the qualifications and best value. Receipt of proposals does not obligate the City in any way to engage any Consultant and the City reserves the right to reject any or all proposals, wholly or in part, at any time, without penalty. The City shall retain the right to abandon the proposal process at any time prior to the actual execution of a contract with a Consultant, and the City shall bear no financial or other responsibility in the event of such abandonment. The City reserves the right to conduct consultant interviews and/or negotiate all final terms and conditions of any agreement.

## **7. COMPENSATION**

Consultant shall indicate in the proposal a maximum cost to perform all services utilizing the staffing levels stated in their proposal. Costs shall be comprehensive and include all mark-up rates and annual adjustments, if any.

## **8. PROJECT DURATION**

The Project duration is approximately 48 months from execution of the Consultant agreement to project acceptance for both FS27 and FS29. Services provided by the consultant beyond duration period shall be compensated for by using hourly rates specified in the consultant's proposal. Completion of the Project in a timely manner is of utmost importance.

## **9. SUBMITTAL GUIDELINES**

Proposals shall include a cover letter signed by an officer authorized to execute an agreement with the City; key staff with description of their abilities, qualifications and experience; project experience and references on similar projects; and fee. Proposals shall not exceed twenty 8.5" x 11" pages (double-sided) in total length, including any appendices or supplemental information. Consultants shall submit four hard copies of their proposal in a sealed envelope bearing the caption "City of Newark – Proposal for Project Management Service for Fire Stations #27 and #29 Replacement Project." The envelope shall be addressed to:

---

**Miki Tsubota, City Engineer**  
**City of Newark – Public Works Department**  
**Newark City Hall**  
**37101 Newark Boulevard**  
**Newark, CA 94560-3796**

Proposals must be received by the date and time on the cover sheet of this Request for Proposal. E-mail or FAX submissions will not be accepted. Late proposals will not be accepted. The City assumes no responsibility for delays caused by delivery service. Postmarking by the due date will not substitute for actual receipt at the stated deadline.

Any changes made by the City to the requirements in this RFP will be made by written addenda. Any written addenda issued to this RFP shall be incorporated into the terms and conditions of any resulting Agreement. The City will not be bound by any modifications to or deviations from the requirements set forth in this RFP as the result of oral instructions. The City reserves the right to revise or withdraw this RFP at any time and for any reason.

The City reserves the right to reject any and all proposals, to waive any minor informalities, irregularities, and/or non-responsiveness that does not influence the competitive nature of the proposal, to request additional information concerning any statement for purposes of clarification, to accept or negotiate any modification to any statement following the deadline for receipt of all statements, and to waive any irregularities if such would serve the best interests of the City.

All inquiries regarding the RFP should be directed to Miki Tsubota at [miki.tsubota@newarkca.gov](mailto:miki.tsubota@newarkca.gov).

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

If awarded a contract, the Consultant shall maintain a valid City business license, and maintain insurance coverage, including errors and omissions and worker's compensation, reflecting the minimum amounts and conditions specified by the City as outlined in the attached Contractual Services Agreement. Consultants are liable for all errors or omissions contained in their Statement of Qualifications. By submitting a Proposal, interested consultants represent that they: (1) have thoroughly examined and become familiar with the Work required under this RFP; (2) comprehend all conditions that may impact the requested scope of services; (3) have reviewed of all addenda, if any; and (4) are capable of providing the equipment, goods and services necessary to perform the requested scope of services, in a manner that meets the City's and ACFD's objectives. Failure to examine the documents and inform itself shall be at each firm's own risk.

---

**ATTACHMENT A**

**CITY OF NEWARK  
STANDARD SERVICES AGREEMENT**



**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF NEWARK  
AND  
[NAME OF CONSULTANT]  
FOR [SERVICES]**

This Agreement for consulting services (“Agreement”) is made by and between the City of Newark, a municipal corporation, (“City”) and \_\_\_\_\_, a \_\_\_\_\_ (corporation / limited liability company / sole proprietor), with offices located at \_\_\_\_\_, (“Consultant”), (together referred to as the “Parties”) as of \_\_\_\_\_, 20\_\_ (the “Effective Date”).

**Section 1. Services.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A and incorporated herein, at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

**1.1 Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on \_\_\_\_\_, and Consultant shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City’s right to terminate the Agreement, as referenced in Section 8.

**1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement according to the standards observed by a competent practitioner of the profession in which Consultant is engaged and in the geographical area in which Consultant practices its profession.

**1.3 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.

**1.4 Time is of the Essence.** Time is of the essence. Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to timely finish the Scope of Work, to meet the standard of performance provided in Section 1.1 and 1.2 above and to satisfy Consultant’s obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed \_\_\_\_\_, (\$ \_\_\_\_\_) notwithstanding any contrary indications that may be contained in Consultant’s proposal for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Consultant’s proposal, attached as Exhibit A, regarding the amount of compensation, the Agreement shall prevail. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services

---

rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred prior to the invoice date. Invoices shall contain the following information, unless waived by the Contract Administrator:

- Serial identifications of progress bills; i.e., Progress Bill No. 1 for the first invoice, etc.;
- Project name & number if applicable;
- Purchase Order number to expedite payment;
- The beginning and ending dates of the billing period;
- A task summary containing the original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder;
- The Consultant's signature;
- Consultant shall give separate notice to the City when the total number of hours worked by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours within a 12-month period.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have 30 days from the receipt of an invoice that complies with all of the requirements above to pay Consultant.

