CITY OF NEWARK
CITY COUNCIL

City Administration Building, City Council Chambers
37101 Newark Boulevard, Newark, CA 94560 | (510) 578-4266 | E-mail: city.clerk@newark.org

AGENDA

Thursday, March 10, 2022
7:00 P.M.

HYBRID IN-PERSON/VIRTUAL MEETING
REFER TO THE END OF THE AGENDA TO REVIEW OPTIONS FOR PARTICIPATING IN THE MEETING REMOTELY OR IN-PERSON.

IF YOU ATTEND THE MEETING IN PERSON, A FACE COVERING IS RECOMMENDED BUT NOT REQUIRED. LIMITED PUBLIC SEATING WILL BE AVAILABLE IN THE CITY COUNCIL CHAMBERS CONSISTENT WITH CDC GUIDELINES.

A. ROLL CALL

B. PRESENTATIONS

C. PUBLIC COMMENT
The public is invited to address the City Council on any item not listed on the agenda. Public Comments are generally limited to 5 minutes per speaker. Please note that State law prohibits the Council from acting on non-agenda items.

D. CONSENT CALENDAR
Consent Calendar items are considered to be routine and may be approved by one motion. There will be no separate discussion on these items unless there is a request by a Council Member, a staff member, or a member of the public to remove an item for separate discussion and action.

1. Approval of Audited Demands

2. Approval of February 24, 2022, minutes

3. Adopt a resolution authorizing the City Manager to execute an amendment to the Consulting Services Agreement with Robert Half International Inc. to increase the not-to-exceed compensation for temporary staffing support to the Information Systems Division

4. Adopt a Resolution Amending the 2020-2022 Biennial Budget and Capital Improvement Plan for Fiscal Year 2021-2022 for Capital Improvement Plan Budget Rollovers

5. Adopt a Resolution Approving Amendments to the Contractual Services Agreements with 4Leaf, Inc. and Bureau Veritas North America, Inc. for Additional Building Inspection Division Plan Review, Field Inspection and Miscellaneous Support Services

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Introduction of an ordinance adding Chapter 7.24, Fireworks Social Host Ordinance, to the Newark Municipal Code to increase penalties an enforcement authority related to illegal use of fireworks

G. CITY COUNCIL MATTERS

City Council Members report on attendance at intergovernmental agency meetings, conferences, and seminars since the last meeting. City Council Members may also announce upcoming events and coordinate attendance; report on local events attended since the last meeting; and make brief comments on issues of concern.

H. CLOSED SESSION

I. ADJOURNMENT

HYBRID IN-PERSON/VIRTUAL MEETING NOTICE

This meeting is being conducted utilizing teleconferencing and electronic means consistent with Assembly Bill 361. Members of the public may attend the meeting in person, virtually via Zoom, or watch it via YouTube. If you attend the meeting in person, a face covering is recommended but not required. The City Council Chambers will have limited public seating consistent with CDC Guidelines.

Mayor Nagy, Vice Mayor Hannon, and Council Members Bucci, Collazo, and Freitas may be attending this meeting via teleconference. Teleconference locations are not open to the public. In the event that any members of the City Council elect to attend this meeting via teleconference, all votes conducted during the teleconferencing session will be conducted by roll call vote.

How to view the meeting remotely:
Livestream online at YouTube: https://www.youtube.com/channel/UC383NGSxaPwZP1lkJbo2T8A
Copy/paste the YouTube URL into your browser if the link does not automatically open.

How to participate in the meeting remotely, via Zoom Webinar:
From a PC, Mac, iPad, iPhone or Android device: Zoom Meeting https://us06web.zoom.us/j/82035848965

From a telephone dial 1- 669-900-9128, Webinar ID Number 820 3584 8965

Provide live, remote public comments, when the Mayor calls for comments. Use the raise your hand feature in Zoom to be called upon by the City Clerk.

For frequently asked Zoom questions, please go to Agendas and Minutes and select the Frequently Asked Questions link.

No question shall be asked of a council member, city staff, or an audience member except through the Mayor. No person shall use vulgar, profane, loud or boisterous language that interrupts a meeting. Any person who refuses to carry out instructions given by the Mayor for the purpose of maintaining order may be guilty of an infraction and may result in removal from the meeting.

Council Meeting Access/Materials:
The agenda packet is available for review at Agendas and Minutes. The packet is typically posted to the City website the Friday before the meeting, but no later than 72 hours before the meeting.

Pursuant to Government Code 54957.5, supplemental materials distributed less than 72 hours before this meeting, to a majority of the City Council, will be made available for public inspection at this meeting and will be posted, if time allows, at Agendas and Minutes. Materials prepared by City staff and distributed during the meeting are available for public inspection at the meeting or after the meeting if prepared by some other person. Documents related to closed session items or are exempt from disclosure will not be made available for public inspection. For those persons who require special accommodations, please contact the City Clerk at least two days prior to the meeting at City Clerk or 510-578-4266.

STAFF REPORT

Item D. 1.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Krysten Lee, Finance Director
SUBJECT	Approval of Audited Demands

Attachments

Audited Demands

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 02/17/2022

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	02/17/2022	5024 Accounts Payable	AFLAC		1,014.08
	Invoice	Date	Description		Amount
	864978	02/16/2022	JANUARY 2022 PREMIUMS		1,014.08
Check	02/17/2022	5025 Accounts Payable	ALAMEDA COUNTY WATER DISTRICT		3,841.96
	Invoice	Date	Description		Amount
	120121-013122	02/01/2022	ACWD HYDRANTS 12/01-21-01/31/22		3,841.96
Check	02/17/2022	5026 Accounts Payable	ALESHIRE & WYNDER, LLP		5,162.00
	Invoice	Date	Description		Amount
	66086	02/07/2022	FY 21/22 INVESTIGATION & LEGAL SERVICES - 01/31/22		5,162.00
Check	02/17/2022	5027 Accounts Payable	ALL CITY MANAGEMENT SERVICES, INC.		2,386.19
	Invoice	Date	Description		Amount
	74586	01/12/2022	SCHOOL CROSSING GUARD SVCS 12/26-01/08/22		2,386.19
Check	02/17/2022	5028 Accounts Payable	AT&T		180.11
	Invoice	Date	Description		Amount
	2300-020122	02/01/2022	CHARGES FOR CAPTION LISTINGS - 02/1/22-02/28/22		180.11
Check	02/17/2022	5029 Accounts Payable	BAY CENTRAL PRINTING		540.46
	Invoice	Date	Description		Amount
	190690	01/25/2022	STOP WORK ORDERS		540.46
Check	02/17/2022	5030 Accounts Payable	CAL-WEST LIGHTING & SIGNAL MAINTENANCE		9,065.62
	Invoice	Date	Description		Amount
	211213	12/31/2021	TRAFFIC LIGHT MAINTENANCE (DECEMBER 2021)		4,569.88
	220155	01/31/2022	STREETLIGHT KNOCKDOWN (5401 THORNTON)		4,495.74
Check	02/17/2022	5031 Accounts Payable	C.A.P.E.		300.00
	Invoice	Date	Description		Amount
	09737	07/27/2021	CAPE 2022 ANNUAL TRAINING SEMINAR 04/25-04/29/22; LAURA DA SILVA		300.00
Check	02/17/2022	5032 Accounts Payable	DEPARTMENT OF JUSTICE		418.00
	Invoice	Date	Description		Amount
	560205	02/03/2022	FINGERPRINTING FEES 1/22		418.00
Check	02/17/2022	5033 Accounts Payable	EAST BAY REFRIGERATION		2,035.04

	Invoice	Date	Description	Amount
	19285	02/01/2022	REFRIGERATOR MAINTENANCE FY 21/22	2,035.04
Check	02/17/2022	5034 Accounts Payable	GRAINGER	605.12
	Invoice	Date	Description	Amount
	9070301115	09/29/2021	PARKS DISSOLVED OXYGEN METER	605.12
Check	02/17/2022	5035 Accounts Payable	IDN WILCO INC	43.09
	Invoice	Date	Description	Amount
	9654269-00	12/10/2021	BLDG SUPPLIES - LATCH SPRING	43.09
Check	02/17/2022	5036 Accounts Payable	IDAX	700.00
	Invoice	Date	Description	Amount
	INV-0001759	01/27/2022	BUENA VISTA SPEED SURVEYS	400.00
	INV-0001725	01/18/2022	MANZANITA ST SPEED SURVEY	300.00
Check	02/17/2022	5037 Accounts Payable	INTERNATIONAL CODE COUNCIL INC	660.40
	Invoice	Date	Description	Amount
	1001451817	01/24/2022	BUILDING INSPECTION CODE BOOKS	660.40
Check	02/17/2022	5038 Accounts Payable	KBA DOCUMENT SOLUTIONS, LLC	263.95
	Invoice	Date	Description	Amount
	55Y1236393	12/16/2021	COPIER LEASE/SERVICE/SUPPLIES 11/22-12/21/21	263.95
Check	02/17/2022	5039 Accounts Payable	NAPA AUTO PARTS	1,370.76
	Invoice	Date	Description	Amount
	JAN' 2022	01/31/2022	NAPA - FLEET PARTS AND SUPPLIES	1,370.76
Check	02/17/2022	5040 Accounts Payable	LIEBERT CASSIDY WHITMORE	1,014.00
	Invoice	Date	Description	Amount
	211036	12/31/2021	CLIENT/MATTER NO. NE008-00007	156.00
	211037	12/31/2021	CLIENT/MATTER NO. NE008-00008	858.00
Check	02/17/2022	5041 Accounts Payable	JOLIE MACIAS	250.00
	Invoice	Date	Description	Amount
	121521EXP	02/08/2022	MATT BREEN RETIREMENT COOKIES	250.00
Check	02/17/2022	5042 Accounts Payable	MFCP INC	76.40
	Invoice	Date	Description	Amount
	8186049	01/25/2022	FLEET PARTS AND SUPPLIES	76.40
Check	02/17/2022	5043 Accounts Payable	PACIFIC GAS & ELECTRIC	2,062.12
	Invoice	Date	Description	Amount
	3926-020322	02/03/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (12/29/21-1/27/22)	89.12
	1859-020322	02/03/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (12/29/21-1/27/22)	1,903.93
	0552-020222	02/02/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (12/28/21-1/26/22)	69.07
Check	02/17/2022	5044 Accounts Payable	PHOENIX GROUP INFORMATION SYSTEMS	534.81
	Invoice	Date	Description	Amount
	122021101	01/18/2022	PARKING CITATION PROGRAM DEC 2021	534.81
Check	02/17/2022	5045 Accounts Payable	CURVATURE LLC	523.41

	Invoice	Date	Description	Amount
	714624	11/05/2021	GLC-TE-1000BASE-T SFP TRANSCEIVER MODULE	523.41
Check	02/17/2022	5046 Accounts Payable	QUADIENT LEASING USA, INC.	417.69
	Invoice	Date	Description	Amount
	N9246980	01/28/2022	MAIL AND FOLDER MACHINE LEASE 2/1/22-2/28/22	417.69
Check	02/17/2022	5047 Accounts Payable	PATRICK SMITH	186.07
	Invoice	Date	Description	Amount
	122321EXP	12/23/2021	SUPPLIES FOR K9 TIO	186.07
Check	02/17/2022	5048 Accounts Payable	STANDARD INSURANCE COMPANY	571.20
	Invoice	Date	Description	Amount
	FEB'22	02/01/2022	EMPLOYEE LIFE INSURANCE AND AD&D COVERAGE PREMIUMS - 02/22	571.20
Check	02/17/2022	5049 Accounts Payable	STATE OF CALIFORNIA	1,259.61
	Invoice	Date	Description	Amount
	2022-00000186	02/11/2022	GARNISH - WAGE GARNISHMENT CASE# 624448511	1,259.61
Check	02/17/2022	5050 Accounts Payable	ANNE STEDLER	74.86
	Invoice	Date	Description	Amount
	111221EXP	11/12/2021	FLYER COPIES	33.08
	120721EXP	12/07/2021	3-RING BINDERS	41.78
Check	02/17/2022	5051 Accounts Payable	T-MOBILE	138.88
	Invoice	Date	Description	Amount
	966241989-012122	01/21/2022	IPHONE SVC 12/21/21-01/20/22	138.88
Check	02/17/2022	5052 Accounts Payable	TYLER BUSINESS FORMS	151.16
	Invoice	Date	Description	Amount
	69327	01/25/2022	1099 SUPPLIES	151.16
Check	02/17/2022	5053 Accounts Payable	UNION PACIFIC RAILROAD COMPANY	2,133.90
	Invoice	Date	Description	Amount
	90112448	12/14/2021	FY 21/22 DIAGNOSTIC MEETING FOR MOWRY VILLAGE	2,133.90
Check	02/17/2022	5054 Accounts Payable	U.S. BANK CORPORATE PAYMENT SYSTEMS	11,728.46
	Invoice	Date	Description	Amount
	012422STMT	01/24/2022	CC PAYMENT 01/24/22	11,728.46
Check	02/17/2022	5055 Accounts Payable	VERIZON WIRELESS	12,644.55
	Invoice	Date	Description	Amount
	9897567003	01/18/2022	CELL/TABLET/WIFI SERVICE - 12/19/21-01/18/22	12,644.55
AP ZBA ACCOUNTS PAYABLE Totals:			Transactions: 32	$62,353.90
	Checks:	32	$62,353.90	

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 02/24/2022

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	02/24/2022	5056 Accounts Payable	ABACUS PRODUCTS INC		770.14
	Invoice	Date	Description		Amount
	B67127	02/03/2022	PRINTING SVCS - CONTINUATION OF NOTICE TO APPEAR CITATION		441.43
	B67128	02/03/2022	PRINTING SVCS - INVENTORY & AFFIDAVIT ON SEARCH WARRANT		328.71
Check	02/24/2022	5057 Accounts Payable	ABC FIRE PROTECTION, INC.		1,333.90
	Invoice	Date	Description		Amount
	61027	02/08/2022	FLEET EXTINGUISHER SERVICE		445.88
	61031	02/07/2022	FIRE EXTINGUISHERS SERVICE AND MAINTENANCE		888.02
Check	02/24/2022	5058 Accounts Payable	ACCESS		80.00
	Invoice	Date	Description		Amount
	9228118	01/31/2022	SHREDDING SVCS JAN 2022		80.00
Check	02/24/2022	5059 Accounts Payable	TREASURER OF ALAMEDA COUNTY		3,538.00
	Invoice	Date	Description		Amount
	JAN'22	02/01/2022	CRIME LAB FEES - JAN'22		3,538.00
Check	02/24/2022	5060 Accounts Payable	ALAMEDA COUNTY WATER DISTRICT		36,174.07
	Invoice	Date	Description		Amount
	110221-010422	01/04/2022	WATER SERVICE 11/02/2021-01/04/2022		36,174.07
Check	02/24/2022	5061 Accounts Payable	ALL CITY MANAGEMENT SERVICES, INC.		4,417.66
	Invoice	Date	Description		Amount
	74923	01/26/2022	SCHOOL CROSSING GUARD SVCS 01/09-01/22/22		4,417.66
Check	02/24/2022	5062 Accounts Payable	ALLTECH PETRO INC.		2,123.40
	Invoice	Date	Description		Amount
	11533	12/21/2021	FUEL ISLAND REPAIR		2,123.40
Check	02/24/2022	5063 Accounts Payable	BAY CENTRAL PRINTING		128.54
	Invoice	Date	Description		Amount
	190854	02/02/2022	BUSINESS CARDS - MATTHEW AVILA		64.27
	190855	02/02/2022	BUSINESS CARDS - BUILDING INSPECTION		64.27
Check	02/24/2022	5064 Accounts Payable	BKF ENGINEERS		26,542.87
	Invoice	Date	Description		Amount
	22020385	02/01/2022	LINDSEY TRACT DESIGN SERVICES, PROJECT 1238 (12/27/21-1/23/22)		26,542.87

Check	02/24/2022	5065 Accounts Payable	BEACON VETERINARY SPECIALISTS	300.00
	Invoice	Date	Description	Amount
	121175	12/31/2021	VET SVCS 12/31/21	150.00
	120816	12/20/2021	VET SVCS 12/18-12/20/21	150.00
Check	02/24/2022	5066 Accounts Payable	CENTRAL VETERINARY HOSPITAL	128.00
	Invoice	Date	Description	Amount
	473816	01/27/2022	VET SVCS 01/27/22	128.00
Check	02/24/2022	5067 Accounts Payable	CITY OF FREMONT	13,205.00
	Invoice	Date	Description	Amount
	323221	02/03/2022	SHELTER OPERATING EXPS FEB 2022	13,205.00
Check	02/24/2022	5068 Accounts Payable	CLASSIC GRAPHICS	334.84
	Invoice	Date	Description	Amount
	45962	02/04/2022	FLEET PARTS AND MAINTENANCE	334.84
Check	02/24/2022	5069 Accounts Payable	COUNTY OF ALAMEDA	925.00
	Invoice	Date	Description	Amount
	JANUARY'22	02/03/2022	CITATION PROCESSING FEES - JAN'22	925.00
Check	02/24/2022	5070 Accounts Payable	CSULB FOUNDATION	452.00
	Invoice	Date	Description	Amount
	0314-031822	02/15/2022	CRIME ANALYSIS CORE COURSE; 03/14-03/18/22; WAYBRIGHT	452.00
Check	02/24/2022	5071 Accounts Payable	DELTA DENTAL INSURANCE COMPANY	17,341.92
	Invoice	Date	Description	Amount
	BE004814686	01/19/2022	DENTAL PREMIUM - FEB'22	100.86
	BE004816550	01/19/2022	DENTAL PREMIUM - FEB'22	17,241.06
Check	02/24/2022	5072 Accounts Payable	ENVIRONMENTAL SCIENCE ASSOCIATES	13,099.25
	Invoice	Date	Description	Amount
	171737	02/10/2022	HOUSING ELEMENT UPDATE PREPARATION 1/1/22-1/28/22	13,099.25
Check	02/24/2022	5073 Accounts Payable	FIDELITY SECURITY LIFE INSURANCE/EYEMED	2,171.16
	Invoice	Date	Description	Amount
	165128622	01/19/2022	VISION PREMIUM - 02/22	2,151.43
	165149979	01/19/2022	COBRA - RC	19.73
Check	02/24/2022	5074 Accounts Payable	FOLGERGRAPHICS, INC	615.77
	Invoice	Date	Description	Amount
	131340	01/31/2022	PROCLAMATION PAPER	615.77
Check	02/24/2022	5075 Accounts Payable	FREMONT ALARM	553.75
	Invoice	Date	Description	Amount
	41230	01/07/2022	ALARM REPAIR AND MAINTENANCE	553.75
Check	02/24/2022	5076 Accounts Payable	FREMONT FORD/AUTOBODY OF FREMONT	1,308.72
	Invoice	Date	Description	Amount
	401368	02/02/2022	FLEET REPAIR AND MAINTENANCE #1705	1,170.30

