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, July 28, 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.

A. ROLL CALL

B. PRESENTATIONS

1. Introduction of employees

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 July 14, 2022, minutes

3. Adopt a Resolution confirming the continued existence of a local emergency due to the COVID-19 Pandemic.

4. Adopt a resolution authorizing and approving the City Manager to execute a contractual services agreement with KBA Document Solutions for copier/printer/scanner/fax equipment lease, maintenance and other support services

5. Adopt a Resolution Approving Contractual Services Agreements with Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc. for On-Call Civil Engineering Development Plan Check Review Services

6. Adopt a Resolution Approving the Annual Agreement with Alameda County for Participation in the Alameda County Urban County Community Development Block Grant for Fiscal Year 2022-2023 and Amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2022-2023

7. Adopt a Resolution Authorizing the City Manager to Execute a Project Specific Maintenance Agreement with the State of California through its Department of Transportation (Caltrans) for State Route (SR) 880 and Mowry Avenue Crossing

8. Adopt a resolution approving an amendment to the Management, Supervisory, and Professional Employee Group Compensation and Benefit Plan to add the class specification of Crime Analyst.

9. Adopt a Resolution approving a Contractual Services Agreement with Surf to Snow Environmental Resource Management, Inc. to conduct inspections of industrial and commercial facilities as required by the City's stormwater discharge permit

10. Adopt a Resolution Authorizing the County of Alameda to Execute a HOME-American Rescue Plan fund contract with Allied Housing, Inc. for the Cedar Community Apartments Homekey Project.

11. 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 July 28 Pursuant to AB 361.

12. Adopt a resolution approving a second amendment to the contractual services agreement between the City and Abbe and Associates to assist with the implementation of commercial organics waste collection and related services and amending the 2022-2024 Biennial Budget and Capital Improvement Plan

13. Second reading and adoption of an Ordinance amending Chapter 2.09 of the Newark Municipal Code ("City Councilmembers-Salaries") to increase the salaries of City Councilmembers and Mayor by ten percent (10%). (Introduced 7/14/2022)

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Adopt a Resolution approving the Agreement between the Newark Chamber of Commerce and the City of Newark in an amount not to exceed $230,500 and authorizing an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for FY 2023 to appropriate American Rescue Plan Act (ARPA) funding of $230,500 for the Chamber Agreement and $25,000 for the Chamber CEO Executive Recruiter for a total appropriation of $255,500.

2. Adopt a resolution approving and authorizing the City Manager to execute a Side Letter Agreement to extend the Memorandum of Understanding between the City of Newark and the Newark Police Association (NPA).

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 (2021). 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.

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/83029739177

From a telephone dial 1- 669-900-9128, Webinar ID Number 830 2973 9177

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 B. 1.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Introduction of employees

The following employees will be introduced at the City Council meeting:

Senior Planner Carmelisa Lopez
Building Inspector I Kyle Moore
Administrative Support Specialist II Sofia Castillo

STAFF REPORT

Item D. 1.

DATE	07/28/2022
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: 07/07/2022

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	07/07/2022	6096 Accounts Payable	4LEAF INC		117,360.00
	Invoice	Date	Description		Amount
	J1118A47	05/26/2022	BI FIELD INSCPECTION AND RELATED PROFESSIONAL SERVICES 04/22		26,440.00
	J1118A46	04/28/2022	BI FIELD INSCPECTION AND RELATED PROFESSIONAL SERVICES 03/22		33,160.00
	J1118A45	03/25/2022	BI FIELD INSCPECTION AND RELATED PROFESSIONAL SERVICES 02/22		28,200.00
	J1118A44	02/25/2022	BI FIELD INSCPECTION AND RELATED PROFESSIONAL SERVICES 01/22		29,560.00
Check	07/07/2022	6097 Accounts Payable	ABACUS PRODUCTS INC		1,450.38
	Invoice	Date	Description		Amount
	B68438	06/13/2022	PRINTING SVCS - NOTICE TO APPEAR CITATION		1,080.48
	B68457	06/15/2022	CITY ENVELOPES		369.90
Check	07/07/2022	6098 Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		415.74
	Invoice	Date	Description		Amount
	2021-22-414	06/28/2022	FIRE TRUCK REPAIR #243N		415.74
Check	07/07/2022	6099 Accounts Payable	ALPINE AWARDS INC		4,037.70
	Invoice	Date	Description		Amount
	5551194	06/10/2022	RUN THE LAKE		786.11
	5551207	06/13/2022	RASH GUARDS FOR AQUATICS		1,760.14
	5551208	06/13/2022	GUARD APPAREL		1,491.45
Check	07/07/2022	6100 Accounts Payable	LUIS BAILON		88.19
	Invoice	Date	Description		Amount
	062722EXP	06/27/2022	2ND BOOT/JACKET REIMBURSEMENT 06/27/22		88.19
Check	07/07/2022	6101 Accounts Payable	BAIRD + DRISKELL COMMUNITY PLANNING		52,185.00
	Invoice	Date	Description		Amount
	1312	06/14/2022	HOUSING ELEMENT UPDATE PREPARATION		52,185.00
Check	07/07/2022	6102 Accounts Payable	DAN CIANCIARULO		168.34
	Invoice	Date	Description		Amount
	062322EXP	06/23/2022	2ND BOOT REIMBURSEMENT 06/23/22		168.34
Check	07/07/2022	6103 Accounts Payable	PETTY CASH CUSTODIAN-JESSICA GURULE		714.53
	Invoice	Date	Description		Amount

	033122-062222	07/05/2022	V#1126-1141 FY 21/22 REC PETTY CASH REPLENISHMENT	714.53
Check	07/07/2022	6104 Accounts Payable	PETTY CASH CUSTODIAN-BEVERLY RYANS	533.91

Invoice	Date	Description	Amount
071421-040522	06/15/2022	PETTY CASH REPLENISHMENT V#3164-3188	533.91

Check	07/07/2022	6105 Accounts Payable	CLEARGOV INC.	13,738.66

Invoice	Date	Description	Amount
2022-11757	04/30/2022	CG OPERATIONAL BUDGET BUILDER 04/30/22-04/29/2023	13,738.66

Check	07/07/2022	6106 Accounts Payable	COTTON, SHIRES AND ASSOCIATES, INC.	4,982.50

Invoice	Date	Description	Amount
522215	05/26/2022	GEOTECH PEER REVIEW, GMC WILLOW (5/1/22-5/20/22)	3,937.50
622227	06/28/2022	GEOTECH PEER REVIEW, GMC WILLOW (5/23/22-6/28/22)	1,045.00

Check	07/07/2022	6107 Accounts Payable	COUNTY OF ALAMEDA	1,925.00

Invoice	Date	Description	Amount
MAY '22	06/03/2022	CITATION PROCESSING FEES - MAY'22	1,925.00

Check	07/07/2022	6108 Accounts Payable	DAILY JOURNAL CORPORATION	483.75

Invoice	Date	Description	Amount
B3596960	06/21/2022	LEGAL ADVERTISING	271.25
B3598900	06/28/2022	PH NOTICES FOR FY 21/22 - FMC WILLOW PROJECT	116.25
B3599095	06/28/2022	PH NOTICES FOR FY 21/22 - 35360 FIRCREST DR	96.25

Check	07/07/2022	6109 Accounts Payable	DALE HARDWARE	857.40

Invoice	Date	Description	Amount
JUN' 22	06/25/2022	DH- PARTS AND SUPPLIES	857.40

Check	07/07/2022	6110 Accounts Payable	ALHAMBRA	251.02

Invoice	Date	Description	Amount
15734365 061322	06/13/2022	WATER SERVICE	251.02

Check	07/07/2022	6111 Accounts Payable	DUKE DE LEON	690.00

Invoice	Date	Description	Amount
4162	06/29/2022	BROADCAST CITY COUNCIL AND PC MEETINGS JUNE 2022	690.00

Check	07/07/2022	6112 Accounts Payable	EWING IRRIGATION PRODUCTS INC.	4,421.37

Invoice	Date	Description	Amount
17062177	06/15/2022	IRRIGATION SUPPLIES	4,421.37

Check	07/07/2022	6113 Accounts Payable	FRANK BONETTI PLUMBING INC	1,340.00

Invoice	Date	Description	Amount
70944	06/13/2022	LAKESHORE PARK TOILET SERVICE	660.00
70997	06/14/2022	SILLIMAN SERVICE	680.00

Check	07/07/2022	6114 Accounts Payable	FREMONT FORD	2,129.74

Invoice	Date	Description	Amount
204848	06/16/2022	FORD MAINTENANCE PART FOR INSTALL	1,481.44
406077	06/21/2022	FLEET REPAIR AND MAINTENANCE	648.30

Check	07/07/2022	6115 Accounts Payable	HOME DEPOT CREDIT SERVICES	2,960.00

	Invoice	Date	Description	Amount
	JUN' 22	06/13/2022	HD CC 06/13/2022	2,960.00
Check	07/07/2022	6116 Accounts Payable	INDUSTRIAL PLUMBING SUPPLY, LLC.	477.78
	Invoice	Date	Description	Amount
	101241	06/10/2022	PLUMBING SUPPLIES	137.63
	101352	06/16/2022	PLUMBING SUPPLIES	340.15
Check	07/07/2022	6117 Accounts Payable	JARVIS FAY LLP	4,674.00
	Invoice	Date	Description	Amount
	16594	05/31/2022	LEGAL SERVICES FOR FMC WILLOW PROJECT	4,674.00
Check	07/07/2022	6118 Accounts Payable	KBA DOCUMENT SOLUTIONS, LLC	455.24
	Invoice	Date	Description	Amount
	55Y1283401	06/16/2022	COPIER LEASE/SERVICE/SUPPLIES - 5/22-6/21/22	455.24
Check	07/07/2022	6119 Accounts Payable	KNORR SYSTEMS INC	62.72
	Invoice	Date	Description	Amount
	SI239664	06/10/2022	SILLIMAN POOL PARTS AND MAINT	62.72
Check	07/07/2022	6120 Accounts Payable	LAKESHORE LEARNING MATERIALS	5,177.24
	Invoice	Date	Description	Amount
	167865061022	06/10/2022	TABLES, CHAIRS, RUG, BBALL HOOP, MISC SUPPLIES	5,177.24
Check	07/07/2022	6121 Accounts Payable	GTG	24,960.00
	Invoice	Date	Description	Amount
	105	05/02/2022	INFORMATION TECH DEPARTMENT ASSESMENT	24,960.00
Check	07/07/2022	6122 Accounts Payable	LINCOLN AQUATICS	3,469.20
	Invoice	Date	Description	Amount
	D8777523	05/31/2022	ROBOTIC POOL CLEANER	3,469.20
Check	07/07/2022	6123 Accounts Payable	BRICK TECH	2,373.50
	Invoice	Date	Description	Amount
	0606-06102022	06/10/2022	PAYMENT FOR 6/6-6/10 BRICK TECH CAMPS	2,373.50
Check	07/07/2022	6124 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	5,446.90
	Invoice	Date	Description	Amount
	194987	06/20/2022	LEGAL SVCS - SANCTUARY WEST - SVCS THUR 5/31/22	86.60
	194989	06/20/2022	LEGAL SVCS - SVCS THRU 5/31/22	952.60
	194990	06/20/2022	LEGAL SVCS - FMC WILLOW - SVCS THRU 5/31/22	3,844.80
	194991	06/20/2022	LEGAL SVCS - MOWRY VILLAGE - SVCS THRU 5/31/22	562.90
Check	07/07/2022	6125 Accounts Payable	OSBORNE LUMBER COMPANY, INC.	31.57
	Invoice	Date	Description	Amount
	558736	06/16/2022	LUMBER	31.57
Check	07/07/2022	6126 Accounts Payable	PACIFIC GAS & ELECTRIC	80,416.99
	Invoice	Date	Description	Amount
	7578-061722	06/17/2022	ELECTRICITY - JUNE 2022	80,416.99
Check	07/07/2022	6127 Accounts Payable	QUADIENT FINANCE USA INC	1,088.31