---

**2.3 Final Payment.** City shall pay the last 10% of the total sum due pursuant to this Agreement within 60 days after completion of the services and submittal to City of a final invoice, if all services required have been satisfactorily performed.

**2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

**2.5 Hourly Rate/Fees.** Unless the services provided are for a lump sum or flat fee, fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on the compensation cost proposal attached hereto as Exhibit B. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit B, the Agreement shall prevail.

**2.6 Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, attached hereto and incorporated herein. Reimbursable expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses shall not include a mark-up and are billed as a direct costs. In no event shall expenses be advanced by the City to the Consultant. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

**2.7 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

**2.8 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets to verify costs incurred to that date.

**2.9 Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**2.10. Business License.** The Consultant is not authorized to perform services or incur costs whatsoever under the terms of this Agreement until Consultant applies for and has been issued a business license from the City pursuant to Title 5 of the Newark Municipal Code.

---

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant’s use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, long-distance telephone or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Consultant's bid. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Required Coverage.** Consultant shall maintain all required insurance listed herein for the duration of this Agreement.

<u>COVERAGE</u>	<u>TYPE OF INSURANCE</u>	<u>MINIMUM LIMITS</u>
A	<b>Commercial Liability</b> Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	<b>General</b> \$2,000,000 per occurrence; Bodily Injury and Property Damage \$4,000,000 in the aggregate; Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability

		occurrence form CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis
B	<p><b>Commercial or Business Automobile Liability</b>  All owned vehicles, hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability is acceptable for individual contractors with no transportation or hauling related activities</p>	<p>\$1,000,000 per occurrence;  Any Auto; Bodily Injury and Property Damage. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (most recent edition), Code 1 (any auto). No endorsement shall be attached limiting the coverage.</p>
C	<p><b>Workers' Compensation (WC) and Employers Liability (EL)</b>  Required for all contractors with employees</p>	<p>WC: Statutory Limits  EL: \$100,000 per accident for bodily injury or disease. Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement</p>
D	<p><b>Professional Liability/Errors &amp; Omissions</b></p>	<p>\$2,000,000 per occurrence  \$4,000,000 policy aggregate;  Any deductible or self-insured</p>

Includes endorsements of retention shall not exceed contractual liability \$150,000 per claim
---

**4.2 Additional requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

a. All required insurance shall be maintained during the entire term of the Agreement with the following exception: Insurance policies and coverage(s) written on a claims-made basis shall be maintained during the entire term of the Agreement and until three (3) years following termination and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement

b. All insurance required above with the exception of Professional Liability, Personal Automobile Liability, Workers' Compensation and Employers Liability, shall be endorsed to name as additional insured: City of Newark, its City Council, and all City officers, agents, employees, volunteers and representatives.

c. For any claims related to this Agreement or the work hereunder, the Consultant's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

d. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.

e. **Certificates of Insurance:** Before commencing operations under this Agreement, Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage is in effect. The City reserves the rights to require the Consultant to provide complete, certified copies of all required insurance policies.

f. **Subcontractors:** Consultant shall include all subcontractors as an insured (covered party) under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

g. **Claims-made limitations.** The following provisions shall apply if the professional liability coverage is written on a claims-made form:

i. The retroactive date of the policy must be shown and must be before the date of the Agreement.

---

ii. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.

iii. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must purchase an extended period coverage for a minimum of three (3) years after completion of work under this Agreement.

iv. A copy of the claim reporting requirements must be submitted to the City for review prior to the commencement of any work under this Agreement.

#### **4.3 All Policies Requirements.**

a. **Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII. Insurance shall be maintained through an insurer with a minimum A.M. Best Rating of A- or better, with deductible amounts acceptable to the City. Acceptance of Consultant's insurance by City shall not relieve or decrease the liability of Consultant hereunder. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Consultant.

b. **Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Consultant shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

c. **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

d. **Waiver of Subrogation.** Consultant hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Consultant agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the consultant, its employees, agents, and subcontractors.

**4.4 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:

---

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- 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
- Terminate this Agreement.

**Section 5. INDEMNIFICATION AND CONSULTANT’S RESPONSIBILITIES.**

Consultant shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney’s fees and costs and fees of litigation) (collectively, “Liability”) of every nature arising out of or in connection with Consultant’s performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Consultant’s obligation to defend and indemnify shall not be excused because of the Consultant’s inability to evaluate Liability or because the Consultant evaluates Liability and determines that the Consultant is not liable to the claimant. The Consultant must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Consultant fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Consultant under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Consultant accepts or rejects the tender of defense, whichever occurs first.