	200816	02/03/2022	FORD PARTS - S1101 K9	138.42
Check	02/24/2022	5077 Accounts Payable	GYM DOCTORS	857.88
	Invoice	Date	Description	Amount
	00128207	02/03/2022	MAINTENANCE & TREADMILL/LEG PRESS REPAIRS	857.88
Check	02/24/2022	5078 Accounts Payable	HOME DEPOT CREDIT SERVICES	1,224.73
	Invoice	Date	Description	Amount
	FEB' 22	02/13/2022	HD CC 02/13/2022	1,224.73
Check	02/24/2022	5079 Accounts Payable	LANGUAGE LINE SERVICES	109.27
	Invoice	Date	Description	Amount
	10441538	01/31/2022	INTERPRETATION SVCS JAN 2022	109.27
Check	02/24/2022	5080 Accounts Payable	LEXISNEXIS RISK DATA MANAGEMENT INC.	424.20
	Invoice	Date	Description	Amount
	1415640-20220131	01/31/2022	BACKGROUND CHECKS JAN 2022	424.20
Check	02/24/2022	5081 Accounts Payable	METROPOLITAN PLANNING GROUP	2,363.75
	Invoice	Date	Description	Amount
	2002992	01/31/2022	PROJECT MGMT SERVICES-FMC WILLOW - 01/22	2,363.75
Check	02/24/2022	5082 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	13,796.46
	Invoice	Date	Description	Amount
	187428	01/21/2022	PROFESSIONAL SERVICES THROUGH 12/31/2021	1,290.00
	187426	01/21/2022	PROFESSIONAL SERVICES THROUGH 12/31/2021	253.62
	187425	01/21/2022	PROFESSIONAL SERVICES THROUGH 12/31/2021	12,252.84
Check	02/24/2022	5083 Accounts Payable	NHA ADVISORS, LLC	3,275.00
	Invoice	Date	Description	Amount
	611	02/01/2022	FINANCIAL CONSULTING - 04/26/21-01/31/22	3,275.00
Check	02/24/2022	5084 Accounts Payable	PLACER LABS, INC.	8,400.00
	Invoice	Date	Description	Amount
	10.5494	02/03/2022	SUBCR. LOCATION BASED SERVICES & ANALYTICS 7/1/21-6/30/22	8,400.00
Check	02/24/2022	5085 Accounts Payable	PLAN JPA	408.50
	Invoice	Date	Description	Amount
	PLAN-2021-835	01/26/2022	GENERAL LIABILITY CLAIMS - DECEMBER 2021	408.50
Check	02/24/2022	5086 Accounts Payable	PERF	200.00
	Invoice	Date	Description	Amount
	10074	12/15/2021	PERF MEMBERSHIP FOR CAPTAIN ARGUELLO 2022	200.00
Check	02/24/2022	5087 Accounts Payable	RUTAN & TUCKER, LLP	6,270.00
	Invoice	Date	Description	Amount
	918661	01/28/2022	AREA 4 CEQA	6,270.00
Check	02/24/2022	5088 Accounts Payable	S&L BREWER ENTERPRISES, INC.	1,000.00
	Invoice	Date	Description	Amount
	2022NEW01	01/25/2022	K9 TRAINING JAN 2022	500.00

	2021NEW12		12/23/2021	K9 TRAINING DEC 2021	500.00
Check	02/24/2022	5089 Accounts Payable		SAFETY COMPLIANCE MANAGEMENT	1,386.00
	Invoice		Date	Description	Amount
	HMS4683		02/01/2022	HAZWOPER ANNUAL REFRESHER 2022	1,386.00
Check	02/24/2022	5090 Accounts Payable		SILVER & WRIGHT LLP	1,003.00
	Invoice		Date	Description	Amount
	29034		02/01/2022	LEGAL SERVICES	1,003.00
Check	02/24/2022	5091 Accounts Payable		STANDARD INSURANCE COMPANY	1,096.50
	Invoice		Date	Description	Amount
	JANUARY 2022 LTD		02/17/2022	STANDARD - STANDARD INSURANCE COMPANY*	1,096.50
Check	02/24/2022	5092 Accounts Payable		TURF STAR, INC.	985.71
	Invoice		Date	Description	Amount
	7207817-00		01/10/2022	MOWER SUPPLIES - HYDRAULIC HOSE	985.71
Check	02/24/2022	5093 Accounts Payable		UNIVERSAL BUILDING SERVICES & SUPPLY	43,320.48
	Invoice		Date	Description	Amount
	2022-0101		01/31/2022	JANITORIAL SERVICES JAN 2022	42,270.72
	496990		01/19/2022	JANITORIAL SERVICE - SERVICE CENTER JAN 2022	583.20
	498016		01/31/2022	JANITORIAL SERVICE - SERVICE CENTER 1/31/22	466.56
Check	02/24/2022	5094 Accounts Payable		U.S. BANK ST. PAUL	21,176.17
	Invoice		Date	Description	Amount
	1904776		01/20/2022	LOIB AID #26 REASSESSMENT & REFUND OF 2013	21,176.17
Check	02/24/2022	5095 Accounts Payable		WASHINGTON HOSPITAL	25.00
	Invoice		Date	Description	Amount
	0122-NPD		02/02/2022	LAB TESTS JAN 2022	25.00
Check	02/24/2022	5096 Accounts Payable		WEX BANK	1,417.90
	Invoice		Date	Description	Amount
	78275213		02/06/2022	CHEVRON FUEL PURCHASE 01/07/2022-2/6/2022	1,417.90
EFT	02/24/2022	217 Accounts Payable		GRELLA PARTNERSHIP STRATEGIES 122400724 / 501023599026	7,020.00
	Invoice		Date	Description	Amount
	232		12/01/2021	CONSULTING SERVICES FOR USE OF CV19 FEDERAL FUNDING	3,960.00
	240		01/08/2022	CONSULTING SERVICES FOR USE OF CV19 FEDERAL FUNDING	3,060.00

AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 42	$241,304.54
Checks:	41	$234,284.54	
EFTs:	1	$7,020.00	

STAFF REPORT

Item D. 2.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Approval of February 24, 2022, minutes

Attachments

Minutes

Minutes

Thursday, February 24, 2022
7:00 P.M.

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:05 p.m. Present were Council Members Collazo, Freitas, and Vice Mayor Hannon. Council Member Bucci was noted absent.

B. PRESENTATIONS

1. Introduction of Employees

Mayor Nagy introduced Alameda County Fire Division Chief Jeffrey Luepke.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Vice Mayor Hannon moved, Council Member Collazo seconded, to approve Consent Calendar items D.1 through D.5, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 4 AYES, 1 ABSENT (Bucci).

1. Approval of Audited Demands

2. Approval of February 10, 2022, minutes

3. Adopt a Resolution Finding That There is a Proclaimed State of Emergency; Finding That Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the State of Emergency; and Authorizing Continued Remote Teleconferenced Meetings of the Legislative Bodies of the City of Newark for the 30 Day Period Beginning February 24 Pursuant to AB 361
Resolution No. 11319

4. Adopt a resolution approving a personnel allocation change to the 2020-2022 Biennial Budget and Capital Improvement Plan, removing one 0.75 full-time equivalent (FTE) Administrative Assistant and adding 1.0 FTE Administrative Analyst to the City Manager's Office
Resolution No. 11320

5. Adopt a resolution authorizing the submittal of an application for the SB 1383 Local Assistance Grant Program administered by the California Department of Resources Recycling and Recovery, authorize the City Manager or designee to execute funding agreements, and amend the 2020-2022 Biennial Budget and Capital Improvement Plan
Resolution No. 11321

E. PUBLIC HEARINGS

F. OTHER BUSINESS

G. CITY COUNCIL MATTERS

Mayor Nagy wished his wife Connie a happy birthday. The City Council shared birthday greetings to Connie Nagy.

Council Member Collazo congratulated her son and daughter in law on their 5th anniversary. Shop Newark.

H. CLOSED SESSION

1. Conference with legal counsel - Existing Litigation
Pursuant to California Government Code Section 54956.9(d)(1)
Name of Case: Loth, Chomnan v. City of Newark (Workers' Compensation Appeals Board Number ADJ13021646)

2. Closed session pursuant to Government Code Section 54957, Public Employee Appointment, Title: City Attorney

At 7:15 p.m., the City Council recessed to closed session.

At 7:24 p.m. the City Council convened in closed session.

At 7:36 p.m. the City Council reconvened in open session with all Council Members present, except for Council Member Bucci.

I. ADJOURNMENT

Mayor Nagy adjourned the meeting at 7:36 p.m.

STAFF REPORT

Item D. 3.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Lenka Hovorka, Assistant City Manager
SUBJECT	Adopt a resolution authorizing the City Manager to execute an amendment to the Consulting Services Agreement with Robert Half International Inc. to increase the not-to-exceed compensation for temporary staffing support to the Information Systems Division

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute an amendment to the Consulting Services Agreement with Robert Half International Inc. to increase the not-to-exceed compensation for temporary staffing support to the Information Systems Division.

EXECUTIVE SUMMARY

The Information Systems Division is authorized for 3.75 full-time equivalent staff. As of March 9, 2022, the division will have three (3) vacancies. While recruitments are underway, the division is in need of temporary staffing support to maintain the City's technology systems. Staff recommends an Amendment (Attachment B) to the existing consulting services agreement with Robert Half International (Attachment C) for temporary staffing support in an additional amount not to exceed $120,000 for the period of March - June 2022.

BACKGROUND

The City was in progress of requesting a full-time Information Systems (IS) Technician when COVID-19 struck. This position would have brought the Information Systems team to its previous size of 3.75 full-time equivalent staff. This request was held until presented and approved at the January 27, 2022, City Council meeting. During the months of June - October 2021, Robert Half International Inc. provided technical assistance for the computer deployment project and to help fulfill help desk requests.

In October 15, 2020, the Information Systems Manager resigned. At that time, the City was facing a budget deficit and the City utilized a consultant for technical assistance until July 2021. The vacancy remains, though a recruitment is currently in progress. The City will also have a vacant Information Systems Specialist position beginning March 8. Currently, three positions, Information Systems Manager, Information Systems Specialist, and Information Systems Technician, are vacant. The Division now

consists of one three-quarter time (0.75) Information Systems Technician.

DISCUSSION/ANALYSIS

The Information Systems Division is responsible for maintaining all City technology systems, including support of all employees' computers and phones; software implementation, updates, and patches; network administration; police communications; and ensuring online City services remain available. In the latest month, February 2022, the help desk received 53 requests for technical support. The last two quarters averaged 450 requests per quarter. In addition to resolving help desk requests and ongoing systems maintenance, staff began or made progress on projects such as citywide computer deployment, police dispatch workstation set-up, expanding wifi and upgrading our security posture. Other projects, such as policy updates, employee training, and a disaster recovery plan were delayed or put on hold due to staff vacancies.

Robert Half International Inc. can provide technical assistance to assist the City in filling the gaps left by the vacant Information Systems Specialist and Information Systems Technician positions until the City completes a successful recruitment. Based on the current recruitment schedule, staff anticipates these two full-time vacancies will be filled in May or June 2022, and requests that Robert Half International Inc. provide technical assistance until the vacancies can be filled. The estimated cost for this technical staffing support for four months is estimated to not exceed $120,000 and can be accomplished through amendment to the original contract (Attachment C). This includes all levels of technical support, including 24/7 response for public safety purposes.

The Information Systems Manager is expected to be filled in April 2022, and will be temporarily filled with current City and vendor resources.

FISCAL IMPACT

Personnel savings from the three (3) full-time vacancies in the Information Systems Division is available to pay for the proposed contract amendment.

REVIEW AND APPROVAL

Prepared by – Lenka Hovorka, Assistant City Manager
Reviewed by – Kristopher J. Kokotaylo, Interim City Attorney
Approved by – David J. Benoun, City Manager

Attachments

Robert Half Amendment
Robert Half Resolution
Original contract

FIRST AMENDMENT TO THE CONSULTING SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND ROBERT HALF INTERNATIONAL INC. FOR TEMPORARY STAFFING SUPPORT

This First Amendment amends the Consulting Services Agreement between the City of Newark, a municipal corporation, ("City") and Robert Half International Inc., doing business through its division Robert Half Technology, a Delaware company with offices located at 1850 Gateway Drive, Suite 200, San Mateo, CA 94404, ("Consultant"), (together referred to as the "Parties") as of June 14, 2021.

RECITALS

WHEREAS, the Parties executed a Consulting Services Agreement C21054 (the "Agreement") to perform the services generally including: temporary staffing support; and

WHEREAS, Section 8.3 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend and amend the Agreement effective March 1, 2022; and

WHEREAS, the Parties desire to add additional temporary staffing services; and

WHEREAS, the Agreement provides a not to exceed compensation of Forty-seven Thousand Seven Hundred Dollars ($47,700.00); and

WHEREAS, the total cost of the additional services are not to exceed One Hundred Twenty Thousand Dollars ($120,000.00).

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 2. "Not to Exceed" Compensation, of the Agreement is amended to increase the combined total of compensation and costs payable under the Agreement by One Hundred Twenty Thousand Dollars ($120,000.00) from Forty-seven Thousand Seven Hundred Dollars ($47,700.00) to One Hundred Sixty-seven Thousand Seven Hundred Dollars ($167,700.00).

2. Exhibit B, Compensation Schedule, of the Agreement, is amended to remove:

Assigned Individual: Patrick Concepcion

Bill Rate: $62.00/hour

Start Date: June 14, 2021

Estimated End Date: October 31, 2021

Hourly rates for all assignments will be agreed on a case-by-case basis.

And add:

Assigned individuals, bill rates, start dates, and estimated end dates for all assignments will

be agreed on a case-by-case basis.

3. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

CITY OF NEWARK

_____
DAVID BENOUN
CITY MANAGER

Robert Half International Inc. **EOE**

_____
MEGAN SLABINSKI
DISTRICT PRESIDENT

ATTEST:

_____
SHEILA HARRINGTON, CITY CLERK

APPROVED AS TO FORM:

_____
KRISTOPHER J. KOKOTAYLO
INTERIM CITY ATTORNEY

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AN AMENDMENT TO THE CONSULTING SERVICES AGREEMENT WITH ROBERT HALF INTERNATIONAL, INC. TO PROVIDE TEMPORARY STAFFING SUPPORT

WHEREAS, the Parties executed Consulting Services Agreement C21054 (the "Agreement") to perform the services generally including: temporary staffing support; and

WHEREAS, Section 8.3 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend and amend the Agreement effective March 1, 2022; and

WHEREAS, the City finds the services are required to maintain the City's technology systems and desires to amend the Agreement to provide additional funding for additional temporary staffing support to be provided by the Consultant.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute an amendment, in a form approved by the City Attorney, to the Consulting Services Agreement with Robert Half International Inc. to provide temporary staffing support in an additional amount not to exceed $120,000.00 for a total not to exceed amount of $167,700.00.

C21054

**CONSULTING SERVICES AGREEMENT BETWEEN
THE CITY OF NEWARK
AND
ROBERT HALF INTERNATIONAL INC.
FOR TEMPORARY STAFFING SUPPORT**

This Agreement for consulting services is made by and between the City of Newark, a municipal corporation, ("City") and Robert Half International Inc., doing business through its division Robert Half Technology, a Delaware with offices located at 1850 Gateway Drive, Suite 200, San Mateo, CA 94404, ("Consultant"), (together referred to as the "Parties") as of June 14, 2021 (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 March 14, 2022, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The City's right to terminate the Agreement, as referenced in Section 8, shall not be affected.

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.

1.3 **Assignment of Personnel.** Consultant shall assign qualified personnel ("Assigned Individual") 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. Consultant guarantees City's satisfaction with Consultant's Assigned Individual's services by extending to City an eight (8) hour guarantee period. If, for any reason, City is dissatisfied with the Assigned Individual assigned to City, Consultant will not charge for the first eight (8) hours worked, provided Consultant is allowed to replace the Assigned Individual. Unless City contacts Consultant before the end of the guarantee period, City agrees that Consultant's Assigned Individual is satisfactory for purposes of this guarantee.

City agrees to hold in confidence the Assigned Individual's resume, social security number and other legally protected personal information (unless disclosure is required pursuant to the California Public Records Act (Gov. Code Section 6250 et seq.), and City agrees to implement and maintain reasonable security procedures and practices to protect such information from unauthorized access, use, modification or disclosure.

1.4 **Time is of the Essence.** Intentionally deleted.

Section 2. **COMPENSATION.** City hereby agrees to pay Consultant a sum not to exceed Forty-seven Thousand Seven Hundred Dollars, ($47,700), including reimbursable costs incurred under this Agreement ("Not-to-Exceed Amount"). Notwithstanding anything to the contrary in this Agreement,

Consultant may at any time, in its sole discretion, discontinue performance of the services once the Not-to-Exceed Amount has been attained (even if Consultant continued to provide services after the Not-to-Exceed Amount was reached). Hourly rates for all assignments will be agreed on a case-by-case basis. Assigned Individual will present a time sheet or an electronic time record to City for verification and approval at the end of each week. In the event of a conflict between this Agreement and any other documents 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 will bill City weekly for the total hours worked; Consultant's invoices are thirty (30) days of receipt, including applicable sales and service taxes all of which are payable by City. Client's approval of the Assigned Individual's timesheet will indicate its acceptance of the terms provided in Consultant's letter confirming the engagement of that Assigned Individual. Invoices shall contain the following information:

- 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;
- 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; and
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant performing services hereunder.

2.2 Payment. City shall make payments, based on invoices received 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. Intentionally deleted.

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. Fees for work performed by Consultant on an hourly basis shall not exceed the Not-to-Exceed Amount. Notwithstanding any language in this Agreement to the contrary (including any references to fixed-price, deliverables, acceptance of deliverables, or milestones), Consultant shall be compensated on a time and materials basis only.

2.6 Reimbursable Expenses. Intentionally deleted.

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 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. Intentionally deleted.

2.10. Business License. The Consultant will apply for a business license from the City.

Section 3. FACILITIES AND EQUIPMENT. Except as set forth herein, City shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement.

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. 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.

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

COVERAGE	TYPE OF INSURANCE	MINIMUM LIMITS
A	**Commercial General Liability** Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	$1,000,000 per occurrence; Bodily Injury and Property Damage $2,000,00 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	**Commercial or Business Automobile Liability** 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	$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.
C	**Workers' Compensation (WC) and Employers Liability (EL)** Required for all contractors with employees	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.