	Invoice	Date	Description	Amount
	4857-071322	06/15/2022	POSTAGE	1,088.31
Check	07/07/2022	6128 Accounts Payable	REVENUE & COST SPECIALIST, LLC	2,340.00
	Invoice	Date	Description	Amount
	9061	06/01/2022	PROFESSIONAL SERVICES TO DEVELOP EV CHARGING FEE	2,340.00
Check	07/07/2022	6129 Accounts Payable	ROBERT HALF	2,520.00
	Invoice	Date	Description	Amount
	60173011	06/14/2022	TEMPORARY STAFFING GARY CAIN - 06/10/22	2,520.00
Check	07/07/2022	6130 Accounts Payable	SEIFEL CONSULTING INC	12,000.00
	Invoice	Date	Description	Amount
	12800	06/15/2022	AFFORDABLE HOUSING LIVE/WORK POLICY STUDY	12,000.00
Check	07/07/2022	6131 Accounts Payable	SMITH & SONS ELECTRIC, INC.	519.00
	Invoice	Date	Description	Amount
	22040	06/28/2022	SVC SERVICE	519.00
Check	07/07/2022	6132 Accounts Payable	STAPLES	1,063.01
	Invoice	Date	Description	Amount
	8066577826	06/15/2022	OFFICE SUPPLIES	1,063.01
Check	07/07/2022	6133 Accounts Payable	LEHR	3,044.69
	Invoice	Date	Description	Amount
	SI70500	02/08/2022	LEHR-CF33 INSTALL	3,044.69
Check	07/07/2022	6134 Accounts Payable	THE GOODYEAR TIRE & RUBBER COMPANY	454.52
	Invoice	Date	Description	Amount
	184-1097121	06/29/2022	TIRE SERVICE AND REPAIR	454.52
Check	07/07/2022	6135 Accounts Payable	TIREHUB, LLC	922.40
	Invoice	Date	Description	Amount
	27975784	06/27/2022	TIRES-GY ASSUR MAXLIFE	618.95
	28035180	06/29/2022	TIRES	303.45
Check	07/07/2022	6136 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY	906.56
	Invoice	Date	Description	Amount
	502613	05/31/2022	JANITORIAL - ADDITIONAL SERVICES SVC MAY 2022	466.56
	502612	05/31/2022	JANITORIAL - ADDITIONAL SERVICES CH MAY 2022	440.00
Check	07/07/2022	6137 Accounts Payable	URBAN PLANNING PARTNERS, INC.	6,339.00
	Invoice	Date	Description	Amount
	22005-220531	06/28/2022	TASK ORDER #3 - HOMEKEY NEPA	6,339.00
Check	07/07/2022	6138 Accounts Payable	ZUMAR INDUSTRIES	5,124.71
	Invoice	Date	Description	Amount
	97054	06/17/2022	STREETS SUPPLIES	5,124.71
Check	07/07/2022	6139 Accounts Payable	HERZSTEIN , DAVID	118.23
	Invoice	Date	Description	Amount

	061722UUT		06/17/2022	UTILITY USERS TAX REFUND	118.23
Check	07/07/2022	6140 Accounts Payable		TRI-CITY VOLUNTEERS	500.00
	Invoice		Date	Description	Amount
	649927		06/29/2022	RENTAL COMPLETE. REFUND DEPOSIT. ORIGINAL PAYMENT VIA CHECK.	500.00
EFT	07/07/2022	327 Accounts Payable		SPECTRUM SMALL BUSINESS SERVICES, LLC 325084426 / 5348560846	2,681.00
	Invoice		Date	Description	Amount
	06272022-GENERAL		06/27/2022	CONSULTING AND REFERRALS TO BUSINESS SUPPORT AGENCIES-3RD AMEND	2,681.00

AP ZBA ACCOUNTS PAYABLE Totals: Transactions: 46 $377,899.80

Checks:	45	$375,218.80
EFTs:	1	$2,681.00

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 07/14/2022

Type	Date	Number Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE					
Check	07/14/2022	6141 Accounts Payable	4LEAF INC		18,443.40
	Invoice	Date	Description		Amount
	J1118A48	06/21/2022	BI FIELD INSCPECTION AND RELATED PROFESSIONAL SERVICES 05/22		18,443.40
Check	07/14/2022	6142 Accounts Payable	AFLAC		1,934.56
	Invoice	Date	Description		Amount
	741468	07/07/2022	AFLAC - JUNE PREMIUMS		920.48
	222466	02/11/2022	AFLAC - FEB PREMIUMS		1,014.08
Check	07/14/2022	6143 Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		1,642.68
	Invoice	Date	Description		Amount
	2021-22-456	06/30/2022	FIRE TRUCK REPAIR #252		1,642.68
Check	07/14/2022	6144 Accounts Payable	ALL CITY MANAGEMENT SERVICES, INC.		1,199.52
	Invoice	Date	Description		Amount
	78403	06/15/2022	SCHOOL CROSSING GUARD SVCS 05/29-06/11/22		1,199.52
Check	07/14/2022	6145 Accounts Payable	LAW OFFICES OF GARY M. BAUM		8,255.00
	Invoice	Date	Description		Amount
	001685	06/30/2022	LEGAL SERVICES THROUGH JUNE 24, 2022		8,255.00
Check	07/14/2022	6146 Accounts Payable	BAY CENTRAL PRINTING		1,827.38
	Invoice	Date	Description		Amount
	191998	05/16/2022	SMIP - EMERGENCY BUILDING PLACARDS		1,827.38
Check	07/14/2022	6147 Accounts Payable	BKF ENGINEERS		50,537.67
	Invoice	Date	Description		Amount
	22060959	06/13/2022	LINDSEY TRACT DESIGN SERVICES, PROJECT 1238 (4/25/22-5/22/22)		50,537.67
Check	07/14/2022	6148 Accounts Payable	BUREAU VERITAS NORTH AMERICA INC.		13,844.10
	Invoice	Date	Description		Amount
	1572293	03/09/2022	BUILDING INSPECTION ON CALL PLAN REVIEW SERVICES		237.50
	RI 22032596	05/20/2022	BUILDING INSPECTION ON CALL PLAN REVIEW SERVICES		4,048.44
	RI 22032597	05/20/2022	BUILDING INSPECTION ON CALL PLAN REVIEW SERVICES		5,866.63
	RI 22037650	06/14/2022	BUILDING INSPECTION ON CALL PLAN REVIEW SERVICES		3,611.86
	RI 22037649	06/14/2022	BUILDING INSPECTION ON CALL PLAN REVIEW SERVICES		79.67
Check	07/14/2022	6149 Accounts Payable	WORLDWIDE TELEPROMPTING		1,600.00

	Invoice	Date	Description	Amount
	1249	06/24/2022	TELEPROMPT 2022 STATE OF THE CITY ADDRESS	1,600.00
Check	07/14/2022	6150 Accounts Payable	BURTON'S FIRE INC	145.53
	Invoice	Date	Description	Amount
	S 57238	06/30/2022	FIRE TRUCK PROBE	145.53
Check	07/14/2022	6151 Accounts Payable	CAL-WEST LIGHTING & SIGNAL MAINTENANCE	24,441.73
	Invoice	Date	Description	Amount
	220506	05/31/2022	TRAFFICE SIGNAL MAINTENANCE (MAY 2022)	7,191.73
	220609	06/30/2022	TRAFFIC SIGNAL INVENTORY	17,250.00
Check	07/14/2022	6152 Accounts Payable	CELTIC DOG KENNELS, LLC	1,035.00
	Invoice	Date	Description	Amount
	016-2022	06/01/2022	K9 PROGRAM KENNEL SERVICES TIO 05/30-06/01/22	90.00
	017-2022	06/14/2022	K9 PROGRAM KENNEL SERVICES ECHO 05/25-06/14/22	945.00
Check	07/14/2022	6153 Accounts Payable	CITY OF FREMONT	13,205.00
	Invoice	Date	Description	Amount
	324421	05/31/2022	SHELTER OPERATING EXPS JUNE 2022	13,205.00
Check	07/14/2022	6154 Accounts Payable	CLASSIC GRAPHICS	892.53
	Invoice	Date	Description	Amount
	46571	06/20/2022	LOGO INSTALL	892.53
Check	07/14/2022	6155 Accounts Payable	COMCAST	26.70
	Invoice	Date	Description	Amount
	0628-072722YARD	06/23/2022	CABLE SERVICE 06/28/2022-07/27/2022	26.70
Check	07/14/2022	6156 Accounts Payable	COUNTY OF ALAMEDA	50.00
	Invoice	Date	Description	Amount
	PRJ1280	07/07/2022	NOTICE OF EXEMPTION HANDLING FEE - 1280	50.00
Check	07/14/2022	6157 Accounts Payable	CYNTHIA M KIRBY	350.00
	Invoice	Date	Description	Amount
	2206015	06/01/2022	POLYGRAPH TESTING SERVICES	350.00
Check	07/14/2022	6158 Accounts Payable	DELTA DENTAL OF CALIFORNIA	17,955.29
	Invoice	Date	Description	Amount
	BE005017839	07/07/2022	DELTA DENTAL PPO - JULY PREMIUMS	17,955.29
Check	07/14/2022	6159 Accounts Payable	DELTA DENTAL INSURANCE COMPANY	113.73
	Invoice	Date	Description	Amount
	BE005016013	07/07/2022	DELTA CARE - JULY PREMIUMS	113.73
Check	07/14/2022	6160 Accounts Payable	DIVISION OF THE STATE ARCHITECT	88.40
	Invoice	Date	Description	Amount
	0401-063022	06/30/2022	CA STATE CASP FEES (AB1379)	88.40
Check	07/14/2022	6161 Accounts Payable	DOOLEY ENTERPRISES, INC.	38,238.48
	Invoice	Date	Description	Amount

	63270	06/20/2022	AMMUNITION 06/20/22	38,238.48
Check	07/14/2022	6162 Accounts Payable	FIDELITY SECURITY LIFE INSURANCE/EYEMED	2,293.78
	Invoice	Date	Description	Amount
	165320893	07/07/2022	EYE MED - COBRA (JULY PREMIUMS)	59.19
	165330894	07/07/2022	EYE MED - JULY PREMIUMS	2,234.59
Check	07/14/2022	6163 Accounts Payable	FITGUARD, INC	304.77
	Invoice	Date	Description	Amount
	187283	05/25/2022	FITNESS EQUIP MAINTENANCE	304.77
Check	07/14/2022	6164 Accounts Payable	FOLGERGRAPHICS, INC	2,231.61
	Invoice	Date	Description	Amount
	132726	06/21/2022	PRINTING SERVICES	2,231.61
Check	07/14/2022	6165 Accounts Payable	FRANK BONETTI PLUMBING INC	4,381.14
	Invoice	Date	Description	Amount
	71125	06/21/2022	2ND CHANCE PLUMBING REPAIR	3,220.00
	71113	06/21/2022	FIRE STATION 1-SHOWER REPAIR	170.00
	71178	06/22/2022	PLUMBING REPAIR	991.14
Check	07/14/2022	6166 Accounts Payable	GHA TECHNOLOGIES, INC.	8,297.18
	Invoice	Date	Description	Amount
	101224510	06/21/2022	AUTOMOX	8,297.18
Check	07/14/2022	6167 Accounts Payable	GRAINGER	137.15
	Invoice	Date	Description	Amount
	9335409463	06/06/2022	BLDG SUPPLIES	115.51
	9336989463	06/07/2022	SILLIMAN PARTS	21.64
Check	07/14/2022	6168 Accounts Payable	HAWK ANALYTICS, INC	4,995.00
	Invoice	Date	Description	Amount
	INV25252	03/30/2022	CELLHAWK SUBSCRIPTION 07/01/22-06/30/23	4,995.00
Check	07/14/2022	6169 Accounts Payable	HILLYARD / SAN FRANCISCO	666.23
	Invoice	Date	Description	Amount
	604743594	05/17/2022	TRASH BAGS	666.23
Check	07/14/2022	6170 Accounts Payable	LORENZO HOULE	350.00
	Invoice	Date	Description	Amount
	070222EXP	07/02/2022	BOOT REIMBURSEMENT 07/02/2022	350.00
Check	07/14/2022	6171 Accounts Payable	J. HIGGINS, LTD.	5,880.15
	Invoice	Date	Description	Amount
	180799	06/21/2022	HONOR GUARD UNIFORMS	5,880.15
Check	07/14/2022	6172 Accounts Payable	THE RROOAR LLC	905.50
	Invoice	Date	Description	Amount
	0620-062422	06/24/2022	PAYMENT FOR CODING & ROBOTICS 06/20-06/24/22	905.50
Check	07/14/2022	6173 Accounts Payable	LINCOLN AQUATICS	958.64
	Invoice	Date	Description	Amount