With respect to third party claims against the Consultant, the Consultant waives any and all rights of any type to express or implied indemnity against the Indemnitees.

Notwithstanding the forgoing, to the extent this Agreement is a “construction contract” as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of consultant to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

---

## **Section 6. STATUS OF CONSULTANT.**

**6.1 Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3; however, otherwise City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

**6.2 Consultant Not an Agent.** 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.

## **Section 7. LEGAL REQUIREMENTS.**

**7.1 Governing Law.** The laws of the State of California shall govern this Agreement.

**7.2 Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

**7.3 Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

**7.4 Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.

**7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, genetic information, marital status, sex, sexual orientation, gender, or

---

gender identity, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

**8.1 Termination.** City may cancel this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Consultant shall be entitled to compensation for services performed to the effective date of termination; City, however, may condition payment of such compensation upon Consultant delivering to City any or all work product, including, but not limited to documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

**8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

**8.3 Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.

**8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.

---

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, the following:

**8.6.1** Immediately terminate the Agreement;

**8.6.2** Retain the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement;

**8.6.3** Retain a different consultant to complete the work described in Exhibit A not finished by Consultant; or

**8.6.4** Charge Consultant the difference between the cost to complete the work described in Exhibit A that is unfinished at the time of breach and the amount that City would have paid Consultant pursuant to Section 2 if Consultant had completed the work.

**8.6.5** No remedy mentioned in this Agreement is intended to be exclusive of any other right, power, or remedy, permitted by law. Neither the failure nor the delay on the part of the City to exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the City of any such right or remedy preclude any other or further exercise of any such right or remedy.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

**9.1 Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City upon termination of the Agreement and City may use, reuse or otherwise dispose of the documents without Consultant's permission. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both parties.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this

---

Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement. All such records should be maintained in accordance with generally accepted accounting principles and shall be clearly identified and readily accessible.

**9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

**10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.

**10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.

**10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.

**10.4 No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.

**10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.

**10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.

**10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

---

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.* Consultant hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Consultant was an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code § 1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, will be disqualified from holding public office in the State of California.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by the City Manager, or his designee, identified as \_\_\_\_\_ ("Contract Administrator"). All correspondence, meeting documentation, invoices and project deliverables shall be directed to or through the Contract Administrator.

**10.10 Notices.** Any notice, demand, request, consent or approval that either party is required to give the other pursuant to this Agreement, shall be in writing and may be given by either (i) personal service, (ii) delivery by reputable overnight delivery service (e.g. Federal Express) which provides a receipt showing date and time of delivery, (iii) certified United States mail, postage prepaid, return receipt requested, or (iv) by email transmission. Notice shall be effective upon personal delivery or delivery to the addresses specified below, as reflected on the receipt of delivery or return receipt, as applicable.

Any written notice to Consultant shall be sent to:

All other written notices to City shall be sent to:

Miki Tsubota

Public Works

City of Newark

37101 Newark Blvd.

Newark, CA 94560

Kristopher J. Kokotaylo,

City Attorney

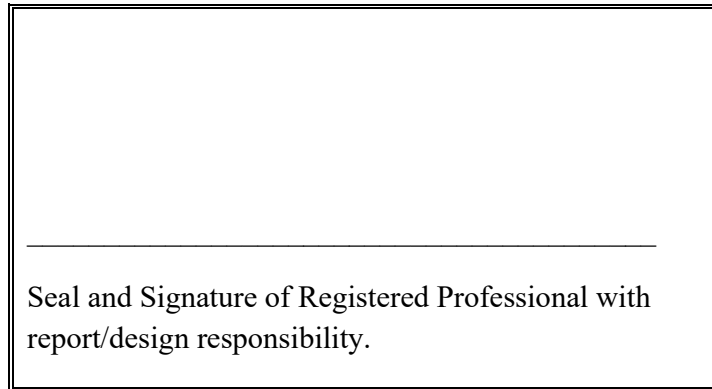
City of Newark

37101 Newark Blvd.

Newark, CA 94560

with a copy to

**10.11 Professional Seal.** Where applicable in the determination of the contract administrator, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation. The stamp/seal shall be in a block entitled "Seal and Signature of Registered Professional with report/design responsibility," as in the following example.



**10.12 Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B represent the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A                      Scope of Services

Exhibit B                      Cost Proposal

**10.13 Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

**SIGNATURES ON FOLLOWING PAGE**

---

The Parties have executed this Agreement as of the Effective Date.

**CITY OF NEWARK**

**[CONSULTANT]**

\_\_\_\_\_  
\_\_\_\_\_, CITY MANAGER

\_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
\_\_\_\_\_, CITY CLERK

**APPROVED AS TO FORM:**

\_\_\_\_\_  
KRISTOPHER J. KOKOTAYLO  
CITY ATTORNEY

5638310.1  
Version 3.2.21

\_\_\_\_\_

**EXHIBIT A**

**SCOPE OF SERVICES**

.

**EXHIBIT B**

**COMPENSATION SCHEDULE**

# **ATTACHMENT B**

## **EXCERPT FROM CITYWIDE FACILITIES MASTER PLAN**