D	**Professional Liability/Errors & Omissions** Includes endorsements of contractual liability	$1,000,000 per claim $2,000,000 policy aggregate; Any deductible or self-insured retention shall not exceed $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, 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, 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, and employees. 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: Consultant shall provide Certificate(s) of Insurance and applicable insurance endorsements, in form and satisfactory to City, evidencing that all required insurance coverage herein is in effect.

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.

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. Intentionally deleted.

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. Except for Professional Liability/Errors & Omissions, 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:

- Terminate this Agreement.

Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.

Consultant shall indemnify, defend with counsel reasonably acceptable to City, and hold harmless City and its officers, officials, employees, and agents (collectively "Indemnitees") 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") to the extent arising out of or in connection with Consultant's failure to comply with any of its obligations contained in this Agreement, except Consultant shall have no duty of indemnification or defense for such Liability caused by the negligence or willful misconduct of Indemnitees.

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.

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 (collectively "Payments"), except Consultant shall no duty of indemnification or defense for such Payments caused by the negligence or willful misconduct of the 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. Nothing in this Agreement shall obligate any Robert Half International Inc. branch, other than the Robert Half Technology division of Robert Half International Inc.'s San Mateo, CA branch, to provide the services pursuant to this Agreement. Notwithstanding the foregoing, Robert Half International Inc. shall be responsible for any liability or claim arising out of Consultant's performance of services under the terms of this Agreement.

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

7.3 **Other Governmental Regulations.** Intentionally deleted.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice its respective professions. 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 that are legally required to practice its respective professions.

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, marital status, sex, or sexual orientation, 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.

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.

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.

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 obtains by City 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. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared by the City 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 City 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.

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. This audit provision shall not apply to confidential information, including but not limited to, Consultant's Assigned Individual 's personnel files or the remuneration paid by Consultant to its Assigned Individual s and subcontractors, unless required by law.

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 will endeavor to 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 hereunder. 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 directly solicit any employees of City to leave employment. This section shall not prohibit Consultant from hiring or representing employees of City who come to Consultant through indirect means.

10.9 Contract Administration. This Agreement shall be administered by the City Manager, or his designee, identified as Assistant City Manager Lenka Hovorka ("Contract

Administrator"). All correspondence, meeting documentation, and legal notice shall be directed to or through the Contract Administrator.

10.10 Notices. Any written notice to Consultant shall be sent to:

Robert Half International Inc.
Attention: Client Contracts Department
2613 Camino Ramon
San Ramon, CA 94583-9128

All other written notices to City shall be sent to:

Lenka Hovorka
Assistant City Manager
City of Newark
37101 Newark Blvd.
Newark, CA 94560

10.12 Professional Seal. [Intentionally Omitted]

10.13 Integration. This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A and B, represents the entire and integrated agreement between City and Consultant with respect to the subject matter herein and supersedes all prior negotiations, representations, or agreements, either written or oral, with respect to the subject matter herein.

Exhibit A	Scope of Services
Exhibit B	Compensation Schedule

10.14 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.

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

CITY OF NEWARK

DAVID BENOUN
CITY MANAGER

Robert Half International Inc. EOE

Megan Slabinski

MEGAN SLABINSKI
DISTRICT PRESIDENT

ATTEST:

Sheila Harrington

SHEILA HARRINGTON, CITY CLERK

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
INTERIM CITY ATTORNEY

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CITY OF NEWARK

DAVID BENOUN
CITY MANAGER

Robert Half International Inc. EOE

MEGAN SLABINSKI
DISTRICT PRESIDENT

ATTEST:

SHEILA HARRINGTON, CITY CLERK

APPROVED AS TO FORM:

KRISTOPHER J. KOKOTAYLO
INTERIM CITY ATTORNEY

EXHIBIT A

SCOPE OF SERVICES

Provide temporary staffing services

City shall provide direction regarding tasks for Assigned Individuals providing services to City. City shall not permit or require Assigned Individuals (i) to perform services outside of the scope of his or her assignment; (ii) to sign contracts or statements (including SEC documents); (iii) to make any management decisions; (iv) to make any final decisions regarding system design, software development or the acquisition of hardware or software; (v) to sign, endorse, wire, transport or otherwise convey cash, securities, checks, or any negotiable instruments or valuables; (vi) to use computers, or other electronic devices, software or network equipment owned or licensed by Assigned Individual ; (vii) to operate machinery (other than office machines) or automotive equipment.

Since Consultant is not a professional accounting firm, City agrees that City will not permit or require Assigned Individual (a) to render an opinion on behalf of Consultant or on City's behalf regarding financial statements; (b) to sign the name of Consultant on any document; or (c) to sign their own names on financial statements or tax returns.

It is understood that City has full responsibility for: (i) providing safe working conditions as required by law, including compliance with all public health and occupational safety regulations and guidelines applicable to City's business, and (ii) ensuring that safety plans exist for, and safety related training is provided to, Assigned Individuals working on City's premises.

City may request that Consultant permit its Assigned Individuals to provide services to City remotely (i.e., from a location other than City's offices) using City's or Consultant's laptop and/or other computer or telecommunications equipment (the "Equipment"). City acknowledges and agrees that Consultant shall have no control over, and City shall be solely responsible for, (i) the logical and physical performance, reliability and security of the Equipment or related devices, network accessibility and availability, software, services, tools and e-mail accounts (collectively, "Computer Systems") used by the Assigned Individual, and (ii) the security, integrity, and backing up of the data and other information stored therein or transmitted thereby. Moreover, City must not permit Assigned Individual to save or store any of City's files or other data on the Computer Systems provided by Consultant (including, but not limited to, any virtual desktop infrastructure solution). City agrees that Consultant shall not be liable for any loss, damage, expense, harm, business interruption or inconvenience resulting from the use of such Computer Systems.

If City requires Consultant to perform background checks or other placement screenings of Assigned Individual s, City agrees to notify Consultant prior to the start of services under this Agreement. Consultant will conduct such checks or screenings only if they are described in a signed, written amendment to this Agreement. If City requests a copy of the results of any checks conducted on Consultant's Assigned Individuals, City agrees to keep such results strictly confidential and to use such results in accordance with applicable laws and solely for employment purposes.

EXHIBIT B

COMPENSATION SCHEDULE

Assigned Individual: Patrick Concepcion
Bill Rate: $62.00/hour
Start Date: June 14, 2021
Estimated End Date: October 31, 2021

Hourly rates for all assignments will be agreed on a case-by-case basis.

If applicable, overtime will be billed at 1.50 times the normal billing rate. Federal law defines overtime as hours in excess of 40 hours per week, state laws vary. If state law requires double time pay, the double time hours will be billed at 2.00 times the normal billing rate.

In the event City wishes to convert any of Consultant's Assigned Individuals, City agrees to pay a conversion fee in accordance with this Section. The conversion fee will equal a percentage of the Assigned Individual 's annual salary for the position that the Assigned Individual is being converted to pursuant to the following conversion schedule:

Hours Billed and paid:	**Conversion Rate:**
0-240 hours	25%
241-480 hours	20%
481-720 hours	15%
721-960 hours	10%
961+ hours	No Fee

City agrees to pay a conversion fee if Consultant's Assigned Individual is hired by the City, on a full-time basis within three months after the last day of the assignment. In no event will the conversion fee exceed $10,000 per individual.

Consultant may charge City a fee for the provision of equipment or technology, if City requests that Assigned Individual use equipment or technology provided by Consultant. Consultant may also increase Consultant's rates to reflect increases in Consultant's cost of doing business, including costs associated with higher wages for workers and/or related taxes, benefits or other costs. Consultant will provide written notice of technology charges and/or increases in rates. Any increase in rates will be prospective, starting as of the effective date Consultant specifies.

3859747.1

STAFF REPORT

Item D. 4.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Soren Fajeau, Public Works Director
SUBJECT	Adopt a Resolution Amending the 2020-2022 Biennial Budget and Capital Improvement Plan for Fiscal Year 2021-2022 for Capital Improvement Plan Budget Rollovers

RECOMMENDATION

Staff recommends that the City Council, by Resolution, amend the 2020-2022 Biennial Budget and Capital Improvement Plan for the Fiscal Year 2021-2022 Capital Improvement Plan Rollover.

EXECUTIVE SUMMARY

Staff annually reviews the City's unspent appropriations along with the City's upcoming spending plans. It is necessary to formally amend the 2020-2022 Biennial Budget and Capital Improvement Plan to re-appropriate the Fiscal Year 2020-2021 appropriations for Fiscal Year 2021-2022. The Capital Improvement Plan rollover for this year includes $53,040,657 of previously approved capital project appropriations.

BACKGROUND

As part of the previous fiscal year-end process, staff reviews the City's unspent appropriations, along with the City's upcoming spending plans. With each new budget year, it is necessary to bring forward the unspent appropriations in the approved Capital Improvement Plan once all prior fiscal year transactions have been finalized. It is now necessary to amend the 2020-2022 Biennial Budget and Capital Improvement Plan to re-appropriate the Fiscal Year 2020-2021 appropriations for Fiscal Year 2021-2022.

DISCUSSION/ANALYSIS

The capital budget amendments include rollovers totaling $53,040,657 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs on the New Civic Center project, the upcoming Central Avenue Railroad Overpass, and other projects. This amount is projected based on the estimated costs to complete the approved capital projects being carried over from the previous year.

The attached Exhibit A outlines all capital projects that require rollover of appropriations from Fiscal Year 2020-2021 to Fiscal Year 2021-2022.

FISCAL IMPACT

The 2020-2022 Biennial Budget and Capital Improvement Plan for Fiscal Year 2021-2022 would be amended for the Capital Improvement Plan rollovers as set forth in Exhibit A for the re-appropriation of all Fiscal Year 2020-2021 capital projects and all new Fiscal Year 2021-2022 capital projects previously approved by the City Council.

REVIEW AND APPROVAL

Prepared by – Krysten Lee, Finance Director; Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – David J. Benoun, City Manager

Attachments

Resolution
Exhibit A

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING THE 2020-2022 BIENNIAL BUDGET AND CAPITAL IMRPOVEMENT PLAN FOR FISCAL YEAR 2021-2022 CAPITAL IMPROVEMENT PLAN ROLLOVERS

WHEREAS, during the annual review of capital projects for the Fiscal Year 2021-2022, a need has been identified to amend the 2020-2022 Biennial Budget and Capital Improvement Plan; and

WHEREAS, the Fiscal Year 2020-2021 appropriations have lapsed at year-end and project that are ongoing or works in progress need to be re-appropriated for the Fiscal Year 2021-2022; and

WHEREAS, the capital budget amendments include rollovers totaling $53,040,657 of previously approved capital project appropriations, including streets and roadway projects, street trees and landscape maintenance projects, building maintenance projects, final costs associated with the New Civic Center project, the upcoming Central Avenue Railroad Overpass project, and other projects; and

WHEREAS, the rollover amount is projected based on estimated costs to complete the approved capital projects.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby amend that certain document entitled “2020-2022 Biennial Budget and Capital Improvement Plan of the City of Newark,” adopted by Resolution No. 11,098 on June 25, 2020, for Fiscal Year 2021-2022 for Capital Improvement Plan rollovers as set forth in Exhibit A attached.

City of Newark **Exhibit A**
Capital Projects Budget Rollover
Fiscal Year 2021-2022

Fund	Fund/Project Description	Project	Capital Rollovers	Total by Fund
	Park Construction (104-5400-5280)			
624	City Wide Parks Signage	1272	80,000	
	Sportsfield Outfield Net Replacement	1273	30,000	
				110,000
	Street Construction (XXX-5000-5280)			
201	Lindsay Tract Storm Drainage Study	766	66,288	
	Cast Iron Storm Water Inlet Grate Replacement Program	890	15,000	
	Lindsay Tract Improvements	1238	1,359,000	
	Mowry Ave Median Landscaping	1239	260,000	
	2020 Thermoplastic Street Striping	1242	15,000	
	2021 Asphalt Concrete Overlay	1250	449,250	
	Arterial Bike Lanes	1254	150,000	
	Citywide Accessible Pedestrian Ramps (Ongoing)	1255	50,000	
	City Wide Crosswalk Evaluation	1256	150,000	
	2021 Curb, Gutter & Sidewalk	1257	1,510	
	Old Town PDA Streetscape Design	1258	500,000	
	Thermoplastic Street Striping	1261	15,000	
	Traffic Calming Measures (Ongoing)	1262	80,000	
	Traffic Signals - LED Lamp/Accessory Replacement (Ongoing)	1263	25,000	
	Traffic Calming Measures (Ongoing 2016-2017)	1160	19,644	
	Citywide Accessible Pedestrian Ramps (Ongoing 2017-2018)	1167	89,950	
	Citywide Street Signs (Ongoing 2017-2018)	1173	7,991	
	Cedar Boulevard Landscape Improvements	1199	161,702	
	Citywide Accessible Pedestrian Ramps (Ongoing)	1200	20,000	
	Citywide Traffic Signal Street Name Signs	1201	63,401	
	Traffic Calming Measures (Ongoing)	1224	23,000	
	Traffic Signals - LED Lamp/Accessory Replacement (Ongoing)	1225	7,639	
	2019 Street Tree Maintenance	1230	48,128	
	Traffic Calming Measures (Ongoing)	1243	43,500	3,621,003
202	Lindsay Tract Street and Storm Drain Improvements	1238	780,000	
	2021 Asphalt Concrete Overlay	1250	749,600	1,529,600
210	Citywide Geographic Information System	456	22,700	22,700
211	Citywide Accessible Pedestrian Ramps (Ongoing)	1234	40,000	40,000
212	Traffic Signals - LED Lamp/Accessory Replacement (Ongoing)	1225	15,400	15,400
214	Park Pathways Resurfacing for ADA Access	1232	232,485	232,485
280	Central Ave Overpass Project Development - Phase I	1014	860,595	860,595
281	2021 Asphalt Concrete Overlay	1250	601,150	
	Central Ave Overpass Project Development	1233	29,300,000	29,901,150
282	Citywide Accessible Pedestrian Ramps (Ongoing 2015-2016)	1101	47,200	
	Lindsay Tract Street and Storm Drain Improvements	1238	274,000	
	2021 Curb, Gutter & Sidewalk	1257	200,000	521,200
283	2021 Curb, Gutter & Sidewalk	1257	4,700	4,700
284	Lindsay Tract Street and Storm Drain Improvements	1238	90,000	
	Citywide Accessible Pedestrian Ramps (Ongoing)	1234	20,000	
	2021 Asphalt Concrete Overlay	1250	900,000	1,010,000
285	Lindsay Tract Street and Storm Drain Improvements	1238	46,887	
	2021 Curb, Gutter & Sidewalk	1257	91,000	137,887
287	2021 Asphalt Concrete Overlay	1250	300,000	300,000
	Capital Improvements (XXX-5600-5280)			
025	Old Town PDA Specific Plan and Development Strategy	1150	28,480	28,480
610	Disaster Recovery Infrastructure	747	100,000	
	Surplus Property Disposal - Old FS No. 1	845	16,800	
	Document Retention	884	75,006	
	Crystal Springs Storm Drain Pump Repairs	933	25,000	
	Lakeshore Park Lake Dredging Needs Scoping Analysis	935	25,000	
	Service Center Clean Water Requirements	1058	95,000	
	Finance System Replacement (Part 2)	1086	709,048	
	Irrigation Main Line Partial Replacement at Community Park	1088	198,100	
	Transition to Paperless Documents	1090	8,100	
	Silliman Activity Center Improvements	1114	254,600	

City of Newark **Exhibit A**
Capital Projects Budget Rollover
Fiscal Year 2021-2022

Fund	Fund/Project Description	Project	Capital Rollovers	Total by Fund
	Trash Capture Devices	1122	67,600	
	Web Site Upgrade	1185	77,700	
	Citywide HVAC Replacements	1144	26,820	
	Email Message Archiving	1145	15,000	
	Lakeshore Park Landscape Restoration	1146	302,900	
	Large Computer Monitors for Plan Review	1147	3,900	
	Patrol Annex Work Station Upgrades	1151	11,698	
	Silliman Activity Center - Light Control Board	1153	50,000	
	Silliman Aquatic Center - Variable Frequency Drive Unit	1157	45,000	
	Citywide Building Painting	1164	77,631	
	Citywide Building Roof Repairs	1165	121,055	
	Citywide Building Upgrades	1166	11,091	
	Citywide Parking Lot Repair and Resealing	1168	37,213	
	Citywide Parks/City Facilities Fence Repairs	1169	9,069	
	Citywide Parks Furniture Installation/Replacement	1170	10,000	
	Citywide Parks Irrigation Systems Upgrade/Modification	1171	170,000	
	Park Pathways Repair and Resealing	1175	77,120	
	Park Renovation	1176	3,950	
	New Civic Center	1188	9,456,045	
	Silliman Aquatic Center Activity Pool Play Structure Replacement	1190	27,535	
	Silliman Aquatic Center Pool Slide Replacement	1191	7,599	
	2018 Park Tree Grid Pruning	1195	6,495	
	Birch Grove Park Tree Maintenance	1196	7,526	
	Bayside TOD Transit Station and Overcrossing (Design)	1197	700,000	
	Birch Grove Park Tennis Court Resurfacing	1198	38,413	
	Citywide Trash Capture Devices (Phase 3)	1202	229,705	
	Citywide Work Station Replacement	1203	35,341	
	Jerry Raber Ash Street Park Basketball Court Resurfacing	1209	40,000	
	Lakeshore Park Well Rehabilitation and Pump Replacement	1211	75,000	
	Newark Community Park Restroom Restoration	1215	60,000	
	Silliman Activity Center - Carpet Replacement	1219	15,842	
	Virtual History Museum	1226	60,000	
	Fire Station No. 27 Painting	1235	32,000	
	Fire Station No. 27 Roofing	1236	55,000	
	Fire Station No. 29 Painting	1237	23,000	
	Service Center Rear Garage Repairs	1240	75,000	
	Service Center Buildings, Painting	1241	80,000	
	Fire Station No. 27 - Fencing	1264	8,000	
	Fire Station No. 29 - Fencing	1265	20,000	
	PD Department Bar Car Patrol Vehicle	1266	84,000	
	PD Patrol Vehicle	1267	84,000	
	PD Replacement Scheduling and Workforce Management Software	1268	101,838	
	PW Maintenance Vehicle	1269	60,000	
	Senior Center Flooring Replacement	1270	75,000	
	Silliman Center Water Heater Replacement	1271	100,000	
	Newark Civic Center Technology	1292	206,687	
	Boathouse Building Repairs	1213	18,573	
	PD vehicles - Sergeant & Vehicle Abatement	1223	51,183	
	Polaris Vehicle (Artificial Turf Maintenance)	1249	7,277	14,465,458
625	Citywide Building Needs Assessment	1274	100,000	
	Citywide Rail Station Alternative Study	1275	80,000	
	Railroad Quiet Zone Study	1276	60,000	240,000
			53,040,657	

STAFF REPORT

Item D. 5.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Matthew Farrell, Chief Building Official
SUBJECT	Adopt a Resolution Approving Amendments to the Contractual Services Agreements with 4Leaf, Inc. and Bureau Veritas North America, Inc. for Additional Building Inspection Division Plan Review, Field Inspection and Miscellaneous Support Services

RECOMMENDATION

Staff recommends that the City Council, by resolution, approve the amendments to the Contractual Services Agreements with 4Leaf, Inc. and Bureau Veritas North America, Inc. for additional Building Inspection Division plan review, field inspection and miscellaneous support services.