	46543833	06/06/2022	COLORQ PH RED INDICATOR	117.00
	SL035710	06/10/2022	GAL REFILLABLE SANI - CHLOR	518.64
	NV143693	06/06/2022	DPD 1A FREE CHLORINE REAGENT	323.00
Check	07/14/2022	6174 Accounts Payable	MAD SCIENCE OF THE BAY AREA	4,689.60
	Invoice	Date	Description	Amount
	0613-061722	06/30/2022	PAYMENT FOR YOUNG INVENTORS 06/13-06/17/22	1,179.60
	0620-062422A	06/30/2022	PAYMENT FOR FIZZ-ICAL 06/20-06/24/22	2,535.00
	0627-070122	06/30/2022	PAYMENT FOR JET CADETS 06/27-07/01/22	975.00
Check	07/14/2022	6175 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	38,075.67
	Invoice	Date	Description	Amount
	194986	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	221.17
	194992	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	13,713.20
	194993	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	589.00
	194994	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	4,308.60
	194995	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	5,733.00
	194996	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	9,956.30
	194997	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	919.40
	194998	06/20/2022	LEGAL SERVICES THROUGH MAY 31, 2022	2,635.00
Check	07/14/2022	6176 Accounts Payable	MICHAEL STEVEN YORKS	450.00
	Invoice	Date	Description	Amount
	2022-09	06/25/2022	BACKGROUND INVESTIGATIONS 06/02-06/28/22	450.00
Check	07/14/2022	6177 Accounts Payable	MIKE YORKS INVESTIGATIONS	4,200.00
	Invoice	Date	Description	Amount
	2022-10	06/19/2022	BACKGROUND INVESTIGATIONS 06/16-07/10/22	4,200.00
Check	07/14/2022	6178 Accounts Payable	AVENU	10,000.00
	Invoice	Date	Description	Amount
	INV06-014342	06/20/2022	UUT AUDIT & ANALYSIS - FIXED FEE APR-JUN '22	10,000.00
Check	07/14/2022	6179 Accounts Payable	OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA	625.00
	Invoice	Date	Description	Amount
	75743791	06/17/2022	PRE-EMPLOYMENT/ DOT PHYSICALS 06/17-06/21	625.00
Check	07/14/2022	6180 Accounts Payable	PACIFIC GAS & ELECTRIC	4,064.65
	Invoice	Date	Description	Amount
	9045-063022	06/30/2022	ELELCTRICITY CHARGES FOR STREET LIGHTS (5/26/22-6/24/22)	185.39
	7460-061522	06/15/2022	ELELCTRICITY CHARGES FOR STREET LIGHTS (4/28/22-5/26/22)	2,685.63
	2305-070122	07/01/2022	ELELCTRICITY CHARGES FOR STREET LIGHTS (5/26/22-6/26/22)	121.03
	0870-070722	07/07/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (6/1/22-6/29/22)	73.39
	1859-070722	07/07/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (5/31/22-6/28/22)	822.22
	3926-070722	07/07/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (5/31/22-6/28/22)	95.11
	0552-070522	07/05/2022	ELECTRICITY CHARGES FOR STREET/TRAFFIC LIGHTS (5/27/22-6/27/22)	81.88
Check	07/14/2022	6181 Accounts Payable	GUSTAVO PEREZ	73.95
	Invoice	Date	Description	Amount
	062722EXP	06/27/2022	BOOT REIMBURSEMENT 06/27/22	73.95

Check	07/14/2022	6182 Accounts Payable	Lighthouse Services, LLC	2,100.00
	Invoice	Date	Description	Amount
	5887	06/16/2022	COMPLIANCE HOTLINE ANNUAL FEE	2,100.00
Check	07/14/2022	6183 Accounts Payable	PROVIDENT LIFE & ACCIDENT INSURANCE	261.24
	Invoice	Date	Description	Amount
	JUNE PREMIUMS	07/07/2022	UNUM - UNUM INSURANCE*	261.24
Check	07/14/2022	6184 Accounts Payable	ROBERT HALF	4,830.00
	Invoice	Date	Description	Amount
	60257407	06/28/2022	TEMPORARY STAFFING GARY CAIN - 6/24/22	2,520.00
	60257408	06/28/2022	TEMPORARY STAFFING KHADAR ALIKHAN - 6/2422	2,310.00
Check	07/14/2022	6185 Accounts Payable	STANDARD INSURANCE COMPANY	1,422.58
	Invoice	Date	Description	Amount
	JULY PREMIUMS	07/07/2022	STANDARD - JULY PREMIUMS	1,422.58
Check	07/14/2022	6186 Accounts Payable	SURF TO SNOW ENVIRONMENTAL RESOURCE	6,780.00
	Invoice	Date	Description	Amount
	12108R	05/31/2022	ON CALL STORMWATER INSPECTIONS (5/1/22-5/31/22)	6,780.00
Check	07/14/2022	6187 Accounts Payable	SYSCO - SAN FRANCISCO	871.46
	Invoice	Date	Description	Amount
	550057908	06/20/2022	CAMP SNACKS	871.46
Check	07/14/2022	6188 Accounts Payable	T-MOBILE	138.88
	Invoice	Date	Description	Amount
	966241989-062122	06/21/2022	IPHONE SVC 05/21-06/20/22	138.88
Check	07/14/2022	6189 Accounts Payable	JENNIFER TRAN	56.51
	Invoice	Date	Description	Amount
	0606-063022EXP	06/30/2022	MILEAGE REIMBURSEMENT JUNE 2022	56.51
Check	07/14/2022	6190 Accounts Payable	TYLER TECHNOLOGIES, INC.	163.00
	Invoice	Date	Description	Amount
	045-382457	06/08/2022	TIMEKEEPING AND ADVANCE SCHEDULING IMPLEMENTATION 05/31/22	163.00
Check	07/14/2022	6191 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY	6,572.00
	Invoice	Date	Description	Amount
	502796	06/23/2022	JANITORIAL - LIBRARY ADDITIONAL SERVICES JUNE 2022	6,572.00
Check	07/14/2022	6192 Accounts Payable	U.S. BANK CORPORATE PAYMENT SYSTEMS	29,776.21
	Invoice	Date	Description	Amount
	062222STMT	06/22/2022	CC PAYMENT 06/22/22	29,776.21
Check	07/14/2022	6193 Accounts Payable	U.S. BANK	1,180.00
	Invoice	Date	Description	Amount
	6566995	06/24/2022	LOIB AID #26 REASSESSMENT & REFUND OF 2013	1,180.00

Check	07/14/2022	6194 Accounts Payable	VERIZON WIRELESS	15,723.84

Invoice	Date	Description	Amount
9909093222	06/18/2022	CELL/TABLET/WIFI SERVICE - 05/19-06/18/22	12,354.12
9909093223	06/18/2022	IPHONE SVC 05/19-06/18/22	3,369.72

Check	07/14/2022	6195 Accounts Payable	VERIZON BUSINESS SERVICES	577.37

Invoice	Date	Description	Amount
72253276	06/20/2022	CELL SVC FOR MDC'S MAY 2022	577.37

Check	07/14/2022	6196 Accounts Payable	WASHINGTON TOWNSHIP MEDICAL FOUNDATION	40.00

Invoice	Date	Description	Amount
7830	06/01/2022	TB INTRADERMAL TESTING FEES	40.00

AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 56	$359,899.81
Checks:	56	$359,899.81	

STAFF REPORT

Item D. 2.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Sheila Harrington, City Clerk
SUBJECT	Approval of July 14, 2022, minutes

Attachments

Minutes

Minutes

Thursday, July 14, 2022

A. ROLL CALL

Mayor Nagy called the meeting to order at 7:00 p.m. Present were Council Members Collazo, Bucci, and Vice Mayor Hannon. Council Member Freitas was noted absent.

B. PRESENTATIONS

1. Introduction of employees

Mayor Nagy introduced Recreation Coordinator Becca Hicks and Junior Engineer Alysia Reyes.

2. Proclamation for the Portuguese Fraternal Society of America Council No. 16 Holy Ghost Festival

Mayor Nagy presented the proclamation to Roger Pereira, Diane Pereira, and Paul Mendes.

3. Commendation to Public Works Director Fajeau

Mayor Nagy presented a commendation to Public Works Director Fajeau in honor of his 25th anniversary of service to the city of Newark.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Council Member Bucci moved, Vice Mayor Hannon seconded, to approve Consent Calendar items D.1 to D.3, that the resolutions be numbered consecutively, and that reading of the titles suffice for adoption. The motion passed, 4 AYES, 1 ABSENT.

1. Approval of Audited Demands

2. Approval of June 23, 2022, special and regular meeting 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 July 14 pursuant to AB 361
Resolution No. 11385

E. PUBLIC HEARINGS

1. Hearing to consider property owners' objections and adopt a resolution confirming the Superintendent of Streets' Report concerning weed abatement assessments
Resolution No. 11386

City Manager Benoun gave the staff report recommending approval.

Mayor Nagy opened the public hearing at 7:18 p.m.

No one requested to speak.

Mayor Nagy closed the public hearing at 7:19 p.m.

Vice Mayor Hannon requested that weed abatement exhibits include the property owner name. He also requested that staff review the abatement process to ensure that staff time is appropriately reimbursed. City Manager Benoun stated that staff would complete a legal review of the questions.

Council Member Bucci moved, Vice Mayor Hannon seconded to adopt a resolution confirming the report of the Superintendent of Streets concerning Weed Abatement assessments. The motion passed, 4 AYES, 1 ABSENT.

F. OTHER BUSINESS

1. Presentation of City of Newark Quiet Zone Study

Assistant City Engineer Imai and consultants Michael Allen (via Zoom) and Thomas Messer gave the presentation. They reviewed the improvements needed for the recommended Quiet Zones located in the Coast Subdivision between Jarvis Avenue and Central Avenue, Mowry Avenue, and the Niles Subdivision between Sycamore Street and Cedar Boulevard. They also discussed a competitive grant funding opportunity.

The City Council discussed the quiet zone locations, the quiet zone risk index versus the current risk index, coordination with the railroad, and the potential grant funding.

Namit Saksena spoke in support of Quiet Zones (documents on file with City Clerk). He stated that increasing the safety of the rail crossings would improve the quality of life for residents and increase property values. He stated that his 2018 online petition for Quiet Zones continues to gather supportive signatures.