EXECUTIVE SUMMARY

The City previously entered into multi-year Contractual Services Agreements with 4Leaf, Inc. (4Leaf) and with Bureau Veritas North America, Inc. (Bureau Veritas) for Building Inspection Division plan review, field inspection and miscellaneous support services. These agreements were established with annual not-to-exceed amounts of $160,000 and $100,000 per fiscal year, respectively, for 4Leaf and Bureau Veritas. Due to the existence of several vacant positions in the Building Inspection Division over the course of the current fiscal year, additional plan review, field inspection and other support services are needed under these contracts for the remainder of Fiscal Year 2021-2022. Staff recommends amendments to the existing agreements to increase the not-to-exceed amount for 4Leaf by $155,000 to a total of $315,000 and by $25,000 for Bureau Veritas to a total of $125,000 for these additional services. No amendment of the 2020-2022 Biennial Budget and Capital Improvement Plan is needed for these contract amendments as the savings experienced as a result of the vacant positions exceeds the anticipated costs for the additional support services.

BACKGROUND

In November 2020, the City entered into multi-year Contractual Services Agreements with 4Leaf, Inc. (4Leaf) and Bureau Veritas North America, Inc. (Bureau Veritas) for ongoing Building Inspection Division plan review, field inspection and miscellaneous support services. The 4Leaf and Bureau Veritas agreements provided for initial not-to-exceed amounts of $160,000 and $100,000 per fiscal year, respectively. The initial not-to-exceed amounts for both agreements were based on anticipated contractual support services needs for the division that primarily involved intermittent field inspection activities and the need for an additional technical assistance while the

Chief Building Official position was vacant under the 4Leaf agreement and ongoing plan review of higher-level projects under the Bureau Veritas agreement. The Building Inspection Division has since identified the need for additional support services under both agreements due to additional staff vacancies in several key positions. The existing agreements with 4Leaf and Bureau Veritas are intended to be flexible so that additional technical support services are available when needed. However, any adjustments to the not-to-exceed amounts for a given fiscal year require approval by the City Council.

DISCUSSION/ANALYSIS

In addition to the ongoing intermittent field inspection support services that 4Leaf provides over the course of a typical fiscal year, the Building Inspection Division has recently required additional support service needs in other areas due to multiple vacancies in permanent positions. The City's long-time City Architect/Chief Building Official recently retired following completion of the Civic Center project. 4Leaf provided technical assistance to fulfill some Chief Building Official functions during the last 18 months. The City has since hired a Chief Building Official, but an increase in costs for these services was experienced in the early part of Fiscal Year 2021-2022 due to the extended vacancy.

The Building Inspection Division recently developed an additional vacancy in one of the full-time Building Inspector I/II positions. Staff is attempting to fill that position as well, but the process could take several months. In the interim period, there is a need for additional field inspection support services under the current contract with 4Leaf. In addition, there are current vacancies in both the Senior Building Inspector position and the recently-funded Plan Check Engineer position. These positions are difficult to fill in the current employment market and staff is evaluating options to fill one or both of these positions as soon as possible. However, in the interim period, additional plan review services are needed under the Bureau Veritas agreement as well as additional miscellaneous support services under the 4Leaf agreement.

Staff has evaluated the additional plan review, field inspection and miscellaneous support service needs of the Building Inspection Division for the remainder of the fiscal year and determined that an additional $155,000 should be authorized with a Second Amendment under the contract with 4Leaf, Inc., to bring the total not-to-exceed amount to $315,000. Staff has further evaluated the ongoing plan review needs for the division and determined that an additional $25,000 should be authorized with a Second Amendment to the Bureau Veritas agreement to bring the total not-to-exceed amount to $125,000. This additional contract capacity is entirely off-set by the cost savings experienced by the Building Inspection Division as a result of the multiple vacant positions. The amendments to the contracts require approval by the City Council, but no budget amendment is necessary due to the overall cost savings.

FISCAL IMPACT

Staff is recommending that the Fiscal Year 2021-2022 not-to-exceed contract agreement amounts with 4Leaf and Bureau Veritas be increased by an additional $155,000 and an additional $25,000, respectively. However, there is no fiscal impact to the 2020-2022 Biennial Budget and Capital Improvement Plan for the current fiscal year for these proposed increases as the salary savings experienced due to the multiple vacancies exceeds the additional operating cost for the recommended contract amendments.

REVIEW AND APPROVAL

Prepared by – Matthew Farrell, Chief Building Official
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – David J. Benoun, City Manager

Attachments

Resolution
4Leaf Second Amendment
BureauVeritas Second Amendment
4Leaf Agreement
4Leaf First Amendment
BureauVeritas Agreement
BureauVeritas First Amendment

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AMENDMENTS TO THE CONTRACTUAL SERVICES AGREEMENTS WITH 4LEAF, INC. FOR ADDITIONAL FIELD INSPECTION AND MISCELLANEOUS SUPPORT SERVICES AND BUREAU VERITAS NORTH AMERICA, INC. FOR ADDITIONAL PLAN REVIEW SERVICES

WHEREAS, the City of Newark entered into a multi-year Contractual Services Agreement (4Leaf Agreement) on November 3, 2020 with 4Leaf, Inc. (4Leaf) to provide ongoing field inspection and miscellaneous support services for the Building Inspection Division, with a listed not-to-exceed amount of $160,000 per fiscal year unless otherwise approve in writing for any additional amount; and

WHEREAS, the City of Newark entered into a multi-year Contractual Services Agreement (Bureau Veritas Agreement) on November 12, 2020 with Bureau Veritas North America, Inc. (Bureau Veritas) to provide ongoing plan review services for the Building Inspection Division, with a listed not-to-exceed amount of $100,000 per fiscal year unless otherwise approve in writing for any additional amount; and

WHEREAS, due to current staff vacancies in the Building Inspection Division, additional services for ongoing field inspection and for other miscellaneous support services are required under the 4Leaf Agreement for the remainder of the current fiscal year in the amount of $155,000 to bring the total not-to-exceed amount for Fiscal Year 2021-2022 to $315,000; and

WHEREAS, due to said vacancies, additional services for ongoing plan review services are required under the Bureau Veritas Agreement for the remainder of the current fiscal year in the amount of $25,000 to bring the total not-to-exceed amount for Fiscal Year 2021-2022 to $125,000; and

WHEREAS, no amendment of the 2020-2022 Biennial Budget and Capital Improvement Plan is necessary due to the net cost savings associated with the existing staff vacancies which exceeds the additional total amount needed ($180,000) under both the 4Leaf Agreement and the Bureau Veritas Agreement; and

WHEREAS, Second Amendments to the 4Leaf Agreement and the Bureau Veritas Agreement, incorporated herein by reference, have been prepared to amend the not-to-exceed amounts accordingly for these additional services.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby approve the Second Amendment to the Contractual Services Agreement with 4Leaf, Inc. to increase the not-to-exceed limit of additional services by $155,000 to a total compensation limit of $315,000 for Fiscal Year 2021-2022.

BE IT FURTHER RESOLVED that the City Council of the City of Newark does hereby approve the Second Amendment to the Contractual Services Agreement with Bureau Veritas North America, Inc. to increase the not-to-exceed limit of additional services by $25,000 to a total compensation limit of $125,000 for Fiscal Year 2021-2022.

BE IT FURTHER RESOLVED that the City Council does hereby authorize the City Manager to execute the above Second Amendments to the Contractual Services Agreements with 4 Leaf, Inc. and with Bureau Veritas North America, Inc., on file with the City Clerk, each in a form approved by the City Attorney.

SECOND AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND 4LEAF, INC.

This Second Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4Leaf, Inc., a California Corporation ("Consultant") (together sometimes referred to as "Parties") dated November 3, 2020, is entered into as of March __, 2022.

RECITALS

WHEREAS, the Parties executed a Contractual Services Agreement (the "Agreement") to provide building inspection field inspection and related professional services; and

WHEREAS, Section 27 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend the Agreement for the Consultant to provide additional services for fiscal year 2021-2022 in the amount of $155,000 for a total not-to-exceed cost for services of $315,000 to be provided during that fiscal year; and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to provide for additional not to exceed compensation of $315,000 for services provided by Consultant for fiscal year 2021-2022.

2. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark	Consultant 4Leaf, Inc.
_____	_____
David J. Benoun City Manager	Kevin Duggan President
Dated: _____	Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

SECOND AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND BUREAU VERTIAS NORTH AMERICA, INC.

This Second Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Bureau Veritas North America, Inc., a California Corporation ("Consultant") (together sometimes referred to as "Parties") dated November 12, 2020, is entered into as of March __, 2022.

RECITALS

WHEREAS, the Parties executed a Contractual Services Agreement (the "Agreement") to provide building inspection field inspection and related professional services; and

WHEREAS, Section 27 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend the Agreement for the Consultant to provide additional services for fiscal year 2021-2022 in the amount of $25,000 for a total not-to-exceed cost for services of $125,000 to be provided during that fiscal year; and

WHEREAS, the City Manager is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to provide for additional not to exceed compensation of $125,000 for services provided by Consultant for fiscal year 2021-2022.

2. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark	Consultant Bureau Veritas North America, Inc.
_____	_____
David J. Benoun City Manager	Craig Baptista Vice President
Dated: _____	Dated: _____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

C20059
R11120

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 3rd day of November, 2020 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and 4LEAF,INC., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: Building Inspection field inspection and miscellaneous support services.

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **CONSULTANT'S SERVICES.** Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. **COMPENSATION.**

A. "Not to Exceed" Compensation. City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Sixty Thousand Dollars and No/100 Dollars ($160,000.00) 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. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

C. Payment. Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "B", for Services, which are performed in accordance with this Agreement to the satisfaction of City.

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

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by

written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. INDEPENDENT CONSULTANT. At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

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

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

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

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

12. **RESERVED.**

13. **RESERVED.**

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

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

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

B. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

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

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. **Minimum Limits of Insurance.**

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$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.
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 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

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

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

2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

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

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

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

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

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

15. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful

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

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

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

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

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

17. LICENSES, PERMITS, ETC. Consultant represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required for Consultant to practice its profession. Consultant represents and warrants to City that Consultant shall, at its sole cost and expense, keep in effect at all times during the term of this

Agreement any licenses, permits, and approvals which are legally required for Consultant to practice its profession. In addition to the foregoing, Consultant shall obtain and maintain during the term hereof a valid City of Newark Business License.

18. TERM/TERMINATION.

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

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by P.W. Director of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

4Leaf, Inc.	**CITY OF NEWARK**
CRAIG TOLE **Consultant**	PUBLIC WORKS DIRECTOR **Administrator**
Address: 4LEAF, INC. Attn: Craig Tole 2126 Rheem Drive Pleasanton, CA 94588	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 11-3-20

4LEAF, INC.,
a California Corporation

By _____
Kevin Duggan, President

Date 10/19/2020

Kevin Duggan
Printed Name

Attest:

_____
City Clerk

Date 11/3/2020

Approved as to form:

_____
City Attorney

Date 10/29/2020

EXHIBIT A

SCOPE OF SERVICES

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.

Section E: Rate Schedule

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

Staff Augmentation Services*

Interim Chief Building Official..... $140/hour
Structural Plan Review (Structural Engineer)..... $155/hour
Structural Plan Reviewer (Professional Engineer) $125/hour
Fire Protection Engineer (Professional Engineer) $170/hour
ICC Certified Plans Examiner $105/hour
Senior Lead Inspector..... $125/hour
Code Enforcement Officer..... $95/hour
Certified Building Inspector I $80/hour
Certified Building Inspector II $95/hour
Commercial Inspector/Building Inspector III..... $115/hour
Sr. Permit Technician..... $75/hour
Permit Technician..... $65/hour
Public Works Inspector..... $145/hour
Senior Planner $150/hour
Associate Planner $120/hour
CASp Inspection/Review..... $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 E, Rate Schedule.
- All plan review services will be subject to 2-hour minimum fee.
- 4LEAF assumes that these rates reflect the 2020-2021 contract period. 3% escalation for 2022 and 2023 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.

As an experienced firm, 4LEAF has approaches to working with clients that differ from those you might encounter with a large corporation. ***The 4LEAF philosophy is to be the best firm by providing our clients with outstanding customer service and first-rate plan review and inspection services. We put our philosophy into action by building client relationships and prioritizing the needs of our clients—this has led us to become the industry leader in providing Building Department Services to both public and private clients throughout California.***

4LEAF has provided plan review and inspection services for numerous projects including marijuana facilities office campuses, parking garages, transportation facilities, city/county-owned buildings, universities, public schools, hospitals, sports arenas, infrastructure, essential service facilities, solar projects, and laboratories. 4LEAF has also performed thousands of plan reviews on residential properties and tenant improvements.

4LEAF's staff has a depth of experience in working with all types of building structures and has performed inspection and plan review services on more than $35 billion dollars in construction during the past 20 years. We have worked with planning and building departments in the construction, rehabilitation, and repair of both public and private buildings as well worked with design review and preservation boards to determine the design criteria and associated project requirements of building improvements. In addition, our staff have performed inspections and plan reviews for public and private building structures for compliance with life-safety and Americans with Disabilities Act (ADA) accessibility requirements.

Basic Services Provided by Firm

Building Department Services	Construction Management and Public Works Inspection	Engineering / Environmental Services
• Jurisdictional Inspectors ❖ Residential ❖ Commercial • OSHPD/DSA Inspectors of Record • ICC Certified Plan Review • California Certified Accessibility Specialists (Inspection & Review) • Leed Accredited Professionals • ICC Certified Building Officials • Complete Building Department Servies • In House Plan Review • Offsite Plan Review • Property Condition Surveys • Fire Recovery Program Services	• Constructability Reviews • Baseline Schedule Review • Stakeholder Coordination • Submittals & RFI's Review Performing Claims Analysis • Public Works Inspection • Construction Monitoring & Reporting • Well/Septic • Wastewater Treament Plant • Civil Plan Review	• Phase I & II Environmental Assessments • Storm Water Pollution Prevention • CERCLA and RCRA Remedial Investigation Work Plans • NPDES Permitting and Compliance • Engineering Cost Estimates • Geotechnical Engineering • Soil Characterization & Waste Profiling • Health & Safety Plans

Firm's Financial Stability

4LEAF is a financially-stable company and many of our contracts are multi-year, which provides a large base for stability, a significant backlog of funding, and the support for many in-house resources. **During the past 20 years, 4LEAF's reputation for technical excellence and corporate integrity has allowed us to grow our staff and expand our services into new areas.** We presently have seven offices located throughout California, Nevada, Washington, and New England. We have a staff of more than 300 certified and licensed Engineers, Architects, Construction Managers, Inspectors, Permit Technicians, and Administrative employees available to serve our clients and ensure that any needs are met with friendly, accommodating, and experienced assistance.

Plan Review

4LEAF plan reviews approximately 10,000 plans each year and has the depth of experience in providing consultant services on a variety of projects. Our project history includes City/County owned properties, laboratories, military projects, transportation projects, office buildings, criminal justice facilities, health care facilities, and high-profile Type B commercial construction projects. Our project history includes:

- Wynn Casino, Everett, MA – ($2.6 Billion)
- County of San Mateo PDU Program – ($1 Billion)
- City of Cupertino – Main Street Cupertino ($300 Million)
- Administrative Office of the Courts – ($200 Million)
- City of Cupertino – Apple Campus 2 Parking Garages ($130 Million)
- University of California, Davis Campus Projects ($130 Million)
- City of Palo Alto – VMware ($125 Million)
- City of Livermore – Fire/Building Reviews for Paragon Outlet Mall – Phases 1 & 2 ($100 Million)
- County of Stanislaus – County Jail Buildings 1, 2, and 3 ($90 Million)
- County of Calaveras – Adult Detention Facility and Administration Building ($68 Million)
- City of Winters – PG&E Gas Operations Training Facility ($65 Million)
- City of East Palo Alto – University Plaza ($65 Million)
- City of Pleasanton – Workday Campus ($60 Million)
- City of Palo Alto – College Terrace ($50 Million)
- City of Dublin – Ross Headquarters ($50 Million)
- Tuolumne County – Juvenile Detention Center ($35 Million)
- County of Alameda GSA – Ashland Youth Center ($34 Million)
- City of Palo Alto – Stanford Hospital Parking Garage and Visitors Center ($32 Million)
- City of Palo Alto – Park Blvd, Park Plaza ($30 Million)
- City of Monterey – Conference Center Renovation ($25 Million)

Project Inspection

4LEAF is the Northern California's leader in Project Inspection Services. Here is a list of our recently completed or in-progress commercial projects:

Building Projects

- Apple Campus 2 ($6 Billion)
- VMware ($1.3 Billion)
- CDCR ($800 Million)
- Taube-Koret CJL ($350 Million)
- UC Merced Phase 1 ($350 Million)
- California Dept. of Parks and Recreation (DPR) ($250 Million)
- St. Joseph's Hospital, Stockton, CA ($120 Million)
- BART Dublin Station, Dublin, CA ($116 Million)
- Lawrence Berkeley National Lab CRTF ($115 Million)
- Los Angeles Downtown Park ($100 Million)
- Stockton Ball Park and Arena ($100 Million)
- Calaveras County Jail ($68 Million)
- Downtown Health Center, Santa Clara County ($50 Million)

Public Works Projects

- Apple Campus 2 ($6 Billion)
- Clark County I-215 Interchange ($50 Million)
- Amtrak Extension, Sac RT ($40 Million)
- America's Cup Marina ($25 Million)
- Richmond Field Station ($25 Million)
- Yosemite Slough, Candlestick Pt. ($14 Million)
- PG&E Gas Pipeline Replacement ($10 Million)
- Downtown Burlingame Utilities ($8 Million)
- W. Sacramento Capitol Ave ($7 Million)
- W. Sacramento Tower Bridge ($6 Million)
- Auburn Blvd, Citrus Heights ($5 Million)
- City of Cotati Train Depot ($1.7 Million)
- City of Walnut Creek Streetscape ($ TBD)

Plan Review Services

4LEAF will provide plan review for any and all types of structures to ensure compliance with all adopted codes, local ordinances (including Tier 1 of Cal Green, if required) and state and federal laws that pertain to Building and Safety, and for compliance with the adopted International Code Council (ICC) Building, Plumbing, Electrical, Mechanical, National Fire Protection codes and standards, and the Accessibility and Noise and Energy Conservation requirements as mandated by the State of California Title 24, State of California Water Efficient Landscape Ordinance, the State of California Certified Access Specialist (CASp) compliance, and all other applicable ordinances. ***Types of projects we provide these services for include; Single-Family Dwellings, Multi-Family Dwelling Units, Commercial, and Industrial.***

On-Site Review Work Plan

4LEAF can supply Registered Professional Engineers to the City of Brentwood to work on-site performing structural plan review and non-structural reviews at the Jurisdiction's discretion. 4LEAF currently supplies on-site review to such Municipalities as:

County of Sonoma
City of Palo Alto
City of Livermore
City of San Jose
Livermore/Pleasanton Fire Dept. (LPFD)
City of Roseville
Menlo Park Fire Protection District
City of Greenfield
City of Pacific Grove
Town of Paradise
City of Hollister
City of Gilroy
City of Sacramento
County of San Benito

Off-Site Review Work Plan

4LEAF is able to work effectively with design teams and assist Public Works, Planning, Fire, and Building Departments in the construction, rehabilitation, and repair of both public and private projects. Our experience includes checking for compliance with the structural, life-safety, accessibility, plumbing, mechanical, electrical, fire, and local codes/ordinances.