This item was informational only.

2. Introduction of an Ordinance amending Chapter 2.09 of the Newark Municipal Code ("City Councilmembers-Salaries") to increase the salaries of City Councilmembers and Mayor by ten percent (10%)
Introduction of Ordinance

Assistant City Manager Hovorka provided an outline of the salary options that the City Council has considered to date. The ten percent increase suggested at the June 23, 2022 meeting was presented for Council consideration.

Council Member Bucci stated that he would vote no. He stated that when he requested to table the automated license plate readers for further study, due to privacy concerns, there was no support. He took issue with this item being tabled and could not support a 10% increase.

Mayor Nagy stated that the cameras for the license plate readers and the city council compensation were two separate issues.

Vice Mayor Hannon stated that there was minimal cost to the City and they needed to compensate people who serve. He offered to donate the increase to a community nonprofit.

Council Member Collazo stated that she does not plan to run again and wants someone who replaces her to be appropriately compensated.

Vice Mayor Hannon moved, Council Member Collazo seconded to by motion introduce an ordinance amending Chapter 2.09 , City Council Members compensation, of the Newark Municipal Code to increase the salaries of City Council Members and Mayor by ten percent (10%). The motion passed, 3 AYES, 1 NO (Bucci), 1 ABSENT (Freitas).

G. CITY COUNCIL MATTERS

Mayor Nagy announced that he would not seek reelection for Mayor and that the nomination period would open on Monday.

Council Member Collazo announced various Alameda County library programs. She shared the remaining summer concerts at Shirley Sisk Grove. Shop Newark.

Council Member Bucci stated that he was disappointed that Mayor Nagy was not seeking reelection and thanked him for his service. He congratulated City Manager Benoun who managed the Newark Little League All Stars, the team is moving on to the sectionals.

Vice Mayor Hannon also commended City Manager Benoun. He praised his wife on their wedding anniversary. He stated that Newark is a welcoming community and has no tolerance for racism or hate. He thanked the Mayor for his service to the community.

H. CLOSED SESSION

I. ADJOURNMENT

Mayor Nagy adjourned the meeting at 8:18 p.m.

STAFF REPORT

Item D. 3.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Kristopher Kokotaylo, City Attorney
SUBJECT	Adopt a Resolution confirming the continued existence of a local emergency due to the COVID-19 Pandemic.

RECOMMENDATION

Staff recommends that the City Council, by resolution, confirm the continued existence of a local emergency due to the COVID-19 Pandemic.

EXECUTIVE SUMMARY

The City Council ratified a proclamation of local emergency on March 17, 2020, as a result of the COVID-19 Pandemic. The local emergency was confirmed by the Council in accordance with State law on the following dates: May 14, 2020, July 9, 2020, September 2, 2020, October 22, 2020, December 10, 2020, January 28, 2021, March 25, 2021, May 13, 2021, June 24, 2021, July 22, 2021, September 9, 2021, October 28, 2021, December 9, 2021, January 27, 2022, March 24, 2022, May 12, 2022, and June 23, 2022.

City staff recommends that the City Council confirm the continued existence of the local emergency in order to mobilize resources, seek reimbursement of related expenditures, and provide immunity to governmental officials for certain acts. Extending the local emergency would also continue many of the City's temporary policies that were adopted in response to the pandemic, including the eviction moratorium, changes to the zoning code to allow outdoor business activities, and the 15% cap on fees charged by food delivery providers to our local restaurants.

BACKGROUND

On March 16, 2020, the City Manager, acting as Director of Emergency Services, proclaimed a local emergency pursuant to California Government Code Section 8630 and Newark Municipal Code Chapter 2.16. The emergency declaration was based on conditions of extreme peril to the safety of persons and property within the City as a consequence of the global spread of the novel coronavirus 2019 ("COVID-19"), including confirmed cases in Alameda County. On March 17, 2020, the City Council adopted a resolution ratifying the Proclamation of Local Emergency issued by the Director of Emergency Services.

Pursuant to State law (see Government Code Section 8630), any City Council that

declares a local emergency must confirm the existence of the local emergency every sixty (60) days until the local emergency ceases. Accordingly, the City Council adopted resolutions confirming the continued existence of the local emergency due to the COVID-19 Pandemic on the following dates: May 14, 2020, July 9, 2020, September 2, 2020, October 22, 2020, December 10, 2020, January 28, 2021, March 25, 2021, May 13, 2021, June 24, 2021, July 22, 2021, September 9, 2021, October 28, 2021, December 9, 2021, January 27, 2022, March 24, 2022, May 12, 2022, and June 23, 2022.

Various governmental agencies have declared an emergency as a result of the pandemic, including the President of the United States and the Governor of the State of California. Many cities in California have likewise declared a local emergency and have continued to confirm the existence of the local emergency within the statutorily required 60 day time period.

DISCUSSION/ANALYSIS

The conditions that prompted the original declaration of a local emergency continue to exist and health officials are still learning more information regarding the nature of COVID-19 and how it is transmitted. Community transmission of COVID-19 continues to occur, and the number of total cases within Alameda County continues to rise. Most recently, the “Omicron” variant, which is more easily transmitted, has led to an increase in COVID-19 cases within Alameda County. The public health and safety concerns for persons and property within the City as a consequence of the global spread of COVID-19 continue to exist.

At the time of this writing (July 15, 2022) there have been 321,162 confirmed cases within the County, with 10,120 of those cases being Newark residents. To date, there have been 1,933 deaths in our County that have been caused by COVID-19. Declaring a state of emergency provides local governments with the power necessary to coordinate and implement plans aimed at protecting the community and property during a disaster. For example, a declaration of emergency is often necessary to secure mutual disaster aid from local, state, and federal agencies. This will also permit the Director of Emergency Services to promulgate orders and regulations necessary for the protection of life and property and ensures that the City and its officials and employees are immune from liability when exercising their official duties during this emergency.

Further, many of the City’s temporary policies that were adopted in response to the pandemic in order to support the local economy are tied to the expiration of the local emergency. This includes the eviction moratorium, the temporary zoning code changes to allow certain business to operate outdoors, and the 15% cap of fees charged by third party food delivery service providers to our local restaurants. If the local emergency is not extended, then these policies would automatically be rescinded.

If adopted, the declaration of emergency will remain in place until the emergency conditions have ended. However, the City Council will be required to continue to review the declaration at least every 60 days as indicated above.

FISCAL IMPACT

There is no direct fiscal impact associated with adopting the accompanying resolution that extends the local emergency. However, the City will consider all options available to seek reimbursement for expenses through appropriate authorities.

REVIEW AND APPROVAL

Prepared by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Continued Emergency Resolution

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK CONFIRMING THE CONTINUED EXISTENCE OF A LOCAL EMERGENCY DUE TO COVID-19

WHEREAS, Government Code Section 8630 and Newark Municipal Code Section 2.16.060 authorize the Director of Emergency Services to proclaim a local emergency when conditions of disaster or extreme peril to the safety of persons and property within the territorial limits of a city exist if the City Council is not in session and provides that the City Council shall ratify the proclamation within seven days thereafter; and

WHEREAS, in accordance with Government Code Section 8630 and Newark Municipal Code Section 2.16.060, the Director of Emergency Services proclaimed the existence of a local emergency caused by the Novel Coronavirus (COVID-19), a respiratory disease first identified in China that may result in serious illness or death that is easily transmissible from person to person, on March 16, 2020; and

WHEREAS, on March 17, 2020, the City Council ratified and confirmed the proclamation of the existence of a local emergency issued by the Director of Emergency Services; and

WHEREAS, on May 14, 2020, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on July 9, 2020, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on September 2, 2020, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on October 22, 2020, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on December 10, 2020, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on January 28, 2021, the City Council adopted a resolution confirming the continued existence of the local emergency; and

WHEREAS, on March 25, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on May 13, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on June 24, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on July 22, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on September 9, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on October 28, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on December 9, 2021, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on January 27, 2022, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on March 24, 2022, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on May 12, 2022, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, on June 23, 2022, the City Council adopted a Resolution confirming the continued existence of the local emergency; and

WHEREAS, pursuant to Government Code Section 8630 the City Council must periodically review the need for continuing the local emergency; and

WHEREAS, pursuant to Government Code Section 8630, the City Council must review the need for continuing the local emergency at least every sixty (60) days; and

WHEREAS, the conditions that prompted the original declaration of a local emergency continue to exist; and

WHEREAS, the recitals contained in Resolution No. 11031 adopted by the City Council on March 17, 2020, the recitals contained in Resolution No. 11048 adopted by the City Council on May 14, 2020, the recitals contained in Resolution No. 11100 adopted by the City Council on July 9, 2020, the recitals contained in Resolution 1111 adopted by the City Council on September 2, 2020, the recitals contained in Resolution No. 11127 adopted by the City Council on October 22, 2020, the recitals contained in Resolution No. 11145 adopted by the City Council on December 10, 2020, the recitals contained in Resolution No. 11166 adopted by the City Council on January

28, 2021, the recitals contained in Resolution No. 11177 adopted by the City Council on March 25, 2021, the recitals contained in Resolution No. 11197 adopted by the City Council on May 13, 2021, the recitals contained in Resolution No. 11219 adopted by the City Council on June 24, 2021, the recitals contained in Resolution No. 11244 adopted by the City Council on July 22, 2021, the recitals contained in Resolution No. 11252 adopted by the City Council on September 9, 2021, the recitals contained in Resolution No. 11265 adopted by the City Council on October 28, 2021, the recitals contained in Resolution No. 11281 adopted by the City Council on December 9, 2021, the recitals contained in Resolution No. 11305 adopted by the City Council on January 27, 2022, the recitals contained in Resolution No. 11325 adopted by the City Council on March 24, 2022, and the recitals contained in Resolution No. 11343 adopted by the City Council on May 12, 2022 are incorporated into this Resolution as if stated herein and the recitals contained in Resolution No. 11367 adopted by the City Council on June 23, 2022 are incorporated into this Resolution as if stated herein; and

WHEREAS, while there has been progress in mitigating the spread of COVID-19, community transmission of COVID-19 has continued to occur and health officials are still learning more information regarding the nature of COVID-19 and how it is transmitted. New variants of COVID-19 that are more easily transmissible, including the "Delta" and "Omicron" variants, have become more prevalent and present new risks; and

WHEREAS, as of December 20, 2021, the Omicron variant has been detected in most states and is rapidly increasing the proportion of COVID-19 cases it causes; and

WHEREAS, the number of cases within Alameda County has continued to rise, and there are now 321,162 confirmed cases of COVID-19 within the County, and 1,933 deaths as of July 15, 2022; and

WHEREAS, the public health and safety concerns for persons and property within the City as a consequence of the global spread of COVID-19 continue to exist; and

WHEREAS, the health, safety, and welfare of Newark residents, businesses, visitors, and staff is of utmost importance to the City and additional future measures may be needed to protect the community; and

WHEREAS, the City may require additional assistance in the future, and a formal declaration of emergency allows the City to access resources in a timely manner in a timely fashion; and

WHEREAS, the City Council finds that conditions of extreme peril to the safety of persons and property within the territorial limits of the City related to COVID-19 pandemic continue in existence; and

WHEREAS, the City Council finds that extraordinary measures are required to protect the public health, safety, and of persons and property within the City that are or are likely to be beyond the control or capability of the services, personnel, equipment, and facilities of the City; and

WHEREAS, the City Council desires to confirm the continued existence of a local emergency within the City of Newark due to COVID-19.

NOW, THEREFORE, BE IT RESOLVED that the Council of the City of Newark hereby declares as follows:

1. The local emergency declared by Resolution No. 11031 due to the COVID-19 pandemic continues to exist within the City of Newark.

2. During the existence of the declared local emergency, the powers, functions, and duties of the City Manager, acting as Director of Emergency Services, and the emergency organization of this City shall be those prescribed by State law and by ordinances and resolutions of the City of Newark.

3. The declaration of local emergency shall remain in effect until such time that the City Council determines that the emergency conditions have been abated.

4. City staff is directed to place an item on the agenda for review at least every sixty (60) days from the effective date of this Resolution to determine the need for continuing the local emergency pursuant to Government Code Section 8630.

STAFF REPORT

Item D. 4.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Lenka Hovorka, Assistant City Manager
SUBJECT	Adopt a resolution authorizing and approving the City Manager to execute a contractual services agreement with KBA Document Solutions for copier/printer/scanner/fax equipment lease, maintenance and other support services

RECOMMENDATION

Staff recommends that the City Council, by resolution, authorize and approve the City Manager to execute a contractual services agreement with KBA Document Solutions for copier/printer/scanner/fax equipment lease, maintenance and other support services for a term of five years.

EXECUTIVE SUMMARY

The City currently receives its copier/printer/scanner/fax equipment lease, maintenance and other support services through an agreement with KBA Docuysys, also known as KBA Document Solutions. This agreement will soon expire, and City staff recommends that the City continue using KBA Document Solutions for copier/printer/scanner/fax equipment lease, maintenance and other support services, as KBA Docusys has provided excellent service, continues to offer competitive pricing, and now offers propriety technology to improve document security and user access.

BACKGROUND

On April 17, 2019, the City issued a Request for Proposals to replace the existing equipment lease for citywide copiers/scanners/printers. The proposals were evaluated by a team of City staff with consideration for cost, overall image quality, print quality and speed, the comprehensiveness of services provided, the completeness of proposals, and other factors. Three proposals were received. KBA Docusys was selected as it offered the lowest overall cost and as an industry leader, it regularly ranks among the top performers for print quality, speed, and excellent service. On July 11, 2019, City Council approved the lease and maintenance agreements with KBA Docusys (Agreement No. C19038), which included a three-year term and an option to extend beyond the three-year term.

DISCUSSION/ANALYSIS

For the past three years, KBA Docusys had provided the City with excellent service under the current agreements. In addition to the three-year term, the agreements offered an option to extend the terms annually for up to four years. The City is interested in extending the agreement, however the current lease and maintenance agreements do not include the current City contract language. Therefore, it was recommended that rather than extend the current maintenance and lease agreements, the City should enter into a new agreement that includes the City's standard language.

FISCAL IMPACT

Over a period of five years, the contract amendment is anticipated to cost $390,000, including all equipments leases, maintenance agreements, enhanced technology, support services, and supplies. Leasing costs are set at $3,921.08 per month. Costs for service, supplies/consumables, parts, labor and toner will vary per machine and use, as well as additional costs that may be incurred due to a larger amount of copies.

REVIEW AND APPROVAL

Prepared by – Angela Montez, Information Technology Technician
Reviewed by – Kristopher J. Kokotaylo, Interim City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

KBA Resolution

Exhibit A - KBA Document Systems Agreement v1

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT AND PURCHASE ORDER WITH KBA DOCUMENT SOLUTIONS, IN THE AMOUNT NOT TO EXCEED $390,000

WHEREAS, the City has used KBA Document Solutions as the provider of copier/printer/scanner/fax equipment leases, maintenance and support services since November 16, 2017, and most recently entered into an agreement approved by City Council on July 11, 2019; and

WHEREAS, the current lease and maintenance agreements are due to expire August 31, 2022 and allow for a multi-year extension; and

WHEREAS, KBA Document Solutions offers cost-effective copier/printer/scanner/fax equipment leases, maintenance and support services; and

WHEREAS, the current lease and maintenance agreements do not include the City's current standard contract language and therefore a new agreement was created and is attached herein as Exhibit A; and

WHEREAS, KBA Document Solutions submitted a quote for copier/printer/scanner/fax equipment leases, maintenance and support services included in Exhibit A; and

WHEREAS, monthly payments of $3,921.08 for copier/printer/scanner/fax machine leasing costs and additional funds are included in the Information Technology Department budget for copier/printer/scanner/fax maintenance and support services.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby authorize the City Manager to execute an agreement and purchase order with KBA Document Solutions in the amount not to exceed $390,000.00 for five years of copier/printer/scanner/fax equipment leases, maintenance and support services.

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CONTRACTUAL SERVICES AGREEMENT
CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 28 day of JULY, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and KBA DOCUMENT SOLUTIONS, an office equipment supplier ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS City requested proposals in 2019 to perform the services generally including: **CITYWIDE COPIERS/SCANNERS/PRINTERS/FAX LEASING, MAINTENANCE, AND SUPPLIES**.

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.

WHEREAS, Consultant had agreed to and has been performing similar services for City since November 16, 2017, and most recently entered into an agreement approved by City Council on July 11, 2019, the term of which will expire on August 31, 2022.

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 Three Hundred Ninety Thousand and No/100 Dollars ($390,000.00) 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 mailed and emailed to:

City of Newark
Attn: Angela Montez
37101 Newark Blvd.
Newark, CA 94560
Angela.Montez@Newark.org

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.

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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 the Maintenance Agreements 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. The lease termination terms will be in accordance with the Non-Appropriation Rider and lease.

19. CONTRACT ADMINISTRATION. This Agreement shall be administered by **LENKA HOVORKA** 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:

KBA Document Solutions	**CITY OF NEWARK**
ANGELA AGUILAR CARMEN VALENZUELA	LENKA HOVORKA
Consultant	**Administrator**
Address: KBA Document Solutions 32900 Alvarado-Niles Rd. #10 Union City, CA 94587	City of Newark Attn: Lenka Hovorka 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 sub consult, 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.

K

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 _____

KBA Document Solutions

DocuSigned by:
By Stefan Brandes
5389249B2979425...
Consultant

Date 7/8/2022

Stefan Brandes Vice President, Sales
Printed Name

Attest:

_____
City Clerk

Date _____

Approved as to form:

_____
City Attorney

Date _____

STAFF REPORT
Item D. 5.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Diana Cangco, Senior Civil Engineer
SUBJECT	Adopt a Resolution Approving Contractual Services Agreements with Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc. for On-Call Civil Engineering Development Plan Check Review Services

RECOMMENDATION

Staff recommends that the City Council approve Contractual Services Agreements with Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc. for on-call Civil Engineering Development Plan Check Review Services.

EXECUTIVE SUMMARY

The current Contractual Services Agreements for on-call Civil Engineering Development Plan Check Review Services expired on June 30, 2022. Based on current and projected development activity, on-call Civil Engineering Development Plan Check Review Services will be required for the foreseeable future. Engineering staff is recommending the approval of Contractual Services Agreements for on-call Civil Engineering Development Plan Check Review Services with three (3) consultants, Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc., with not-to-exceed amounts of $237,000, $100,000, and $100,000, respectively.

BACKGROUND

The Public Works Engineering Division provides civil engineering development plan reviews for private land development planning, engineering, and building permit applications. The civil engineering development plan review services cover a wide range of activities that include, but are not limited to, review of planning entitlement applications such as Tentative Maps, Site Development Reviews, and Conditional Use Permits; development of Conditions of Approval; and review of parcel maps, final maps, tract improvement plans, grading plans, plot plans, and building permit plans for conformance with published City, State, and Federal regulations and engineering standards of practice.

The current and projected service level demands for development plan review remain high, requiring staff augmentation through on-call service contracts. The Engineering Division anticipates submittal of improvement plans, final maps, grading plans, and building permit applications for FMC Willow at Bayside Newark (formerly Dumbarton Transit Oriented Development), which consists of a 22.1-acre site for 279 multifamily

units with a mixed-use area, affordable units, and a future transit station; and Cedar Subdivision, a 5.5-acre site for 130 single family residential units soon after planning entitlements are approved. It is also anticipated that subsequent subdivision phases at NewPark Place will be submitted in the next few years.

In addition to larger development sites, Engineering Division staff also anticipates providing development plan check reviews for several small in-fill subdivision projects and other site development applications.

DISCUSSION/ANALYSIS

The Engineering Division is responding to the continued high service demand for development plan reviews by utilizing on-call consultants. In accordance with the City's Purchasing Rules and Regulations, staff prepared and initiated an RFQ for on-call Civil Engineering Development Plan Check Review Services. Six (6) Statement of Qualifications (SOQ) were received and evaluated and ranked based on completeness and responsiveness to the RFQ. Engineering staff selected three (3) consultants and recommends the approval of Contractual Services Agreements with Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc., with not-to-exceed amounts of $237,000, $100,000 and $100,000, respectively.

Each of the Contractual Services Agreements will be for a two-year term, beginning on July 29, 2022, and expiring on June 30, 2024, renewable for two (2) additional one (1) year terms upon mutual consent of the City and selected consultants, subject to available funding.

FISCAL IMPACT

Under the terms of the agreements, the selected consultants would provide the on-call Civil Engineering Development Plan Check Review Services based upon the adopted compensation rates. The 2022-2024 Biennial Budget includes sufficient funds in the Engineering Division operating budget to fund the requested services for the two-year budget cycle.

REVIEW AND APPROVAL

Prepared by – Diana Cangco, Senior Civil Engineer
Reviewed by – Jayson Imai, Assistant City Engineer
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – David J. Benoun, City Manager

Attachments

Resolution Pakpour etc

Contractual Services Agreement Pakpour Consulting Group

Contractual Services Agreement Ruggeri-Jensen-Azar

Contractual Services Agreement SNG & Associates

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING CONTRACTUAL SERVICES AGREEMENTS WITH PAKPOUR CONSULTING GROUP, RUGGERI-JENSEN-AZAR, AND SNG & ASSOCIATES, INC. FOR ON-CALL CIVIL ENGINEERING DEVELOPMENT PLAN CHECK REVIEW SERVICES

WHEREAS, the City issued Requests for Qualifications ("RFQ") for Civil Engineering Development Plan Check Review Services; and

WHEREAS, a total of six statements of qualifications were received and evaluated by staff based on completeness and responsiveness to the RFQ; and

WHEREAS, based on staff's evaluation, Pakpour Consulting Group, Ruggeri-Jensen-Azar, and SNG & Associates, Inc. were determined to be the most qualified firms to provide the Civil Engineering Development Plan Check Review Services; and

WHEREAS, the costs for said services will be offset by revenues from residential subdivision fees and other development fees associated with the projects for which said services will be provided.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves and authorizes the City Manager to execute agreements with Pakpour Consulting Group in an amount not to exceed $237,000, Ruggeri-Jensen-Azar in an amount not to exceed $100,000, and SNG & Associates, Inc. in an amount not to exceed $100,000, in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the Public Works Director is hereby authorized to renew each aforementioned Contractual Services Agreement for up to two additional one-year terms, at or below the identified not to exceed amounts for each additional year, upon mutual consent of the City and the selected consultant, subject to available funding.

BE IT FURTHER RESOLVED that the City Manager is authorized to take all actions necessary to effectuate the intent of this Resolution.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 28TH day of JULY, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **PAKPOUR CONSULTING GROUP**, a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform on-call civil engineering development plan check review services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; and, after negotiations, Consultant agreed to perform the "Services" more particularly described in Exhibit "A" ("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 the Proposal, City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Two Hundred Thirty-Seven Thousand Dollars ($237,000) for fiscal year 2022-2023 and for each subsequent fiscal year as may be allocated at, above or below this amount for the specified fiscal year, unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses by City, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

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

Invoices shall be sent to:

City of Newark
Public Works Department
37101 Newark Blvd.
Newark, CA 94560

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

C. Payment. Upon receipt of 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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising inquiry; 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-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:	**$2,000,000** per occurrence or claim; **$4,000,000** aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. 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.