Approach

We understand that the specific building plan review responsibilities will include, but are not limited to:

- Examining plans, drawings, specifications, computations documents, soils reports, and any additional data;
- Ascertaining whether projects are in accordance with applicable building and fire codes, and City ordinances, including but not limited to Title 24 and Title 25;
- Performing such reviews as, structural, MEP, green building, fire and life safety, grading and drainage;
- Reviewing plans to ensure conformity to the required strengths, stresses, strains, loads, and stability as per the applicable laws;
- Reviewing plans to ensure conformity with use and occupancy classification, general building heights and areas, types of construction, fire resistance construction and protection systems, means of egress, accessibility, structural design, soils and foundations; and masonry;
- Providing additional plan review services as requested by the City;
- Conducting all plan review at the City Department or, as needed, at a site mutually agreed upon in writing and;
- Supplying all plan review staff with all code books and other basic professional references.

Turn-Around Times

4LEAF has a tremendous reputation for completing projects on-time and under budget. 4LEAF's plan review team is widely recognized for quick turn-around times and prompt service. We have provided some elaborate examples in our Reference section - please read through our **similar experience** examples and contact our references to learn about our abilities and commitments to our clients. Off-site plan reviews are performed at our office, with plans transmitted by personal delivery or overnight service. The standard turn-around time is within 10 business days for residential plan reviews and within 10 days for commercial/industrial plan reviews; however, these timeframes are negotiable based on your needs. **4LEAF also provides Fire Plan Review services.**

Type of Plans	Transportation	Initial Review	Resubmittal Review	2nd Resubmittal Review	Expedited Review	Expedited Resubmittal
Residential	<24 Hours (pick up & delivery)	<10 Days	<5 Days	<3 Days	<5 Days	<3 Days
Commercial	<24 Hours (pick up & delivery)	<10 Days	<5 Days	<3 Days	<5 Days	<3 Days
Large Commercial >15,000 SF.	<24 Hours (pick up & delivery)	Negotiable	Negotiable	Negotiable	Negotiable	Negotiable

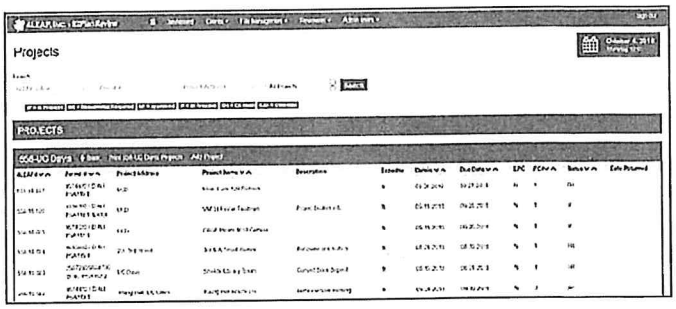
Larger complex plan reviews can be negotiated to achieve the best possible pricing. 4LEAF has a proven track record of working with municipalities to provide expedited reviews with special discounted pricing when applicable.

Pick-up of all plans will be performed by 4LEAF staff within 24 hours of the City's phone call or e-mail. 4LEAF prefers to pick-up and deliver the plans in person to communicate information that may be pertinent to the project and maintain consistent communication. At no additional cost, 4LEAF staff will transport the plans to and from the City upon a phone call to the 4LEAF office or simply e-mail for "pick-up" to pickup@4leafinc.com.

Document Control & Electronic Plan Review

When plans and documents are received for review, 4LEAF's Plan Review Manager and Document Control Technician analyzes the project, creates a job number, and completes a Job Setup Sheet. This form highlights both jurisdiction and project specific design criteria and notes applicable contact information. Jobs are transmitted through 4LEAF's easily accessed EZPlan Review portal which tracks initial and subsequent reviews and is open for view by the customer. The City and their customers can view 4LEAF's plan control log through **EZPlan Review Portal.**

Plans then get distributed for review to a 4LEAF team consisting of a Plan Review Engineer or Architect (a licensed state professional) and/or an ICC Certified Plans Examiner, as applicable. Our staff then performs their function of analyzing the plans and documentation for effective conformance to the California Codes, referenced construction standards, and City amendments. Code review methodology entails "The Effective



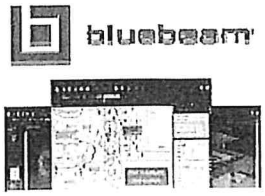
Use of the CBC" reinforced through proprietary and jurisdictional checklists. When complete, the Plan Review Manager overviews the project for quality control purposes and forwards comments or approvals to the pre-designated contacts.

4LEAF's EZPlan Review

EZPlan Review is our in-house tracking software that acts as a communication tool between 4LEAF and the jurisdictions we work with. The use of EZPlan makes communication easy. This web portal allows users visualize project due dates, notes, and status updates so that projects can be followed from start to finish. Additionally, 4LEAF provides electronically stamped and uploaded copies of approved project plans, a value which saves clients time and resources. With the use of EZPlan, 4LEAF hopes to provide a level of ease and transparency during the plan review process.

Electronic Plan Review

4LEAF has successfully implemented and used Bluebeam for electronic review of files to help eliminate the use of paper and take the plan review workflow to a whole new level. 4LEAF's offices are equipped with large scale monitors for easy review of plans. Bluebeam Revu combines powerful PDF editing, markup, and collaboration technology with reliable file creation.



Additional Technologies

Having served more than 100 jurisdictions, 4LEAF and our staff are knowledgeable and have experience working with a variety of different technologies for Electronic Plan Review, Permit Tracking, and Building Inspections. 4LEAF's experience with tracking technologies include but are not limited to:

CRW SYSTEMS ProjectDox eTRAKiT Online Permitting System EnerGov e-PlanSoft™ Accela

Structural Only Review

Upon request, 4LEAF will perform "structural only" reviews for the City. 4LEAF can communicate directly with the designers via email, in-person meetings, and through our EZPlan Review system. 4LEAF prefers PDF files for "structural only" reviews as they allow several Structural Engineers to review plans together should there be design-related questions. The majority of 4LEAF's plan review engineers have a design background and work well with project designers.

Certified Access Specialist (CASp)

4LEAF has nine Certified Access Specialists on staff. We have performed CASp inspections, plan review projects, and have consulted on numerous construction projects for accessibility questions and advice.





CASp Inspector	Certification No.	Expiration
Sarah Deyhimi, P.E.	CASp-876	03/13/2022
Jerry Thome	CASp-104	09/14/2021
Mike Anderson, P.E.	CASp-328	09/22/2021
Peter Oliver	CASp-818	04/11/2021
David Rashé, CBO	CASp-213	06/23/2021
Scott Wungluck	CASp-560	04/29/2020
Brent Hipsher, CBO	CASp-422	04/12/2021
William Holl, AIA	CASp-509	12/6/2021
Edward Fang, P.E.	CASp-227	6/24/2024

Inspection Services

4LEAF maintains the largest database of qualified inspectors of varied qualifications. Inspectors vary from current full-time inspection staff, idle staff (temporarily between assignments), and pre-qualified staff which include inspectors who are available subject to client demand. 4LEAF's inspectors are all ICC Certified and experienced working within a municipal work environment. 4LEAF will provide inspectors with all the necessary tools, equipment, and current code books sufficient to facilitate all required inspections. **4LEAF can provide interim or full-time inspectors same-day or within one business day. Simply call, email, or text our assigned Project Manager for an immediate response.**

We maintain an on-call database for as-needed requests with our clients. 4LEAF utilizes this service for more than 100 municipalities. Below is a snapshot of our database.

Building Department Staffing Sheet

Monthly Inspection Assignment Schedule

	Brentwood	Burlen	Calayer	Camp	Cal Poly	Crt Maz	Cup	Dublin	EPA	Fremont	Folsom	Galt	Gilroy	Hayward	Hillsbrg	Hollister	Kent	Lathrop	LIV	Live	LFFD	Mendoc	Menlo P	Mnlo Fire	Modesto	Napa
2-Oct	ME/CW	RS2			RS/HC	FM		8		ME1/TH/RM	JD/CS/L	GO	DH/CP			8	JB	BA		TS/L			EC			RST
5-Oct	ME/CW	RS2			RS/HC			8		ME1/TH/RM	JD/CS/L	GO	DH/CP			8	JB	BA		TS/L			EC	JS/SB		RST
6-Oct	ME/CW	RS2			RS/HC	FM		8		ME2/RM	JD/CS/L	GO	DH/CP			8	JB	BA		TS/L			EC	JS/SB		RST
7-Oct	ME	RS2	BL		RS/HC			8		ME1/TH/RM			DH/CP			7	JB	BA		IL			EC	JS/SB		RST
8-Oct	ME	RS2	BL		RS/HC	FM		8		ME2/RM/MW			DH/CP	TO		7	JB	BA		TS/L			EC			RST
9-Oct	ME	RS2	BL	TN	RS/HC	FM		8		RM/TK			DH/JT			6	JB	BA		TS/L			EC			RST
10-Oct	ME/CW	RS2	BL	TN	RS/HC			8		RM/DC/GC			DH/JT	MJ		6	JB	BA		IL	GM		EC	SB		RST
11-Oct	ME/CW	RS2	BL	TN	RS/HC	FM				RM/RJ 2x			DH/JC 1/2 Day	MJ		7.5	JB	BA		TS/L			EC	JS/SB	RST	JT
12-Oct	ME	RS2	BL		RS/HC			8		RM/MJ/TK			DH/JT	MJ		7	JB	BA		IL			EC	JS/SB	RST	RST
13-Oct	ME/TK	RS2	BL	TN	RS/HC	FM		8		RM/DB			DH/JT	2X		7	JB	BA		TS/L			EC		RST	RST
16-Oct	ME	RS2	BL		RS/HC	FM		8		ME2/RM			DH/CP			7	JB	BA		TS/L			EC			RST
17-Oct	ME	RS2	BL		RS/HC			8		ME2/RM/RJ			DH/CP			7	JB	BA		IL	GM		EC	SB		RST
18-Oct	ME	RS2	BL		RS/HC	FM		8		ME2/RM			DH/CP/TK			7	JB	BA		TS/L			EC	JS/SB		RST
19-Oct	ME	RS2	BL		RS/HC			8		ME2/RM			DH/CP/			7	JB	BA		IL			EC	JS/SB		RST
20-Oct	ME	RS2	BL		RS/HC	FM	GC	8		ME2/RM/MW/TO			DH/CP/			7	JB	BA		TS/L			EC			RST
23-Oct	ME	RS2	BL		RS/HC	FM		9		MC			DH/CP			7	JB	BA		TS/L			EC			RST/JT
24-Oct	ME	RS2	BL		RS/HC			9		MC			DH/CP			7	JB	BA		IL	GM		EC	SB		RST/JT
25-Oct	ME	RS2	BL		RS/HC	FM		9		MC			DH/CP			7	JB	BA		TS/L			EC	JS/SB		RST/JT
26-Oct	ME	RS2	BL		RS/HC			9		MC			DH/CP			7	JB	BA		IL			EC	JS/SB		RST
27-Oct	ME	RS2	BL		RS/HC	FM		9		MC			DH/CP	2X/TO/DB		7	JB	BA		TS/L			EC			RST
30-Oct	ME	RS2	BL		RS/HC	FM	GC	9		MC			DH/CP			7	JB	BA		TS/L			EC			RST
31-Oct	ME	RS2	BL		RS/HC		GC	9		MC			DH/CP			7	JB	BA		IL	GM		EC	SB		RST
1-Nov	ME	RS2	BL		RS/HC	FM	GC	9		MC			DH/CP	RH		7	JB	BA		TS/L			EC	JS/SB		RST
2-Nov	ME	RS2	BL		RS/HC		GC	9		MC			DH/CP			7	JB	BA		IL			EC	JS/SB		RST
3-Nov	ME	RS2	BL		RS/HC	FM	GC	9		MC			DH/CP			7	JB	BA		TS/L			EC			RST

Inspection Options

Periodic Inspection Services → ***Available Next Day***

4LEAF can fulfill inspection requests immediately upon request including same day. 4LEAF has a wealth of local and available inspectors ready to serve the City. In addition, 4LEAF has a proven track record of providing such services to a number of different building departments.

Part-Time Inspection Services → ***Available Next Day***

4LEAF will provide the City with part-time inspectors upon request. 4LEAF can provide part-time staff within 24 hours of request for any duration of time. 4LEAF's Project Manager will work closely with the department to identify the right personnel and determine the appropriate work schedule.

Full-Time Inspection Services → ***Available Two Days or Less***

4LEAF can provide full-time inspectors upon request. 4LEAF provides this service regularly to many clients throughout Northern California, Central Coast, Sacramento Valley, Peninsula/South Bay, East Bay, North Bay, and Central Valley.

Project Specific Inspection Services → ***Available Two Days or Less***

4LEAF is often tasked with providing inspection services to large projects on behalf of municipalities. 4LEAF currently handles large-scale projects for such clients as the City of Palo Alto, City of Cupertino, etc. These projects are developer funded into a separate City account which is distributed to 4LEAF using a separate invoice and contract number. This is particularly helpful to fast paced projects looking for continuous inspection services over a short period of time (i.e. 6 – 36 Months).

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND 4LEAF, INC.

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and 4Leaf, Inc., a Corporation ("Consultant") (together sometimes referred to as "Parties") dated November 3, 2020, is entered into as of September 8, 2021.

RECITALS

WHEREAS, the Parties executed a Contractual Services Agreement (the "Agreement") to provide building inspection field inspection and related professional services; and

WHEREAS, Section 27 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend the Agreement for the Consultant to provide additional services for fiscal year 2021-2022 in an amount not to exceed $160,000 for services provided during that fiscal year; and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to provide for additional not to exceed compensation of $160,000 for services provided by Consultant for fiscal year 2021-2022.

2. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark

Soren Fajeau
Public Works Director

Dated: 9-8-21

Consultant
4LEAF, Inc.

Kevin Duggan
President

Dated: 9/07/2021

Attest:

Kathleen L. Slaffter for
Deputy City Clerk

Sheila Harrington
City Clerk

Approved as to Form:

Kristopher J. Kokotaylo
Interim City Attorney

C20058
R111 20

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 12TH day of November, 2020 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and BUREAU VERITAS NORTH AMERICA, INC., a Corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform the services generally including: Building Inspection field inspection and miscellaneous support services.

WHEREAS, in response to City's request, Consultant submitted a proposal and, after negotiations, Consultant agreed to perform the Services more particularly described in Exhibit "A" ("Services"), in return for the compensation described in this Agreement and Exhibit "B".

WHEREAS, in reliance upon Consultant's documentation of its qualifications, as set forth in Exhibit "C", City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **CONSULTANT'S SERVICES.** Consultant shall perform Services described, and in the time, place, and manner specified in Exhibit "A" in accordance with the terms and conditions of this Agreement. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit "A", the Agreement shall control.

2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of Services under this Agreement and Consultant shall generally adhere to the schedule set forth in Exhibit "A"; provided, that City shall grant reasonable extensions of time for the performance of such Services occasioned by governmental reviews of Consultant's work product or other unavoidable delays occasioned by circumstances, provided, further, that such unavoidable delays shall not include strikes, lockouts, work stoppages, or other labor disturbances conducted by, or on behalf of, Consultant's officers or employees. Any Services for which times for performance are not specified in this Agreement shall be commenced and completed by Consultant in a reasonably prompt and timely manner based upon the circumstances and direction communicated to Consultant.

Consultant acknowledges the importance to City of City's performance schedule and agrees to put forth its best professional efforts to perform its Services under this Agreement in a manner consistent with that schedule. City understands, however, that Consultant's performance must be governed by sound professional practices.

3. **COMPENSATION.**

A. **"Not to Exceed" Compensation.** City shall compensate Consultant for all Services performed by Consultant hereunder in an amount based upon Consultant's hourly or other rates set forth in Exhibit "B". The payments specified in Exhibit "B" shall be the only payments to be made to Consultant for Services rendered pursuant to this Agreement.

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Thousand Dollars and No/100 Dollars ($100,000.00) 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.** To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

Consultant shall submit all billings for said Services to City in the manner specified in Exhibit "B"; or, if no manner is specified in Exhibit "B", then according to the usual and customary procedures and practices which Consultant uses for billing clients similar to City.

Invoices shall be sent to:

City of Newark
Attn: Finance Department
37101 Newark Blvd.
Newark, CA 94560

Upon completion of Services, City shall sign off and acknowledge that all terms and conditions have been satisfactorily met; upon which, unless waived by City in writing, Consultant shall prepare an itemized statement, briefly describing by task and/or labor category the items billed.

C. **Payment.** Upon receipt of an invoice, City shall make payments to Consultant on a monthly basis, or at such other times as may be specified in Exhibit "B", for Services, which are performed in accordance with this Agreement to the satisfaction of City.