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 12, except for Errors and Omissions Liability, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. 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 and shall not be canceled during the term of this Agreement without notice to the 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 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 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire on June 30, 2024. At the end of the term, the City may

renew this Agreement for two (2) one-year terms as authorized by the by the Public Works Director, City Manager, or City Council.

B. Notwithstanding the provisions of paragraph 16 section A above, City may terminate this Agreement at any time and without cause upon written notification to the Consultant. Consultant may cancel this Agreement upon thirty (30) day's 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.

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

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

	CITY OF NEWARK
JOUBIN PAKPOUR	PUBLIC WORKS DIRECTOR
President	**Administrator**
Address: Pakpour Consulting Group 6601 Owens Drive Suite 230 Pleasanton, CA 94588	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
David Benoun, City Manager

Date _____

Attest:

_____
Sheila Harrington, City Clerk

Date _____

Approved as to form:

_____
Kristopher Kokotaylo, City Attorney

Date _____

PAKPOUR CONSULTING GROUP,
a California corporation

By _____

Date _____

_____
Printed Name, Title

EXHIBIT A

SCOPE OF SERVICES

The desired scope of civil engineering services pertaining to development plan check review encompasses a wide range of activities. Reviewing and managing multiple land development subdivision and Building Permit applications from initial planning entitlement through improvement plan and final map approval, construction and final sign-off may include the following:

- Review of planning entitlement applications such as Tentative Maps, Site Development Reviews, and Conditional Use Permits.
- Development of Conditions of Approval.
- Review of parcel maps, final maps, tract improvement plans, grading plans, street improvement plans, plot plans, and building permit plans for conformance with published City, State, and Federal regulations and engineering standards of practice. Relevant regulations in which the Consultant will be expected to demonstrate proficiency may include, but are not limited to:
    - ADA and accessibility requirements
    - RWQCB MRP compliance and measures including low impact development, source control, design of stormwater treatment measures and sizing calculations (e.g. MRP C.3). Hydromodification standards and the use of BAHM software to both design and review detention and metering devices, as well as trash capture
    - By extension, the Consultant will also be responsible for remaining current with updated regulations and measures.
- Correspond directly with applicants and their design teams; attend meetings with City staff and applicants; write memoranda summarizing plan review comments for transmittal to the applicant; and perform field inspections of projects under construction.
- Perform various tasks at City Hall including writing staff reports for City Council Meetings, preparation of agreements including long-term encroachment agreements, stormwater operations & maintenance agreements, subdivision improvement agreements, administration of surety bonds associated with agreements, grant deed, and grant of easement documents, and review of associated plat maps and legal descriptions.

Additionally, Consultant(s) will be expected to work collaboratively with Public Works staff and other City departments, such as Planning, Building, and Fire, during the review process, maintaining open avenues of communication to facilitate project completion. External agencies that may also require effective communication include Union Sanitary District, Alameda County Water District, Alameda County Flood Control, PG&E (and other dry utility companies), permit applicants, and their respective contractors. The above list is not exhaustive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

Billing Rates | *Fiscal Year 2022-2023*

Position	Hourly Rate
Principal Engineer	$235
Senior Engineer	$205
Senior Designer	$195
Associate Engineer	$185
Associate Designer	$175
Project Engineer	$165
Project Designer	$155
Assistant Engineer	$145
Assistant Designer	$135
Engineering Technician	$115
Administrative Assistant	$80
Public Works Inspector	$160

A five percent (5%) direct cost multiplier will be applied in lieu of charging for direct expenses. A 10% markup will be added to subconsultants. A 1.3 multiplier will be applied to the hourly rate of inspectors working more than 8 hours per day and/or 40 hours per week.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 28TH day of JULY, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **RUGGERI-JENSEN-AZAR**, a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform on-call civil engineering development plan check review services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; and, after negotiations, Consultant agreed to perform the "Services" more particularly described in Exhibit "A" ("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 the Proposal, City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Thousand Dollars ($100,000) for fiscal year 2022-2023 and for each subsequent fiscal year as may be allocated at, above or below this amount for the specified fiscal year, unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses by City, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

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

Invoices shall be sent to:

City of Newark
Public Works Department
37101 Newark Blvd.
Newark, CA 94560

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

C. Payment. Upon receipt of 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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising inquiry; 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-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:	**$2,000,000** per occurrence or claim; **$4,000,000** aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. 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.

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 12, except for Errors and Omissions Liability, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. 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 and shall not be canceled during the term of this Agreement without notice to the 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 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 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire on June 30, 2024. At the end of the term, the City may

renew this Agreement for two (2) one-year terms as authorized by the by the Public Works Director, City Manager, or City Council.

B. Notwithstanding the provisions of paragraph 16 section A above, City may terminate this Agreement at any time and without cause upon written notification to the Consultant. Consultant may cancel this Agreement upon thirty (30) day's 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.

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

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

	CITY OF NEWARK
EDDIE K. SIEU	PUBLIC WORKS DIRECTOR
Principal-in-Charge	**Administrator**
Address: Ruggeri-Jensen-Azar 4690 Chabot Drive Suite 200 Pleasanton, CA 94588	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
David Benoun, City Manager

Date _____

Attest:

_____
Sheila Harrington, City Clerk

Date _____

Approved as to form:

_____
Kristopher Kokotaylo, City Attorney

Date _____

RUGGERI-JENSEN-AZAR,
a California corporation

By _____

Date _____

_____
Printed Name, Title

EXHIBIT A

SCOPE OF SERVICES

The desired scope of civil engineering services pertaining to development plan check review encompasses a wide range of activities. Reviewing and managing multiple land development subdivision and Building Permit applications from initial planning entitlement through improvement plan and final map approval, construction and final sign-off may include the following:

- Review of planning entitlement applications such as Tentative Maps, Site Development Reviews, and Conditional Use Permits.
- Development of Conditions of Approval.
- Review of parcel maps, final maps, tract improvement plans, grading plans, street improvement plans, plot plans, and building permit plans for conformance with published City, State, and Federal regulations and engineering standards of practice. Relevant regulations in which the Consultant will be expected to demonstrate proficiency may include, but are not limited to:
    - ADA and accessibility requirements
    - RWQCB MRP compliance and measures including low impact development, source control, design of stormwater treatment measures and sizing calculations (e.g. MRP C.3). Hydromodification standards and the use of BAHM software to both design and review detention and metering devices, as well as trash capture
    - By extension, the Consultant will also be responsible for remaining current with updated regulations and measures.
- Correspond directly with applicants and their design teams; attend meetings with City staff and applicants; write memoranda summarizing plan review comments for transmittal to the applicant; and perform field inspections of projects under construction.
- Perform various tasks at City Hall including writing staff reports for City Council Meetings, preparation of agreements including long-term encroachment agreements, stormwater operations & maintenance agreements, subdivision improvement agreements, administration of surety bonds associated with agreements, grant deed, and grant of easement documents, and review of associated plat maps and legal descriptions.

Additionally, Consultant(s) will be expected to work collaboratively with Public Works staff and other City departments, such as Planning, Building, and Fire, during the review process, maintaining open avenues of communication to facilitate project completion. External agencies that may also require effective communication include Union Sanitary District, Alameda County Water District, Alameda County Flood Control, PG&E (and other dry utility companies), permit applicants, and their respective contractors. The above list is not exhaustive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

RATE AND EXPENSE SCHEDULES
(Effective through June 30, 2023)

HOURLY RATE SCHEDULE FOR PROFESSIONAL SERVICES

Classification	Rate
Senior Project Manager	$267.00
Project Manager	251.00
Senior: Engineer, Surveyor, Planner	239.00
Associate: Engineer, Surveyor, Planner	223.00
Engineer, Surveyor, Planner	206.00
Assistant: Engineer, Surveyor, Planner	179.00
Senior Designer/Technician	177.00
Technician	156.00
Assistant Technician	135.00
Project Coordinator	120.00
Administrative Assistant	103.00
Clerical	78.00
Field Survey Manager	220.00
1-Person Survey Crew	200.00
2-Person Survey Crew	312.00
3-Person Survey Crew	375.00
Principal	277.00
Deposition/Court Appearance	rates are available upon request

EXPENSE SCHEDULE

Bond Copy (24"x36")	$1.50 each
Color/mylar plot (small, medium)	$10.00 each
Color/mylar plot (large)	$50.00 each
Xerox copy	$0.15 each
Color xerox copy (8½ x 11 or 11 x 17)	$0.50 each
Client-Requested Overtime	Hourly Rate plus 25%

All other expenses, including:	Actual Cost plus 15%
Delivery Service	Travel & Expenses
Outside Reproduction	Filing or Permit Fees
Mileage - Auto	Conference Call Expenses
Outside Consultants	

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 28TH day of JULY, 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and **SNG & ASSOCIATES, INC.**, a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform on-call civil engineering development plan check review services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Engineer and incorporated herein by reference; and, after negotiations, Consultant agreed to perform the "Services" more particularly described in Exhibit "A" ("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 the Proposal, City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of One Hundred Thousand Dollars ($100,000) for fiscal year 2022-2023 and for each subsequent fiscal year as may be allocated at, above or below this amount for the specified fiscal year, unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses by City, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

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

Invoices shall be sent to:

City of Newark
Public Works Department
37101 Newark Blvd.
Newark, CA 94560

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

C. Payment. Upon receipt of 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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

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

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

8. INFORMATION AND DOCUMENTATION.

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

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

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

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

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

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

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

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

A. Verification of Coverage.

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

1. Insurance Services Office Form Number CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury, and personal and advertising inquiry; 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-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:	**$2,000,000** per occurrence or claim; **$4,000,000** aggregate.

D. Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by the City. 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.

E. Claims Made Policies.

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

F. Wasting Policies.

No policy required by this paragraph 12, except for Errors and Omissions Liability, shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. 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 and shall not be canceled during the term of this Agreement without notice to the 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 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 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire on June 30, 2024. At the end of the term, the City may

renew this Agreement for two (2) one-year terms as authorized by the by the Public Works Director, City Manager, or City Council.

B. Notwithstanding the provisions of paragraph 16 section A above, City may terminate this Agreement at any time and without cause upon written notification to the Consultant. Consultant may cancel this Agreement upon thirty (30) day's 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.

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

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

CITY OF NEWARK

NANDA K. GOTTIPARTHY	PUBLIC WORKS DIRECTOR
President	**Administrator**
Address: SNG & Associates, Inc. 5776 Stoneridge Mall Road Suite 365 Pleasanton, CA 94588	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
David Benoun, City Manager

Date _____

SNG & ASSOCIATES, INC.,
a California corporation

By _____

Date _____

_____
Printed Name, Title

Attest:

_____
Sheila Harrington, City Clerk

Date _____

Approved as to form:

_____
Kristopher Kokotaylo, City Attorney

Date _____

EXHIBIT A

SCOPE OF SERVICES

The desired scope of civil engineering services pertaining to development plan check review encompasses a wide range of activities. Reviewing and managing multiple land development subdivision and Building Permit applications from initial planning entitlement through improvement plan and final map approval, construction and final sign-off may include the following:

- Review of planning entitlement applications such as Tentative Maps, Site Development Reviews, and Conditional Use Permits.
- Development of Conditions of Approval.
- Review of parcel maps, final maps, tract improvement plans, grading plans, street improvement plans, plot plans, and building permit plans for conformance with published City, State, and Federal regulations and engineering standards of practice. Relevant regulations in which the Consultant will be expected to demonstrate proficiency may include, but are not limited to:
    - ADA and accessibility requirements
    - RWQCB MRP compliance and measures including low impact development, source control, design of stormwater treatment measures and sizing calculations (e.g. MRP C.3). Hydromodification standards and the use of BAHM software to both design and review detention and metering devices, as well as trash capture
    - By extension, the Consultant will also be responsible for remaining current with updated regulations and measures.
- Correspond directly with applicants and their design teams; attend meetings with City staff and applicants; write memoranda summarizing plan review comments for transmittal to the applicant; and perform field inspections of projects under construction.
- Perform various tasks at City Hall including writing staff reports for City Council Meetings, preparation of agreements including long-term encroachment agreements, stormwater operations & maintenance agreements, subdivision improvement agreements, administration of surety bonds associated with agreements, grant deed, and grant of easement documents, and review of associated plat maps and legal descriptions.

Additionally, Consultant(s) will be expected to work collaboratively with Public Works staff and other City departments, such as Planning, Building, and Fire, during the review process, maintaining open avenues of communication to facilitate project completion. External agencies that may also require effective communication include Union Sanitary District, Alameda County Water District, Alameda County Flood Control, PG&E (and other dry utility companies), permit applicants, and their respective contractors. The above list is not exhaustive; other services may be sought as the need arises.

EXHIBIT B

PAYMENT

Position	Hourly Rate
Principal Engineer	245.00
Senior Project Manager	205.00
Project Manager	190.00
Senior Engineer	180.00
Construction Manager	180.00
Associate Engineer II	160.00
Associate Engineer I	150.00
Assistant Engineer	140.00
Senior Engineering Inspector	150.00
Engineering Inspector	140.00
Engineering Technician/CAD Drafting	130.00
Licensed Land Surveyor	245.00
Licensed landscape Architect	185.00
Clerical/ Admin Support	95.00

Note: Rates valid through June 30, 2023. Rates will be adjusted annually every July 1st.

STAFF REPORT

Item D. 6.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Art Interiano, Deputy Community Development Director
SUBJECT	Adopt a Resolution Approving the Annual Agreement with Alameda County for Participation in the Alameda County Urban County Community Development Block Grant for Fiscal Year 2022-2023 and Amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2022-2023

RECOMMENDATION

Staff recommends that the City Council, by resolution authorize the City Manager to execute an agreement with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for the 2022-2023 fiscal year and amending the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2022-2023.

EXECUTIVE SUMMARY

The City received a fiscal year 2022-2023 Community Development Block Grant (CDBG) award in the amount of $234,493.22. A portion of those funds are allocated for the Alameda County minor home repairs program and CDBG administrative costs. The remainder of the balance, $175,851.22, is recommended to be used for jurisdictional improvements. The jurisdictional improvement funds will be used on a variety of parks projects, including resurfacing the basketball court at Byington Park and improving sidewalks and pathways in Ash Street Park, Lakeshore Park and Civic Center Park. The proposed resolution approves an agreement with Alameda County and amends the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2022-2023.

BACKGROUND

Each year the City of Newark receives funding under the United States Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) Program. This grant provides funding for activities benefiting low- and moderate-income persons, including public works projects, planning studies, and housing rehabilitation and repair.

Newark's funds are disbursed through Alameda County. The County oversees Newark's use of the funds in order to ensure that all appropriate federal government requirements are met. This arrangement is established and governed each year by a pair of agreements, one between Alameda County and HUD, and one between the City

and Alameda County. A copy of the agreement between Newark and Alameda County is attached. By approving this resolution, the City Council will authorize the City Manager to execute the agreement between the City of Newark and Alameda County, thereby continuing the City's participation in the CDBG program.

DISCUSSION/ANALYSIS

The Community Development Advisory Committee (CDAC) met on March 8, 2022 to review the status of CDBG projects and to determine the recommended allocation of Jurisdiction Improvement funds for Fiscal Year 2022-2023. At the time of the CDAC meeting, the exact amount of funding had not been determined. Staff used an estimated amount of $138,103 in order to develop funding recommendations for the CDAC's consideration. The CDAC voted, 7-0 to recommend that the City Council allocate the anticipated Jurisdiction Improvement Project funds to the Citywide ADA Compliance Improvements. The Jurisdiction Improvement Project would address ADA compliance needs at City-owned parks, facilities, and parking lots as identified in the City's Disabled Access Transition Plan. The scope of work would include resurfacing of a basketball court in Byington Park, adding a new pathway in Ash Street Park, repairing and resurfacing pathway and sidewalks to remove tripping hazards in Lakeshore and Civic Center Parks. These improvements would provide accessibility benefits for the entire community. City Council accepted the recommendation from the CDAC committee on March 24, 2022.

FISCAL IMPACT

If approved, the City would accept a grant award in the amount of $234,493.22. The amount is an increase of $97,000 above what was budgeted in the 2022-2024 Biennial Budget and Capital Improvement Plan for 2022-20224, therefore a budget amendment is requested. The amendments include the following:

Increase: 214.90.092.920.4793 (Federal Grants & Awards) $97,000
Increase: 214.90.092.920.6221CIP# (Increase Contractual Services) $97,000

PLANNING COMMISSION

No Planning Commission approval or recommendation is required.

REVIEW AND APPROVAL

Prepared by – Art Interiano, Deputy Community Development Director
Reviewed by – Steven Turner, Community Development Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

CDBG Resolution

Draft CDBS Annual Agreement Award V1

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT WITH ALAMEDA COUNTY FOR PARTICIPATION IN THE ALAMEDA COUNTY URBAN COUNTY COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) PROGRAM FOR FISCAL YEAR 2022-2023 AND APPROVING AN AMENDMENT TO THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN FOR FISCAL YEAR 2022-2023

WHEREAS, the City of Newark is eligible for an entitlement of Community Development Block Grant funds (CDBG) based on its participation in the Alameda County Urban County; and

WHEREAS, the County has allocated $234,493.22 in CDBG funds to the City based on the City's participation in the Urban County; and

WHEREAS, the City anticipated an amount of $138,000 in the 2022-2024 Biennial Budget and Capital Improvement Plan; and

WHEREAS, the contract amount is higher than expected by $97,000 and therefore an increase in the Biennial Budget and Capital Improvement Plan is requested for this amount; and

WHEREAS, the activities of the City under the Agreement with the County shall be governed by the conditions of the Grant Agreement between the County and the United States Department of Housing and Urban Development; and

WHEREAS, the County retains $50,842 of the City's allocation providing for Minor Home Repair Program, which will be administered by Alameda County Healthy Homes Department; and

WHEREAS, the City's proposed projects are CDBG-eligible in accordance with HUD regulations and the conditions of the CDBG Grant Agreement.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute an agreement, in a form approved by the City Attorney, with Alameda County for participation in the Alameda County Urban County Community Development Block Grant (CDBG) Program for Fiscal Year 2022-2023, said agreement on file in the Office of the City Clerk.

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby amends the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2022-2023 as follows:

Account	Description	Amount

Increase:	214.90.092.920.4793	Increase Federal Grants & Awards	$97,000
Increase:	214.90.092.920.6221CIP#	Increase Contractual Services	$97,000

AGREEMENT BY AND BETWEEN
CITY OF NEWARK
AND
THE COUNTY OF ALAMEDA

THIS AGREEMENT is made and entered into this 1st day of July 2022, by and between the County of Alameda, a body corporate and politic of the State of California (hereinafter referred to as "County"), and the CITY OF NEWARK, a municipal corporation located in the County of Alameda, State of California, (hereafter referred to as "City").

WHEREAS, the County has entered into a Grant Agreement with the United States Department of Housing and Urban Development (HUD), for a Community Development Block Grant (CDBG) under the Housing and Community Act of 1974, said funds to be used for Community Development Block Grant Programs and its eligible activities; and

WHEREAS, the City is eligible for an entitlement of CDBG funds based on its participation in the Alameda County Urban County; and

WHEREAS, the County has allocated CDBG funds to the City based on the City's participation in the Urban County; and

WHEREAS, the activities of the City under this Agreement with the County shall be governed by the conditions of the Grant Agreement between the County and the United States Department of Housing and Urban Development; and

WHEREAS, the parties desire that the County retain that portion of the City's allocation providing for Minor Home Repair Program, which will be administered by Alameda County Healthy Homes Department; and

WHEREAS, the Parties have reviewed City's proposed projects and have determined that the projects are CDBG-eligible projects in accordance with HUD regulations and the conditions of the CDBG Grant Agreement;

NOW THEREFORE, FOR AND IN CONSIDERATION OF THE PROMISES HEREINAFTER MADE, COUNTY AND CITY DO MUTUALLY AGREE AS FOLLOWS:

I. STATEMENT OF WORK AND COMPENSATION

A. City shall perform or arrange for the performance of the work under this Agreement in the manner and time provided herein and in accordance with: the budget; the scope of work and any specifications and drawings; and all related documents and provisions attached hereto as Exhibit A and incorporated herein by reference.

B. The maximum amount of fiscal year 2022 CDBG funds allocated to City pursuant to this Agreement to perform the work described in Exhibit A is two hundred thirty-four thousand, four hundred ninety-three dollars and twenty-two cents

($234,493.22) including twenty-eight thousand, five hundred and twelve dollars and twenty-two cents ($28,512.22) in program income and two hundred and five thousand, nine hundred and eighty one dollars ($205,981) in FY22 entitlement funds. Of this amount, the County will retain fifty thousand, eight hundred and forty-two dollars ($50,842) to reimburse the County for its services in providing minor home repair services set forth in Exhibit A. In the event that HUD reduces the Urban County CDBG allocation, the City's allocation will be reduced proportionately.

II. COMMENCEMENT AND COMPLETION REQUIREMENTS

A. This Agreement shall start on July 1, 2022, and be in effect until June 30, 2024, or until all fiscal year 2022 Urban County CDBG funds allocated to City are disbursed to and expended by City, or for the duration of any regulatory agreement or contract executed in conjunction with a project financed with fiscal year 2022 CDBG funds, or when all of the contract terms have been completed, whichever shall first occur.

B. It shall be the responsibility of the City to coordinate and schedule the work to be performed so that commencement and completion will take place in accordance with the provisions of this Agreement. The County may extend the time for completion of the work to be performed under this Agreement in writing, if it determines that delay in the progress of work is not attributable to the negligence of the City and that such delay was due to causes beyond the control of the City, and if such extension will not cause the County to be out of compliance with CDBG rules and regulations for timely commitment and expenditure of funds.

C. Any time extension granted to the City to enable the City to complete the work shall not constitute a waiver of rights the County may have under this Agreement.

D. Should the City not complete the work by the scheduled date or by an extended date, granted by the County in writing, pursuant to previously stated conditions, the County shall be released from all conditions of this Agreement.

E. Upon completion of performance under this Agreement and a determination of final costs, City shall submit to the County a certificate of completion for construction projects and a requisition for final payment for service projects, unless otherwise provided in this Agreement.

F. As a part of this Agreement, City will provide the County with the Certificate(s) of Insurance as outlined in Exhibit B.

III. SUBCONTRACTS

A. Any subcontract funding under this Agreement shall be submitted to County for review and approval prior to its execution.

B. In the event subcontractor is a private non-profit or neighborhood-based non-profit organization, or a local development or small business investment corporation, contractor is required to comply with the procurement procedures of the Office of Management and Budget (OMB) at Title 2 of the Code of Federal Regulations, Part 200 (2 CFR Part 200) (incorporated herein by reference) for the procurement of supplies and services in connection with activities funded under this Agreement.

C. Any subcontract funded under this Agreement shall be subject to the terms and conditions of this Agreement. Contractor shall inform County in writing of any subcontracts entered into with these funds, the amount, the scope of work, any other information the County may from time to time require.