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

4. **ADDITIONAL SERVICES.** In the event City desires the performance of additional services not otherwise included within Services, such services shall be authorized by written task order approved in advance of the performance thereof. Such task order shall include a description of the services to be performed thereunder, the maximum compensation and reimbursement of costs and expenses payable therefore, the time of performance thereof, and such other matters as the Parties deem appropriate for the accomplishment of such services. Except to the extent modified by a task order, all other terms and conditions of this Agreement shall be deemed incorporated in each such task order.

5. **INDEPENDENT CONSULTANT.** At all times during the term of this Agreement, Consultant shall be, and is an independent consultant and shall not be an employee or agent of City. Consultant shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement. City shall have the right to control Consultant only insofar as the results of Consultant's Services; however, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement.

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

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

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

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

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

8. **INFORMATION AND DOCUMENTATION.**

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

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

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

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

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

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

12. **RESERVED.**

13. **RESERVED.**

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

A. **Verification of Coverage.**

Consultant shall furnish City with original certificates of insurance and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by City before work commences.

Proof of Insurance shall be mailed to the following address or any subsequent address as may be directed in writing by the City Risk Manager:

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

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

B. **Minimum Scope of Insurance.**

Coverage shall be at least as broad as:

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

2. Insurance Services Office Form Number CA 00 01 covering Code 1, (any auto), or Code 8 (hired) and Code 9 (non-owned) if consultant has no owned autos; and

3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance; and

4. Errors and Omissions Liability insurance appropriate to the Consultant's profession. Architects' and Engineers' coverage is to be endorsed to include contractual liability.

C. Minimum Limits of Insurance.

It shall be a requirement under this Agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of and Insurance policy or proceeds available to the named Insured; whichever is greater.

Consultant shall maintain limits no less than:

1. General Liability: (including products and completed operations, property damage, bodily injury, and personal and advertising injury)	**$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.
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 14 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. Remedies.

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

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

2. Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or

3. Terminate this Agreement.

H. Acceptability of Insurers.

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

I. Other Insurance Provisions.

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

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

2. Primary Coverage. For any claims related to Services, Consultant's insurance coverage shall be primary insurance as respects City, its officers, officials, directors, employees, and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, directors, employees, or volunteers shall be excess of Consultant's insurance and shall

not be contribute with it. Consultant's policy will not seek contribution from the City's insurance or self-insurance.

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

4. Civil Code § 2782. Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the California Civil Code.

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

6. Subconsultants. Consultant shall include all subconsultants as insureds under its policies or shall require and verify separate certificates and endorsements have been obtained for each subconsultant. All coverages for subconsultants shall be subject to all of the requirements stated herein.

7. Waiver of Subrogation. With respect to Workers' Compensation and Employer's Liability Coverage, the insurer shall agree to waive all rights of subrogation against City, its officers, officials, directors, employees, and volunteers for losses arising from work performed by Consultant for City.

8. Coverage is Material Element. Maintenance of proper insurance coverage in conformity with the provision of this paragraph 14 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

9. Variation. The City Risk Manager may approve a variation in these insurance requirements upon a determination that the coverage, scope, limits, and form of such insurance are either not commercially available or that City's interests are otherwise fully protected. Any variation granted shall be done in writing and shall be made a part of this Agreement as Appendix "A".

15. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 19, herein below) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

16. INDEMNIFICATION/SAVE HARMLESS. To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type arising out of or resulting from Consultant's performance of Services, or any negligent or wrongful act or omission of Consultant or Consultant's officers, employees, agents, or subconsultants. Liabilities subject to the duties to defend and indemnify include, without limitation all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Consultant's obligation to indemnify applies unless it is adjudicated that its liability was caused by the sole active negligence or sole willful misconduct of an indemnified party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an indemnified party, Consultant's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

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

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

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

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

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

18. TERM/TERMINATION.

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

B. Notwithstanding the provisions of paragraph 18 Section A above, City may terminate this Agreement at any time and without cause upon written notification to Consultant. Consultant may cancel this Agreement upon thirty (30) days' written notice to City and shall include in such notice the reasons for cancellation. In the event of such termination, City shall compensate Consultant for Services rendered and reimburse Consultant for costs and expenses incurred, to the date of termination, calculated in accordance with the provisions of paragraph 3. In ascertaining the Services actually rendered to the date of termination, consideration shall be given both to completed work and work in process of completion. Nothing herein contained shall be deemed a limitation upon the right of City to terminate this Agreement for cause, or otherwise to exercise such rights or pursue such remedies as may accrue to City hereunder.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by PUBLIC WORKS DIRECTOR of the City of Newark ("Administrator"). All correspondence shall be directed to or through the Administrator or his/her designee.

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

Bureau Veritas North America, Inc.	**CITY OF NEWARK**
CRAIG BAPTISTA **Consultant**	PUBLIC WORKS DIRECTOR **Administrator**
Address: Bureau Veritas Attn: Craig Baptista 180 Promenade Circle, Suite 150 Sacramento, CA 95834	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 11-12-20

Bureau Veritas North America, Inc.
a California Corporation

By _____ - Vice President
Consultant (Signature & Title)

Date November 03, 2020

Craig Baptsita
Printed Name

Attest:

_____
City Clerk

Date 11/12/2020

Approved as to form:

_____
City Attorney

Date 11/12/20

EXHIBIT A

SCOPE OF SERVICES

Plan Checking—The consultant shall provide all services and work required to review building 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.

RATE SHEDULE

RATE SCHEDULE FOR CITY OF NEWARK
ON-CALL BUILDING INSPECTION PLAN CHECK AND FIELD INSPECTION SERVICES

AUGUST 26, 2020

BV's pricing reflects the firm's commitment to the success of the City of Newark by helping maintain significant quality and cost saving benefits moving forward. Rates include services for On-Call Building Inspection Plan Check and Field Inspection Services and Miscellaneous Support Services.

PERCENTAGE OF CITY PLAN REVIEW FEES	
46% of Plan Review Fee Collected by the City	
HOURLY RATES	
ITEM	**HOURLY BILLING RATE**
Complete or partial review of private or public construction projects regulated by state and local building codes as requested by the City for plan review not covered by a percentage of City collected plan review fees	Plan Review Engineer - $115.00 ICC Certified Plans Examiner - $105.00
Field inspection services of private or public construction projects regulated by State and local building codes as requested by the City	Senior Building Inspector - $95.00 Building Inspector - $85.00
Miscellaneous building, housing and zoning enforcement services	$90.00
Additional Support Services	
- Temporary Building Official	$145.00
- Fire Sprinkler Plan Review	$110.00
- Fire Inspection	$105.00
- Public Works Inspection	$105.00
- Permit Technician	$65.00

- Expedited Plan Review will be an additional 25% of fees shown above.
- Overtime will be an additional 25% of the fees shown above. No overtime will be charged without approval.
- Rates and cost estimate shown above exclude per diem, prevailing wage and union rates. Should these be applicable, the firm will discuss and negotiate fees to account for the increased personnel costs.
- Mileage using personal vehicles during the course of performing inspections will be reimburseable at the IRS standard mileage rate.
- Invoices for services rendered shall be submitted to the City on a monthly basis.

BUREAU VERITAS 180 Promenade Circle, Suite 150, Sacramento, CA 95834
P 916.725.4200 | www.bvna.com

EXPERIENCE PROVIDING SIMILAR SERVICES

EXECUTIVE SUMMARY

In order to meet the needs of the City of Newark, BV is dedicated to meeting all of the requirements of the RFQ by providing experienced, expert staff who will deliver timely, convenient and responsive **On-Call Building Inspection Plan Check and Field Inspection Services.**

Bureau Veritas (BV) is a multi-national corporation with a history which includes 192 years of providing worldwide regulatory compliance service to industry and governmental agencies. Founded in 1828, BV is a global leader in quality assurance, health, safety, and environmental (QHSE) solutions. Recognized and accredited by the largest national and international organizations and with over 80,000 employees, BV has unparalleled resources to manage projects requiring a broad range of expertise across vast geographies. With operations in 140 countries and all continents, BV draws on the synergies between its local teams and dedicated technical centers throughout the world.

Our team has the capability, knowledge and experience to complete simple and highly complex plan review, inspection and any other requested services. The following pages will illustrate that BV can be a comprehensive provider of choice to meet the City of Newark's needs. **We are the largest plan review firm in the United States, with a long-established operation in California.** In addition, we have provided other building and civil services for multiple jurisdictions throughout California. Our staff is registered, certified and dedicated to our municipal clients.

BV will always strive to deliver excellent service and work hard to meet and exceed the City's expectations regarding all agreed upon review times. Our proposed program establishes a process to ensure that the City will receive only the highest quality and timely reviews. We will provide the City and its submittal applicants with clear written comments to submitted documents with the objective of verifying compliance with the City's adopted building codes, zoning ordinances, drainage regulations and other adopted ordinances, policies and standards.

Our plan review team knows the value of clear and transparent communication and how to work together as a team in conjunction with a jurisdiction. This philosophy is put into practice on all of our projects and is a great value to our municipal clients. As a result of our exceptional attention to customer service, large pool of experienced personnel



and ability to provide value-added services like electronic plan review, BV is the right choice for meeting the City of Newark's needs.

The firm's range of experience in this arena covers every key area of service defining a building department. The firm is skilled at helping existing departments augment or refine their current level of client service and is also capable of crafting a department from the ground up. Service offerings include:

- Building Plan Review
- Fire Plan Review
- Construction Management & Inspection
- Engineering Reviews
- Permitting
- Inspections
- Planning
- Code Interpretation
- Code Enforcement
- Code Adoption and Ordinance Preparation
- Planning and Zoning Meeting Attendance
- City Council Meeting Attendance
- Building Official Duties
- Permit Tracking and Record Keeping
- Budget and Staffing Planning
- Pre-Design and Pre-Construction Meetings
- Fee Schedule Evaluation and Updates

The City of Newark can be confident BV is the best choice to provide excellent customer service and qualified staff for all project types.

EXPERIENCE PROVIDING SIMILAR SERVICES

WHAT SETS BV APART

BV understands while the company offers a wide range of services, not every client needs the same solutions. The firm's ability to offer a variety of services and customize services for each client makes BV an ideal partner. BV is justly suited to provide on-call consulting services because we offer:

Unparalleled Building Safety and Code Consulting Expertise

- Consulting to 150+ agencies in the State of California
- Proven turnkey engineering and building safety track record to more than 500 agencies nationally
- Project management and staff augmentation expertise
- Key staff which have assisted in the development and implementation of the latest California codes
- No private sector work = No conflict of interest

Depth of Resources and Proximity to Meet Peak Workloads

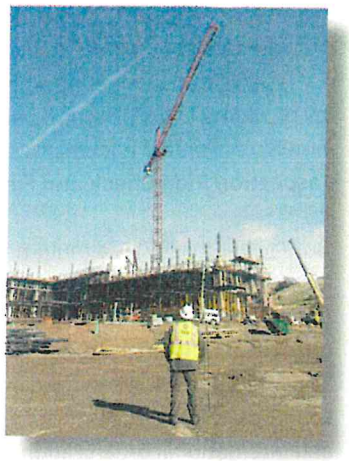
- Building and Safety Services will be provided out of the firm's office located in Sacramento
- 200+ offices throughout the United States with 10 in California dedicated to building and safety services
- Registered engineers and ICC certified staff with extensive code compliance expertise and experience
- USGBC LEED review certifying body

Best Practices and State-of-the-Art Processes to Consistently Meet Turnaround Schedules

- First U.S. firm to achieve IAS Certification for third party accreditation
- Comprehensive and formalized plan review procedure
- Award-winning web-based project tracking and controls
- A commitment to early and ongoing communication including pre-submittal meetings, one-on-one reviews, etc. to expedite the approval process
- Electronic plan review to save time, money, and paper - a GREEN solution

COMPETENCE THROUGH CERTIFICATION - INTERNATIONAL CODE COUNCIL

Building safety depends on more than codes and standards. Service levels of the highest quality during the provision of these services result from providing trained professionals with the resources and ongoing support necessary to stay current with the latest advancements in the building safety field. ICC certification ensures competent building and fire safety individuals are involved in the critical building approval process. It also helps to continue attracting an increasing level of competence and professionalism into the building code community. The ICC certification represents the BV team's commitment to providing professional and qualified plan review and inspection staff to the firm's clients.



PERSONNEL QUALIFICATIONS AND PROJECT MANAGEMENT

Bureau Veritas has a robust team prepared to provide the City of Newark with exemplary Building and Safety Services. The firm's team of expert professionals and the technical resources allow it to provide complete building department administration for jurisdictions both large and small. BV aims to partner with existing jurisdiction staff to best complement their efforts and talents, with the capacity to seamlessly adjust its personnel and resources depending on a City's needs. Partnering with BV provides the City immediate resources. As the demand on the agency increases, the firm supplements the additional workload by augmenting its resources. Because of the firm's familiarity with the policies and procedures necessary for maintaining a building department, it has the ability to immediately begin assisting the jurisdiction with its building and community development department administration needs.

One of BV's key assets is the depth of experience its staff possesses. Professional personnel with years of industry experience coupled with a wide-ranging collection of business resources allows BV to uniquely customize and focus on its client jurisdiction's specific needs and requirements. BV has worked directly with jurisdictions in a variety of capacities and is familiar and comfortable working in the fast-changing pace of a growing communities with evolving departments. BV's team is intimately familiar with the policies and procedures necessary for building and maintaining a thriving building and community development department, selecting and managing personnel from administrative to key management positions, and using creative and leading-edge approaches to reaching successful solutions to tough problems.

BUREAU VERITAS 180 Promenade Circle, Suite 150, Sacramento, CA 95834
P 916.725.4200 | www.bvna.com

EXPERIENCE PROVIDING SIMILAR SERVICES

SCOPE OF SERVICES

Bureau Veritas understands the scope of work requested by the City of Newark and is prepared to allocate the necessary resources to deliver exemplary **On-Call Building Inspection Plan Check and Field Inspection Services**, as well as additional support services as needed. BV is able to provide a variable level of plan review assistance to the City on an as-needed basis.

Building Plan Check

BV has the capacity to provide the following plan check services to the City of Newark:

- Architectural, fire and life safety plans examination
- Structural plans examination
- Energy code plans examination
- Accessibility requirements including
  - » Barrier free plans examination requirements
  - » Disabled access, CASp, ADA
- Mechanical, plumbing, electrical code plans examination
- Review and approval of alternate materials, alternative design and methods of construction
- Green Building and LEED consulting including:
  - » LEED submittal consultation
  - » Green building consulting including CAL Green
  - » ENERGY STAR verification
  - » Energy efficiency audits

Architectural Review

BV blends knowledge of local conditions with a large pool of California licensed or certified building safety experts equipped to handle all building department needs. The firm is able to tailor solutions specific to the City, having provided plan review, inspection services, specialty reviews, and municipal administrative support for over 40 years.

Structural Review

BV is uniquely qualified and experienced in structural review and inspection. The firm has plan review and inspection personnel which have specialized experience with multi family residential, hotels, resorts, retail, commercial, industrial, high-tech facilities, etc. BV has several experienced structural engineers on staff who are immediately available to tackle the City's most complex projects. BV can provide a complete structural review of design drawings, details, and calculations for both vertical loads and lateral seismic and wind forces, in accordance with the California Building Code structural provisions.

Mechanical Review

The California Building Code is supported by ancillary codes such as the California Mechanical Code and any others specifically designated and adopted by the City. BV's staff includes licensed and certified mechanical engineers and inspectors who have the knowledge, training, and experience necessary to review plans for compliance with these codes. Firm staff, who are available immediately to the City, have reviewed heating, cooling, distribution and return air systems, hoods, and product conveyance system plans for a variety of projects including single family residential, multi family residential, custom homes, resorts, and hotels.

Plumbing Review

The California Building Code is supported by ancillary codes such as the California Plumbing Code and any others specifically designated and adopted by the City. BV's staff has the knowledge, training, and experience necessary to review plans and inspect construction for compliance with these codes. The firm has licensed and certified mechanical engineers on staff to assist with plumbing reviews when needed. Firm staff, have reviewed fuel gas, medical gas, potable and non-potable water piping and waste piping systems, and rainwater system plans for single family residential, multi family residential, custom homes and hotels.

Electrical Review

Electrical review and inspection to verify energy compliance is included in all projects in accordance with mandates from the applicable energy standards for non-residential construction. The firm has licensed and certified electrical engineers and inspectors with extensive plan review and inspection experience which have reviewed service installation, transformers, emergency power, panel distribution, single line diagrams, power, and lighting system plans for single family residential, multi family residential, custom homes, resorts, and hotels.

Disabled Access Review

BV has extensive experience and capability which will enable its staff to provide complete plan review and inspection utilizing individuals who possess CASp certification. BV has CASp certified individuals who are able to respond to the needs of the City quickly. The firm currently provides CASp certified individuals to jurisdictions in California to meet the requirements of SB 1608.

EXPERIENCE PROVIDING SIMILAR SERVICES

Fire Plan Review

BV staff will consult closely with the Fire Chief/Fire Marshal or their designated representative on any areas of the code requiring a unique interpretation or where alternate methods are being proposed and considered. BV reviews plans of fire suppression systems for compliance with applicable codes, standards, and amendments, including CFC, CBC, the adopted National Fire Protection Standards, the California Health & Safety Codes, CSFM, and U.L. BV's vast experience includes written comments and verbal communication with applicants to better understand requirements and provide direction for compliance, as well as close communication with fire departments to clarify policies, code interpretations, plan review status, and procedures.

Green Building Review

BV has plan review engineers, plans examiners, and inspectors who are well versed and experienced with energy code compliance. Firm staff have been involved at various levels of energy code development in California and are certified to review and inspect for energy codes. BV staff have reviewed plans, and inspected projects, which incorporate new technology, and complex energy code compliance. The firm has staff available to the City who are CAL Green Certified.

Building Inspection

BV inspectors are ICC certified and have extensive experience in the construction trades as well. Fast-track projects may be built into small phases based on incremental design and fabrication steps. In such cases, the firm's inspection team keeps daily logs to track corrections and plan review changes. BV's inspection teams also have the capacity to provide on-call building inspection services to cover staff vacation time, peak work loads, specialized inspection activities, and any other situations which may arise. These activities may include next-day inspections and same-day response to important or urgent requests. BV's building inspection services can be adjusted to provide a high level of coordination specifically suited to the design-build concept.

Building Official

BV staff can work directly with City staff to prepare accurate interpretations of the Code requirements, to adopt and process new codes and their requirements, and to act as a general point of contact for the jurisdiction. The building official will provide the support and direction necessary to facilitate timely and efficient work amongst the jurisdictional staff and other departments. Firm staff is able to analyze applicable ordinances and resolutions of jurisdictions and make recommendations for approval of appropriate code adoptions, amended as necessary in accordance with the applicable code, to implement an effective and compliant code enforcement program. BV staff will keep current on applicable code requirements adopted at the state or federal levels and inform and implement as necessary to keep the jurisdiction compliant. BV's building official will attend staff, board, and council meetings as required and mutually agreed upon. This individual will oversee other firm staff as well as provide guidance for City staff, applicants, designers, and contractors to navigate the code.

Permit Technician Services

BV is available to work with the City 's staff to seamlessly staff the public counter, issue counter permits, answer plan review or inspection questions, and assist the public with a high level of customer service. Permit technician services may include:

- Interface with the public, internal staff and related departments
- Review permit applications for completeness
- Accept, login, and route plans
- Calculate and/or collect fees
- Issue permits
- When authorized, review and issue counter permits
- Maintain permit records
- Use jurisdiction permitting programs and/or software

Code Enforcement

BV staff will work with the City staff to investigate violations of City codes and ordinances, collect and analyze data, present cases to City Attorney, issue notices on violations and maintain an accurate record of inspections and findings. Our staff will be knowledgeable about practices of code enforcement and officer safety, and City policies, procedures, administrative and technical regulations. We are able to answer questions pertaining to inquiries, requests, and/or complaints related to licensing and codes.

Public Works Services

BV's extensive experience providing public works inspection and plan review services to multiple agencies throughout California enables us to evaluate items which are essential to providing effective services to the City.

We offer services that range from reviewing and inspecting a single, complex or unique project to handling all plan review and inspection needs for a City. Our staff are dedicated to providing the highest level of customer service and ensuring that all work is in conformance with all requirements. Our resources can be adjusted on fast-track projects, as needed, to meet demanding schedules.

EXPERIENCE PROVIDING SIMILAR SERVICES/REFERENCES

REPRESENTATIVE PROJECTS

The most important selection criteria for clients who choose Bureau Veritas is expertise. Having provided building and safety services for 45 years, BV is a foremost expert in the field. The firm's greatest asset is its reputation. This reputation comes from the best experts in the industry, all acting with the utmost integrity and ethics. The following are representative projects demonstrating BV's experience providing similar on-call services to local government clients.

PLAN REVIEW, INSPECTION SERVICES & IN-HOUSE STAFF

City of Burlingame

CITY CONTACT: RIGOBERTO "RICK" CARO, CHIEF BUILDING OFFICIAL
ADDRESS: 501 PRIMROSE ROAD
BURLINGAME, CA 94010
EMAIL: RCARO@BURLINGAME.ORG
TELEPHONE: 650.558.7270



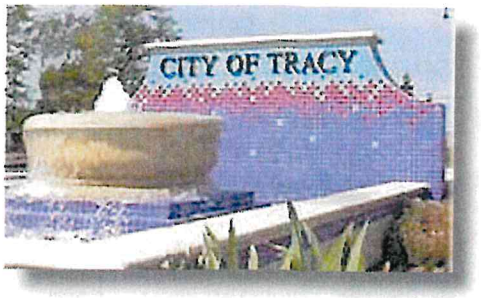
Dates of Service: 2003 - Present (Active Contract)

BV provides in-house staff and outside plan reviews as well as inspections for a wide range of projects for the City of Burlingame. Staff has reviewed commercial buildings, condominiums, office buildings, medical offices, residential projects, tenant improvements of various complexities as well as buildings for assembly occupancies. BVNA provides a licensed engineer two days per week to the City. BVNA has provided a building inspector to the City to inspect residential and commercial projects.

BUILDING AND FIRE PLAN REVIEW & INSPECTION AND PLANNING SERVICES

City of Tracy

CITY CONTACT: KEVIN JORGENSEN, CHIEF BUILDING OFFICIAL
ADDRESS: 333 CIVIC CENTER PLAZA
TRACY, CALIFORNIA, 95376
EMAIL: KEVIN.JORGENSEN@CITYOFTRACY.ORG
TELEPHONE: 209.831.6415



Dates of Service: 2011 - Present (Active Contract)

Bureau Veritas has provided services to the City of Tracy since 2011, including building and fire plan check and inspection, as well as planning services and ADA assessments. Projects include both small and large scale residential and commercial projects located throughout the city.

EXPERIENCE PROVIDING SIMILAR SERVICES/REFERENCES

BUILDING AND SAFETY ADMINISTRATION

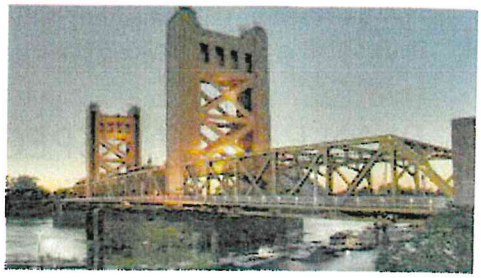
City of West Sacramento

CITY CONTACT: RANDY GOODWIN

ADDRESS: 1110 WEST CAPITOL AVENUE, 2ND FLOOR
WEST SACRAMENTO, CA 95691

EMAIL: RANDYG@CITYOFWESTSACRAMENTO.ORG

TELEPHONE: 916.617.4660



Dates of Service: 1998 - Present (Active Contract)

BV is proud to be part of the legacy of excellence and well-earned reputation for outstanding customer service that the City of West Sacramento enjoys today. Our team of professionals provides complete building plan review, permit counter, fire plan review and field inspection services that include compliance with Title 24, Part 9 and Title 24, Part 2 for fire and life safety, code interpretation, and recommendations for alternate means of fire protection for more than a decade. We also provide support in the Building Department regarding fire code issues; participate in training for the Building Department, and other departments of the City, including the Fire Department.

RESILIENT CITY PERMIT CENTER & PLANNING SERVICES

City of Santa Rosa

CITY CONTACT: GABE OSBURN, DEPUTY DIRECTOR OF DEVELOPMENT

ADDRESS: 100 SANTA ROSA AVENUE, ROOM 3
SANTA ROSA, CA 95404

EMAIL: GOSBURN@SRGITY.ORG

TELEPHONE: 707.543.3853



Dates of Service: 2017 - Present (Active Contract)

BV was selected to provide post-fire recovery and rebuilding assistance. In 2017, the most destructive wildfire in California history spread through the Sonoma County region and left more than $1.2 billion of property damage. BV has provided permitting and planning services for the Resilient City Permit Center, an additional permit center dedicated to the rebuilding efforts after the Sonoma County fires. The BV team has been responsible for plan check and inspection, meeting the need for higher than usual permit application volumes. This recovery-centered office has been staffed by our in-house team of plans examiners and permit technicians, offering permit intake and processing, record support, plan check, and inspection services. The Resilient City Permit Center provides the full range of planning and building assistance to residents, contractors, and developers. Our team continues to support the City's needs, after assisting in the rebuild of more than 3,000 residential homes, as well as commercial structures.

PROPOSED TEAM, RESUMES AND REFERENCES

PROPOSED TEAM AND RESUMES

BV has assembled a team of experts who are equipped to deliver exemplary services associated with the provision of services to the City of Newark. **Resumes for the primary staff below in red are included in the APPENDIX.** Resumes for additional personnel may be provided upon request.

Management

Craig Baptista, M.B.A.
Principal-in-Charge

Gene Paolini, C.B.O.
Client Liaison

David Gavranich, E.I.T.
Plan Review Team Lead

Andrea Coley
Inspections Manager

Project Team

Plan Review Engineers
Troy Schmidt, S.E.
George Kellogg, P.E., C.B.O.
Wendy Haggard, P.E.
Cristian Son, P.E.
Askan Delsim, P.E.
Tom Harris, S.E.
Daniel Lee, S.E., C.B.O.
Mac Saberi, P.E.

Plans Examiners
David Gavranich, E.I.T.
Chuck Zimmerman
Jeff Wise
Rick Mauldin, C.A.Sp.
Mike Helmer, C.A.Sp.
Gary Eide, C.B.O.
Josh Pino, C.A.Sp.
Murray McCool

Building Inspection
Mark Woods, C.B.O.
Josh Pino, C.A.Sp.
Gary Eide, C.B.O.
Chuck Zimmerman
Jeff Wise
Leon McNeil
Chris Gales
Brian Elder
Sean Burke
John Brownlee

Public Works Services
Michael Middleton, P.E.
Jee Choy, P.E.
Wendy Haggard, P.E.
Craig Hamner, P.E.

Code Enforcement
Josh Pino, CASp
Carl Houston

Building Official
Gene Paolini, C.B.O.
Mark Woods, C.B.O.
Michael Vieira, C.B.O.
Tony Falcone, C.B.O.
George Kellogg, P.E, C.B.O.
Gary Eide, C.B.O.

Permit Technicians
Debbie Galli
Susan Mays
Jessica Hannemann
Leslie Lundholm

Fire Prevention Team
Lisa Beaver, FPE
Andrew Reiwitch
Dennis Moss
Jeff Hartsuyker
Rick Perry

REFERENCES

Bureau Veritas has served nearly 200 jurisdictions throughout California over the past 45 years including cities and counties, as well as institutional clients. **Select references including the name, agency, title, address and telephone number of client contacts may be found on pages 7-8 of this proposal.**

FIRST AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND BUREAU VERITAS NORTH AMERICA, INC.

This First Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Bureau Veritas North America, Inc., a Delaware Corporation ("Consultant") (together sometimes referred to as "Parties") dated November 12, 2020, is entered into as of September 8, 2021.

RECITALS

WHEREAS, the Parties executed a Contractual Services Agreement (the "Agreement") to provide building inspection field inspection and related professional services; and

WHEREAS, Section 27 of the Agreement allows the Parties to amend the Agreement provided that the amendment is in writing signed by the Parties; and

WHEREAS, the Parties desire to extend the Agreement for the Consultant to provide additional services for fiscal year 2021-2022 in an amount not to exceed $100,000 for services provided during that fiscal year; and

WHEREAS, City staff is authorized to execute this Amendment in a form approved by the City Attorney.

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not to Exceed" Compensation, of the Agreement, is amended to provide for additional not to exceed compensation of $100,000 for services provided by Consultant for fiscal year 2021-2022.

2. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

City of Newark

Soren Fajeau
Public Works Director
Dated: 9-8-21

Consultant
Bureau Veritas North America, Inc.

Craig Baptista
Vice-President
Dated: September 7, 2021

Attest:

Kathleen L. Slaffer for
Deputy City Clerk

Sheila Harrington
City Clerk

Approved as to Form:

Kristopher J. Kokotaylo
Interim City Attorney

STAFF REPORT

Item F. 1.

DATE	03/10/2022
TO	Honorable Mayor and City Council Members
FROM	Kristopher Kokotaylo, Interim City Attorney
SUBJECT	Introduction of an ordinance adding Chapter 7.24, Fireworks Social Host Ordinance, to the Newark Municipal Code to increase penalties an enforcement authority related to illegal use of fireworks

RECOMMENDATION

Staff recommends that the City Council waive full reading and, by title only, introduce an ordinance adding Chapter 7.24, Fireworks Social Host Ordinance, to the Newark Municipal Code.

EXECUTIVE SUMMARY

The City of Newark authorizes certain non-profit organizations to annually sell safe and sane fireworks leading up to the 4th of July holiday in compliance with State law and Newark Municipal Code Section 15.17.020 (a copy of which is attached to this staff report). Unfortunately, last year the Police Department received a substantial increase in calls for service relating to illegal firework usage both leading up to the 4th of July holiday as well as on the holiday itself. While our Police Department dedicates resources to enforcing all laws on the 4th of July holiday, our officers face challenges when issuing citations, particularly when there are large gatherings which makes it difficult to identify the specific violator.

To address this issue, staff evaluated potential further enforcement options and, as a result, staff has prepared for City Council consideration of an ordinance that establishes strict liability for social hosts that allow the deployment of illegal fireworks on their property or at their hosted gatherings. This ordinance would authorize the City to issue administrative citations of up to $1,000 per violation.

BACKGROUND

Historic Background:

The City of Newark is one of three cities in Alameda County that allows the sale and use of safe and sane fireworks to celebrate the 4th of July holiday. The Newark Municipal Code contains regulations that govern the sale and use of fireworks, including the dates that authorized organizations can sell, and when individuals can use, fireworks.

In the early 2000's, in response to increasing illegal fireworks activity that was taking place within Newark at the time, the City Council directed the formation of a Fireworks Task Force. The Fireworks Task Force developed an Action Plan that included several measures aimed at reducing the use of illegal fireworks, including closing parks on July 4th after 7:30 p.m., activating a firework's hotline, increasing police staffing levels, and adopting a zero tolerance policy for the illegal use of fireworks.

There are currently 10 fireworks booth permits within the City. The total number of fireworks booths permits decreases whenever an organization: 1) chooses to not renew a previously issued permit; 2) is deemed ineligible for a fireworks booth permit; or 3) no longer meets the requirements for issuance of a fireworks booth permit.

Despite the limited number of fireworks booth permits, existing regulations, and other enforcement efforts, which is further explained below, the illegal use of fireworks persists during the 4th of July holiday.

2021 4th of July:

Police Department Enforcement

The Police Department experienced a 40% increase in overall fireworks calls for service from January 1st through July 4th in 2021 vs. the same time frame in 2020. As a result of the increased calls for service and community concerns, the Police Department emphasized enforcement (citations), rather than education, in its efforts.

The Police Department, working in conjunction with the Public Works Department and the Alameda County Fire Department ("ACFD"), annually prepares an operation to respond to calls for service throughout the City and to ensure the proper and safe disposal/disposition of illegal fireworks that are seized. In 2021, the 4th of July operational period began at 6 p.m. on July 4 and ended at 1 a.m. on July 5, 2021 (the "Operational Period").

During the Operational Period, the Police Department received a total of 139 calls for service with 104 fireworks related calls for service. There were 60 warnings issued and 6 criminal citations issued for either violations of the Newark Municipal Code or the California Health and Safety Code. Of the 6 citations issued, two were for criminal misdemeanor violations of California Health and Safety Code Section 12677 (illegal possession of dangerous fireworks) and four were traffic court citations for violation of Newark Municipal Code Section 15.17.020 (illegal fireworks). The District Attorney declined to prosecute both misdemeanor citations and of the four traffic court citations, one suspect has paid a $280 fine while the other traffic court citations are awaiting court dates.

In addition to the citations, officers also confiscated an assortment of aerial mortars, rocket-type aerials, M-80's and other illegal fireworks overfilling two 55-gallon barrels.

Fire Department Calls for Service

In preparation for the 2021 July 4th Holiday, ACFD staffed one additional fire engine and one additional Battalion Chief for a total of three fire engines, one fire truck, and two battalion chiefs. ACFD was dispatched to 9 fires in total -- 2 residential, 2 dumpster/trashcan fires, and 5 outside fires, presumably related to legal and/or illegal fireworks.

DISCUSSION/ANALYSIS

Current Enforcement:

As noted above, the City currently issues criminal citations for violations of the Newark Municipal Code or the California Health and Safety Code. The use of illegal fireworks may constitute either a criminal misdemeanor or felony depending on the violation or activity. Individuals convicted of a misdemeanor are subject to penalties of up to 6 months in jail and/or a fine of up to $1,000.

Criminal enforcement related to illegal use of fireworks presents some challenges. First, an officer must observe and apprehend an individual deploying or handling the illegal fireworks to issue the criminal citation. Attempting to make a criminal apprehension during large 4th of July gatherings can be challenging as it may be difficult to identify who illegally utilized the firework. Second, even where the City is able to apprehend a suspect, it does not have control over the ultimate outcome as the District Attorney is responsible for prosecution. There is no current mechanism to hold event hosts liable for the conduct of their guests that engage in the illegal use of fireworks.

Proposed Social Host Ordinance:

Staff has evaluated potential enforcement options and recommends that the City Council adopt a Social Host Fireworks Ordinance (the “Proposed Ordinance”). The Proposed Ordinance would make property owners, or individuals that control the property (for example through a lease or rental agreement), strictly liable for illegal fireworks activity occurring on their property or at their gatherings. Strict liability is a legal standard that does not depend on actual negligence or intent to harm to create liability, but is based on the breach an absolute duty to make something safe. Generally, traffic offenses and offenses related to hazardous activities are strict liability offenses.

The Proposed Ordinance would eliminate one of the largest hurdles to enforcement on the 4th of July – locating and apprehending individuals that use illegal fireworks. During 4th of July operations, police officers can often identify crowds of individuals or properties where illegal fireworks are deployed. However, locating the individual can be difficult, particularly when there is a large crowd. The Proposed Ordinance would create liability for property owners that host gatherings or shield individuals that utilize illegal fireworks. For example, if officers observe an illegal firework utilized from a gathering in the back or front yard of private property, officers do not have to confront

the individuals engaged in the illegal activity. They could document the activity and issue an administrative citation to the property owner or host. In the event that a property owner rents or leases the property to another individual, is not present, and had no prior knowledge of the violation, the City could proceed with enforcement against the responsible party.

A violation of the Proposed Ordinance is a misdemeanor that allows the City to issue administrative fines of up to $1,000. Staff intends to use administrative enforcement to enforce the Proposed Ordinance and intends to issue administrative fines at the full $1,000 amount for each violation. Utilizing administrative enforcement instead of criminal enforcement would eliminate the possibility that the District Attorney dismiss the matter without any consequence for the violator. Also, the Proposed Ordinance would provide an appeal process for a property owner to show that they should not be liable where they can show that they rented or leased the property to another, were not present, and had no prior knowledge of the violation. However, staff would still have the ability to seek recourse against the responsible party who will be identified when the property owner provides proof that they rented or leased the property.

A number of cities have recently established a Social Host Fireworks ordinance including, but not limited to: Union City; Rohnert Park; Petaluma; Pacifica; Folsom; Redwood City; and San Jose.

If the Council adopts the Proposed Ordinance, staff would engage in extensive public outreach to ensure that community members are aware of the new law and the consequences of violation. This community outreach would include requiring fireworks booths to distribute warning notices to each fireworks purchaser for each fireworks transaction.

FISCAL IMPACT

There is no direct fiscal impact with adopting the Proposed Ordinance. To the extent that the City issues administrative fines for violations of the Proposed Ordinance, the City may see some revenue from that effort.

REVIEW AND APPROVAL

Prepared by – Kristopher J. Kokotaylo, Interim City Attorney and Gina L. Anderson, Police Chief
Approved by – David J. Benoun, City Manager

Attachments

Social Host Fireworks Ordinance
Municipal Code Fireworks section
Presentation

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK ADDING CHAPTER 7.24, FIREWORKS, TO THE NEWARK MUNICIPAL CODE TO INCREASE PENALTIES RELATED TO ILLEGAL FIREWORKS

WHEREAS, the City of Newark allows the sale and use of Safe and Sane Fireworks, as defined and classified in Sections 12529 and 12562 of the Health and Safety Code, around the Fourth of July holiday; and

WHEREAS, the sale and use of Safe and Sane Fireworks is regulated by the City; and

WHEREAS, the use of illegal fireworks poses a significant public health, safety, and welfare risks to those that discharge the illegal fireworks as well as members of the public in the surrounding areas; and

WHEREAS, the use of illegal fireworks creates a significant fire danger, which is exacerbated by ongoing drought conditions within the City; and

WHEREAS, the use of illegal fireworks has increased significantly over recent years, which has increased the significant public health, safety, and welfare risks such fireworks cause; and

WHEREAS, the City Council desires to increase the penalties for illegal fireworks by classifying such conduct as a misdemeanor and increasing the maximum fine for violations; and

WHEREAS, the California Constitution, Article XI, Section 7, provides cities and counties with the authority to enact ordinances to protect the health, safety, welfare, and morals of their citizens.

THE CITY COUNCIL OF THE CITY OF NEWARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Recitals.

The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. Addition of Chapter 7.24.

Chapter 7.24, Fireworks, is added to the Newark Municipal Code to read as follows:

"Chapter 7.24 Fireworks Social Host Ordinance.

Section 7.24.010 Definitions.

The following definitions shall apply to this Chapter

A. “Safe and Sane Fireworks” means those fireworks defined and classified in Sections 12529 and 12562 of the Health and Safety Code, as those sections may be amended from time to time.

B. “Social host” means any of the following:

1. Any owner of private property as listed on the most recent Alameda County assessment roll;
2. Any person who has the right to use, possess or occupy a public or private property under a lease, permit, license, rental agreement, or contract; or
3. Any person who hosts, organizes, supervises, officiates, conducts, or accepts responsibility for a gathering on public or private property.

C. “Strictly liable” means liability for a wrongful act irrespective of such person’s intent, knowledge, negligence or lack thereof in committing the wrongful act.

Section 7.24.020 Use.

Fireworks other than Safe and Sane Fireworks are prohibited. Except as permitted by the City, it is unlawful for any person, corporation, or entity to possess, store, offer for sale, expose for sale, sell at retail or wholesale, use, discharge, or explode, or allow the use on their property or property under their control, any fireworks except Safe and Sane Fireworks.

Section 7.24.030 Social Host Liability

Any Social Host shall be Strictly Liable for any unlawful ignition, use, discharge or display of any dangerous fireworks, or Safe and Sane Fireworks in violation of this Code, at their property or gathering; except that:

A. No owner of private property shall be liable under this Section for a violation of this Chapter if the property owner can demonstrate that at the time of such violation they:

1. had rented or leased the property to another,
2. were not present, and
3. had no prior knowledge of the violation.

B. No person who has the right to use, possess or occupy a unit in a multifamily residential property under a lease, rental agreement or contract shall be liable under this Section for violations of this Chapter occurring in the common areas of the property.

Section 7.24.040 Penalty.

A. Any person or entity who violates this Chapter shall be guilty of a misdemeanor, punishable by any remedy authorized by this Municipal Code or applicable law, at the election of the City.

B. Notwithstanding anything in this Code to the contrary, a violation of this Chapter may be punishable by a fine of up to one thousand ($1,000) per violation. For the purposes of

this Section, each use or discharge of a firework in violation of this Chapter shall be a separate violation.

C. A fine for violating this section may be issued to administratively in accordance with Chapter 7.18 (Administrative Citations) and any person receiving a fine pursuant to this section shall be entitled to the hearing procedures contained therein.

SECTION 3. Severability

If any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this Ordinance are severable. The City Council of the City of Newark hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be held unconstitutional, invalid, or unenforceable.

SECTION 4. CEQA.

Approval of the ordinance is exempt from further environmental review under the general rule in California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) that CEQA only applies to projects that have the potential for causing a significant effect on the environment. As a series of text amendments and additions that do not authorize any new activity, it can be seen with certainty that there is no possibility that the ordinance will have a significant effect on the environment.

SECTION 5. Publication and effective date.

Within fifteen (15) days from and after adoption, this Ordinance shall be published once in the Tri-City Voice, a newspaper of general circulation printed and published in Alameda County and circulated in the City of Newark, in accordance with California Government Code Section 36933. This Ordinance shall take effect and be enforced thirty (30) days after its adoption.

K. Chapter 56 is amended by adding Section 5614 as follows.

5614 Fireworks

5614.1 Definitions. For the purpose of this Chapter the phrases "fireworks," "dangerous fireworks," and "safe and sane fireworks" shall have the meanings ascribed to them in Sections 12511, 12505, and 12529 of the Health and Safety Code of the state of California.

5614.2 Storage of safe and sane fireworks:

5614.2.1 Safe and sane fireworks in excess of five pounds shall not be stored at any one location in the City of Newark.

EXCEPTIONS:

1. A maximum of one day's sales supplies of safe and sane fireworks, per stand, may be stored in a safe and sane fireworks stand for which a permit has been issued, or in a tamper resistant metal container approved by the Fire Code Official, pursuant to this Article.

2. If the stand closes at any time, the safe and sane fireworks, in excess of five pounds, may be stored in the booth with an adult guard, 18 years or older on the premises at all times.

3. Safe and sane fireworks stands shall not be located in areas zoned residential or General Industrial.

4. The City Community Development Director shall determine that the locations of the safe and sane fireworks stands do not have unsightly, undesirable, or obnoxious qualities that are not harmonious with, or are not properly related to their sites, surroundings and traffic circulation in the vicinity, or which would not meet the specific intent of the Zoning Code.

5614.3 Prohibition

5614.3.1 The manufacture, sale, or discharge of safe and sane fireworks within the jurisdictional area is prohibited except under special permits as are required by local and state regulations.

EXCEPTIONS

1. A permit is not required for the discharge of safe and sane fireworks as described in Section 12529 of the Health and Safety Code.

[1]Editor's note(s)—See the editor's note to Ch. 15.32Editor's note(s)—.

2. Nothing in this section shall be construed to prohibit the discharge of safe and sane fireworks by railroads or other transportation agencies for signal purposes of illumination, or discharge of blank cartridges for a show or theater, or for use by military organizations.

5614.4 Sale of safe and sane fireworks

5614.4.1 Annual permit required: any organization desiring to sell or to offer for sale safe and sane fireworks shall annually make application to the Fire Code Official for a permit to sell safe and sane fireworks.

5614.4.2 Application for Permit:

1. Shall be made in writing at the office of the Fire Marshal of the City of Newark, accompanied by the permit fee.

2. Shall be made during regular office hours, between the fifteenth day of April and the fifteenth day of May of each year.

3. Shall set forth the proposed location of the safe and sane fireworks stand applied for.

4. Shall be accompanied by an assurance that if the permit is issued to the applicant, applicant shall, at the time of receipt of such permit, deliver to the Fire Code Official a general liability insurance policy or endorsement adding or specifying the City, its officers, employees, and volunteers as "insureds" and within the scope and limits as set by the Fire Chief.

5614.5 Annual Permit. An annual permit shall only be issued to any organization meeting the following requirements:

5614.5.1 Nonprofit organization organized primarily for veteran, patriotic, welfare, youth activity, civic betterment, or charitable purpose within the City of Newark.

5614.5.2 The organization shall have its principal place of business and permanent meeting place within the City limits of the City of Newark.

5614.5.3 The organization shall have been organized for a minimum of one (1) year continuously preceding the filing of the application for the permit.

5614.5.4 The organization shall have at least twenty (20) regular and active participants, volunteers, or members with a minimum of fifty percent (50%) of those regular and active participants, volunteers, or members being bona fide residents of the City of Newark. For purposes of this section, a "member" need not be a "member" as defined by California Corporations Code Section 5056.

5614.5.5 The organization shall obtain a business license from the City of Newark.

5614.6 Operation of Stand

5614.6.1 No person other than the permittee organization shall operate the stand for which the permit is issued or share or otherwise participate in the profits of the operation of such stand.

5614.6.2 No person other than individuals who are members, regular and active participants, volunteers, or other persons supportive of the activities of the permittee organizations, or a spouse or adult child of such a person, shall sell or otherwise participate in the sale of safe and sane fireworks at such stand.

5614.6.3 No person shall be paid any money or other consideration for selling or otherwise participating in the sale of safe and sane fireworks at such stand.

5614.6.4 All retail sales of safe and sane fireworks shall be permitted only from within a temporary safe and sane fireworks stand. The sale from any other building or structure is hereby prohibited.

5614.7 Temporary Safe and Sane fireworks Stands

5614.7.1 No safe and sane fireworks stand shall be located within 25 feet of another building or within 100 feet of any flammable liquid or gas storage or dispensing unit.

5614.7.2 All safe and sane fireworks stands shall be erected in a manner approved by the Fire Marshal in order to reasonably ensure the safety of attendants and patrons.

5614.7.3 No stand shall have a floor area in excess of 300 square feet.

5614.7.4 Each stand shall have at least two remote exits three feet in width and not less than six feet eight inches in height. All doors shall swing out.

5614.7.5 Each stand shall be provided with two 2-A rated fire extinguishers bearing a valid inspection tag and in good working order. Extinguishers shall be easily accessible for use in case of fire.

5614.7.6 "No smoking" signs shall be conspicuously posted at the stand.

5614.7.7 Merchandise shall be displayed in such a manner that it cannot be handled by patrons reaching over the selling counter or through other openings in the stand.

5614.7.8 All electrical wiring will require a permit from the City Building Inspection Division prior to any installation.

5614.7.9 Decorative material, canvas tops, screening, etc., shall be flame retardant or rendered to the satisfaction of the Fire Code Official.

5614.7.10 All weeds and combustible material shall be cleared from within a 25 foot minimum area surrounding the stand.

5614.7.11 Each stand shall be located only at those locations in compliance with the City Zoning Ordinance.

5614.7.12 A maximum of one day's sales supplies of safe and sane fireworks, per stand, may be stored in a safe and sane fireworks stand for which a permit has been issued, or in a tamper resistant metal container approved by the Fire Code Official, pursuant to this Chapter.

5614.7.13 If the stand closes at any time, the safe and sane fireworks, in excess of five pounds, may be stored in the booth with an adult guard, 18 years or older on the premises at all times.

5614.7.14 Safe and sane fireworks stands shall not be located in areas zoned residential or General Industrial.

5614.7.15 The Fire Code Official shall determine that the locations of the safe and sane fireworks stands do not have unsightly, undesirable, or obnoxious qualities that are not harmonious with, or are not properly related to their sites, surroundings and traffic circulation in the vicinity, or which would not meet the specific intent of the Zoning Code.

5614.8 General Requirements

5614.8.1 The sale of safe and sane fireworks shall be from 12:00 noon to 9:00 p.m. on the 28th day of June and 8:00 a.m. to 9:00 p.m. June 29 through July 4. The use of safe and sane fireworks shall be from midnight June 30 to midnight July 4.

5614.8.2 All unsold stock and accompanying litter shall be removed from the location by 12 Noon on the sixth day of July.

5614.8.3 The safe and sane fireworks stand shall be removed from the location by the twelfth of July.

5614.8.4 The sale of safe and sane fireworks shall not be made to any person or persons under the age of 18.

5614.8.5 Prior to the sale, in the event that a prospective purchaser appears or would appear to a reasonable person to be under the age of thirty (30), the permittee shall require the prospective purchaser to show proof of age by displaying a motor vehicle operator's license, a registration certificate issued by the Federal Selective Service Act, an identification card issued to a member of the Armed Forces, or a similar document bearing the picture or likeness of the purchaser. Any permittee that sells safe and sane fireworks to any person under the age of 18 or, in the event that a prospective purchaser appears or would appear to a reasonable person to be under the age of thirty (30), fails to require the prospective purchaser to show proof of age as required herein, shall be guilty of an infraction. Pursuant to Title 7 of the Newark Municipal Code, an Administrative Citation may be issued for the violation. Each sale to any person under the age of 18 shall be deemed a separate violation. In addition the sale of safe and sane fireworks to any person under the age of 18 is declared a public nuisance subject to abatement pursuant to Title 7 of this Code subjecting the

permittee to administrative penalties up to $1,000 per day per violation to a maximum of $100,000, and to recovery of all costs of abatement and enforcement as provided in Title 7.

5614.8.6 In addition to the foregoing, in the event of multiple violations or other evidence of a course of conduct in conscious or reckless disregard of the requirements of this section, the permittee may be deemed ineligible for a safe and sane fireworks booth permit in subsequent years. The Fire Code Official shall make the decision of ineligibility. The permittee may appeal that decision by requesting an administrative hearing to be held by the City Manager's designated Hearing Officer. The hearing shall be conducted pursuant to the rules of procedure set forth in Chapter 7.22 of the Newark Municipal Code. The Hearing Officer's decision shall be the final decision of the City of Newark.

5614.9 Fireworks Display

5614.9.1 General. Outdoor fireworks displays, use of pyrotechnics before a proximate audience and pyrotechnic special effects in theatrical and group entertainment productions shall comply with California Code of Regulations, Title 19, Division 1, Chapter 6 Fireworks.

5614.9.2 Scope. Fireworks and temporary storage, use, and handling of pyrotechnic special effects material used in motion pictures, television, and theatrical and group entertainment productions shall be in accordance with California Code of Regulations, Title 19, Division 1, Chapter 6 Fireworks.

5614.9.3 Permits Required. The permittee shall furnish a general liability insurance policy of endorsement adding the City, its officers, employees, and volunteers as "insureds" and within the scope and limits as set by the Community Development Director. Said policy is to cover payments for all damages, which may be caused to a person or persons or to property by reason of the permitted display and arising from any acts of the permittee, his agents, employees, or subcontractors.

5614.9.4 Fireworks other than safe and sane fireworks prohibited. Except as provided in this section, it is unlawful for any person, corporation, or entity to possess, store, offer for sale, expose for sale, sell at retail or wholesale, use, discharge, or explode any fireworks except "safe and sane fireworks" as described in Section 12529 of the Health and Safety Code. Violation of this section is punishable as an infraction.

(Ord. No. 518, § 1(Att.), 12-12-2019)

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed the former § 15.17.020Editor's note(s)—, and enacted a new 15.17.020Editor's note(s)— as set out herein. The former § 15.17.020Editor's note(s)— pertained to fire department duties—fire prevention bureau established and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

15.17.030 Reserved.

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed § 15.17.030Editor's note(s)—, which pertained to fire code definitions and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

15.17.040 Reserved.

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed § 15.17.040Editor's note(s)—, which pertained to chapter 9Editor's note(s)— amended—fire protection systems and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

15.17.050 Reserved.

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed § 15.17.050Editor's note(s)—, which pertained to chapter 56 amended—explosives and fireworks and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

15.17.190 Reserved.

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed § 15.17.190Editor's note(s)—, which pertained to permit fees and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

15.17.200 Reserved.

Editor's note(s)—Ord. No. 518, § 1Editor's note(s)—(Att.), adopted Dec. 12, 2019, repealed § 15.17.200Editor's note(s)—, which pertained to violation deemed infraction and derived from Ord. No. 471, § 1Editor's note(s)—, adopted Nov. 14, 2013; Ord. No. 494, § 1Editor's note(s)—, adopted Nov. 10, 2016.

Fireworks

Social Host Ordinance



Newark City Council Meeting

March 10, 2022

Agenda

1. Background
2. 2021 Fourth of July Holiday
3. Proposed Ordinance

NEWARK
california

Background

Background

1 2021 Fourth of July Holiday

3 Proposed Ordinance

NEWARK
california



municode

NEWARK
california

Extensively regulates sale and use of Safe and Sane fireworks

CITY OF NEWARK
1955
CALIFORNIA

1 2 3

Newark

1 of 3 cities that sells fireworks for Fourth of July



10

fireworks booths in the City

To be eligible to sell fireworks

Must be Newark-based non-profit primarily for

- Veteran
- Welfare
- Youth Activity
- Civic Betterment
- Charitable Purpose



Number of total permits get lowered if organization chooses

- Not to renew permit
- Is no longer eligible

Early 2000's

Increased illegal fireworks activity

Fireworks Task Force formed





PARK
CLOSED
FROM
7:30 PM
4TH OF JULY

Increased Staffing

NEWARK POLICE

ZERO
TOLERANCE

Fireworks
HOTLINE

Agenda

1. Background
2. 2021 Fourth of July Holiday
3. Proposed Ordinance

2021 Fourth of July Holiday

NEWARK
california





40% Increase in illegal firework usage between January 1st – July 4th, 2021 compared to 2020

Police Dept. engaged in enforcement rather than education

Police





Newark Police Department Call Log
37055 Newark Boulevard, Newark, CA 94560

Date	Time	Number of Actions	Response Type
July 4, 2021 to July 5, 2021	6:00 pm to 1:00 am	104	Fireworks Calls for Service
July 4, 2021 to July 5, 2021	6:00 pm to 1:00 am	60	Fireworks Warnings Issued
July 4, 2021 to July 5, 2021	6:00 pm to 1:00 am	6	Fireworks Criminal Citations

Police





2=

Misdemeanor under California Health & Safety Code

4=

Traffic court violations under Newark Municipal Code

Newark Police Department Call Log
37055 Newark Boulevard, Newark, CA 94560

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July 4, 2021 to July 5, 2021	6:00 pm to 1:00 am	6	Fireworks Criminal Citations

Police

District Attorney

Declined to prosecute both misdemeanor citations



Of Four Citations

One has paid $280
3 are waiting court dates



Criminal enforcement two challenges

Police



Issue Citation

Officer must observe individual lighting or handling illegal firework



Citation is issued

No guarantee that the DA will prosecute



Agenda

Proposed Ordinance

1 Background

3 2021 Fourth of July Holiday

3 Proposed Ordinance

NEWARK california

Property Owners

Strictly liable for illegal fireworks occurring on their property or hosted gatherings

Strict Liability Means

Property owner is liable, regardless of whether they knew one of their guests would use illegal fireworks



Enforced Administratively

Property owners would have to pay $1,000 fine

Property Could Appeal If

- Rent to tenants
- Were not present
- Did not know of the violation

To not be Liable

Property owner would have to identify the tenant, who would be held responsible





ORDINANCE

Makes it easier to enforce illegal fireworks laws and hold accountable those responsible for illegal fireworks use.

Past

Officers had problem identifying person responsible for lighting illegal fireworks because people gather in crowds.



NEWARK
california

Fireworks booths to distribute warning notices during firework sales

APPROVED

CITY OF NEWARK
1955
CALIFORNIA



Questions?

ORDINANCE

Staff's recommendation to adopt ordinance