IV. BUDGET

A. Any requested modification to the Budget attached to this Agreement and incorporated as part of this Agreement, shall be reviewed and approved by the Alameda County Housing Director on behalf of the County. Any budget modifications require the prior written approval of Alameda County Housing Director on behalf of the County. Budget modifications shall not alter: 1) The basic scope of services (Exhibit A) required to be performed under this Agreement; 2) the time period for the services to be performed under this Agreement; and; 3) the total amount of the authorized budget of this Agreement (Exhibit A), subject to future amendments as approved by the Alameda County Housing Director. Any of the cost categories shown in the Agreement Budget, except administration, may be exceeded by ten percent of the indicated figure, provided that the total approved amount of allowable costs is not exceeded and stays under the 15% Urban County Public Services cap.

B. City's expenditure of FY22 funds will be monitored on a project-by-project basis, rather than by the Urban County as a whole. City projects that do not spend down funds in any single quarter must provide a written explanation to County as to why the project is stalled/delayed and when it is expected that the project will start to expend funds.

V. RECORDS AND REPORTS

A. All original documents prepared by City in connection with the work to be performed under this Agreement shall be the property of the County.

B. City's records shall be made available for review by the County prior to the release of funds. City shall be responsible for maintaining all records pertaining to this Agreement, including subcontracts and expenditures, and all other financial and property records in conformance with 2 CFR Part 200.

C. Records must be kept accurate and up-to-date. Failure of City to comply with this provision could result in termination of this Agreement or City's repayment of funds previously awarded under this Agreement.

VI. PROGRAM MONITORING AND EVALUATION

A. City shall be monitored and evaluated in terms of its effectiveness and timely compliance with the provisions of this Agreement, HUD regulations, and conditions of the Grant Agreement between the County and HUD, and the effective and efficient achievement of the Program Objectives.

B. City shall undertake continuous quantitative and qualitative evaluation of the scope of services as specified in this Agreement and shall make quarterly written reports to County.

1. The quarterly written reports shall be submitted in the format approved and distributed by the County.

2. The quarterly report shall be due on the fifteenth day of the month immediately following the report quarter, except for the end of the program year report which is due within thirty days.

C. The County shall have ultimate responsibility for project monitoring oversight and evaluation, to assist City in complying with the scope and contents of this Agreement, and to provide management information which will assist the County's policy and decision-making and managers.

D. The City shall follow audit requirements of the Single Audit Act and 2 CFR Part 200.

VII. AUDIT REPORT

A. In addition to the reporting requirements listed in Section VI (Program Reporting and Evaluation), the City shall commission an independent auditing firm to prepare and file with the City an annual audit report for each year during the term of this Agreement. The City's failure to submit the audit report may result in the termination of the Agreement.

B. The audit report is to be submitted to the County by March 30th of each year during the term of this Agreement. The audit report should state that an audit was made in accordance with the provisions of 2 CFR Part 200. The City will use the audit report to determine whether:

i. The financial statements of the City present fairly its financial position and the results of its operations in accordance with generally accepted accounting principles.

ii. The City has (i) an internal control structure to provide reasonable assurance that the City is managing Federal awards in compliance with applicable laws and regulations, and (ii) controls that ensure compliance with laws and regulations that could have material impact in the City's financial statements.

iii. The City has complied with laws and regulations for the CDBG Program that may have a direct and material effect on the City's financial statements.

iv. The City shall also submit any internal control monitoring (or audit) conducted during the term of this Agreement to the County. The City shall require Providers with which the City contracts in connection with this Agreement to meet the same audit requirements set forth in this Section VI (D).

VIII. PROGRAM INCOME

A. Program income shall be recorded as part of the financial transactions of the grant program and disbursed in accordance with 2 CFR Part 200.

B. Program income received by City shall be returned to County for future application to City projects.

C. Program income from Urban County program activities undertaken by or within City which thereafter terminates its participation in the Urban County shall continue to be program income of the County. County may transfer the program income to City, upon its termination of Urban County participation, provided that City has become an entitlement grantee and agrees to use the program income in its own CDBG entitlement program.

IX. UNIFORM ADMINISTRATIVE REQUIREMENTS

A. City shall comply with Uniform Administrative Requirements as described in Federal Regulations Section 570.502 as applicable to governmental entities.

B. City shall comply with Executive Order 13166 to improve access to services for persons with Limited English Proficiency (LEP) including developing a Language Access Plan.

X. RELIGIOUS ACTIVITY PROHIBITION

City may not engage in inherently religious activities, such as worship, religious instruction, or proselytizing, as a part of the program or services funded by this Agreement.

XI. REVERSION OF ASSETS

A. Upon the expiration of this Agreement, City shall transfer to County any CDBG funds on hand at time of expiration and any accounts receivable attributable to the use of CDBG funds.

B. Real property in excess of $25,000, obtained in whole or in part with CDBG funds must be used to meet one of the national objectives for a minimum of ten years after the expiration of this Agreement or disposed of in a manner that results in County being reimbursed at fair market value less value attributable to non-CDBG expenditures.

XII. OTHER PROGRAM REQUIREMENTS

A. City certifies that it will carry out each activity in compliance with all Federal laws and regulations described in 24 CFR, Part 570, Sub-part K (570.600-570.612) and related to a) Non-discrimination, b) Fair Housing, c) Labor Standards, d) Environmental Standards, e) National Flood Insurance Program, f) Relocation and Acquisition, g) Employment and Contracting Opportunities, h) Lead-based paint, i) Use of Debarred, Suspended or Ineligible Contractors or Sub-recipients, j) Uniform Administrative Requirements and Cost Principals, k) Conflict of Interest, and l) Displacement.

B. Activities and programs under this Agreement shall be governed by the policies and procedures of the Alameda County Urban County or as directed by the County as grantee in order to ensure that compliance with all applicable laws and regulations.

XIII. TERMINATION OF THIS AGREEMENT

County may terminate this Agreement in whole or in part immediately for cause, which shall include as example but not as a limitation:

A. Failure, for any reason, of City to fulfill in a timely and proper manner its obligations under this Agreement, including compliance with City, State and Federal laws and regulations and applicable directives;

B. Failure to meet the performance standards contained in other sections of this Agreement;

C. Improper use or reporting of funds provided under this Agreement; and

D. Suspension or termination by HUD of the grant to the County under which Agreement is made, or the portion thereof delegated by this Agreement.

E. Any and all notices, writings, correspondences, etc., as required by this Agreement

shall be directed to the City and County as follows:

City	**County**
City Manager	Housing Director
City of Newark	Alameda County HCD
37101 Newark Blvd	224 W. Winton Avenue, Room 108
Newark CA, 94560	Hayward, CA 94544

XIV. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, City shall hold harmless, defend and indemnify the County, its Board of Supervisors, officers, employees and agents (collectively "Indemnitees") from and against any and all claims, losses, damages, liabilities or expenses, including reasonable attorney fees, incurred in the defense thereof, for the death or injury to any person or persons (including employees of City or County) or damage of any property (including property of City or County) which arises out of or is in any way connected with performance of this agreement (collectively "Liabilities") except where such Liabilities are proximately caused solely by the negligence or willful misconduct of any Indemnitee.

[SIGNATURES TO FOLLOW ON THE NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this contract on the day first mentioned above.

CITY OF NEWARK

Approved as to form:

By: _____
City Attorney

Date:_____

By: _____
City Manager

Attest: _____
City Clerk

Date: _____

COUNTY OF ALAMEDA

By: _____
President, Board of Supervisors

Date:_____

Approved as to form:
Donna R. Ziegler
County Counsel

DocuSigned by:
By: Heather Littlejohn Goodman
4E16CE9B888B421...
Heather Littlejohn Goodman,
Deputy County Counsel

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

AGREEMENT BY AND BETWEEN
CITY OF NEWARK
AND
THE COUNTY OF ALAMEDA

EXHIBIT A

03L – Sidewalks	
Improve ADA parking accessibility, including basketball court resurfacing at Byington Park, new pathways at Ash Street Park and pathway repairs in Lake Shore Park and Civic Center Park.	$147,339
Owner Rehabilitation Program Income for ADA project	$28,512.22
14A Rehabilitation - Single Unit Residential	
Minor Home Repair Program that promotes the maintenance of homes for the benefit of low-income Alameda County residents. County shall retain $11,490.29 for services to be performed by Alameda County Healthy Homes Department for project delivery costs, including staff costs specific to the project	$50,842
21A Administration	
Provide overall CDBG program administration. (Eligible costs defined in HUD CDBG regulations.)	$7,800
TOTAL - CITY OF NEWARK	**$234,493.22**
Anticipated Program Income*	**$28,512.22**

* ***Based on an estimate of prior years' program income received; only actual program income received will be available to the City for its Revolving Loan Fund (Housing Rehabilitation Programs).***

EXHIBIT A1
ALAMEDA COUNTY HOUSING AND COMMUNITY DEVELOPMENT
AND
CITY OF NEWARK

CFDA number:
■□ CDBG 14.218

CFDA Title: Community Development Block Grants/Entitlement Funds

Name of Federal Agency: Housing and Community Development Department (HUD)

Subrecipient Unique Entity Identification: 021116418

Federal Award Date of award to HCD by HUD:

Federal Award Identification Number: B22-UC-06-0001

EXHIBIT B
COUNTY OF ALAMEDA MINIMUM INSURANCE REQUIREMENTS

Without limiting any other obligation or liability under this Agreement, the County, at its sole cost and expense, shall secure and keep in force during the entire term of the Agreement or longer, as may be specified below, the following minimum insurance coverage, limits and endorsements. The County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances. If the contractor maintains broader coverage and/or higher limits than the minimums shown below, the County requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

	TYPE OF INSURANCE COVERAGES	MINIMUM LIMITS
A	**Commercial General Liability** Premises Liability; Products and Completed Operations; Contractual Liability; Personal Injury and Advertising Liability	$1,000,000 per occurrence (CSL) Bodily Injury and Property Damage
B	**Commercial or Business Automobile Liability** All owned vehicles hired or leased vehicles, non-owned, borrowed and permissive uses. Personal Automobile Liability when extended to cover your business is acceptable for individual contractors with no transportation or hauling related activities	$1,000,000 per occurrence (CSL) Any Auto or Hired and Non-Owned Autos Bodily Injury and Property Damage
C	**Workers' Compensation (WC) and Employers Liability (EL)** As required by State of California	WC: Statutory Limits EL: No less than $1,000,000 per accident for bodily injury or disease
D	**Endorsements and Conditions:**	

1. **ADDITIONAL INSURED:** County of Alameda, its Board of Supervisors, the individual members thereof, and all County officers, agents, employees, volunteers, and representatives are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38; **and** CG 20 37 if a later edition is used). Auto policy shall contain or be endorsed to contain additional insured coverage for the County.
2. **DURATION OF COVERAGE:** All required insurance shall be maintained during the entire term of the Agreement. In addition, Insurance policies and coverage(s) written on a claims-made basis shall be maintained and evidence of insurance must be provided during the entire term of the Agreement and for at least five (5) years following the later of termination of the Agreement and acceptance of all work provided under the Agreement, with the retroactive date of said insurance (as may be applicable) concurrent with the commencement of activities pursuant to this Agreement. If coverage is cancelled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five (5) years after completion of work.
3. **REDUCTION OR LIMIT OF OBLIGATION:** All insurance policies, including excess and umbrella insurance policies, shall be primary and non-contributory coverage at least as broad as ISO CG 20 10 04 13 as respects the County, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor' insurance and shall not contribute with it. Pursuant to the provisions of this Agreement insurance effected or procured by the Contractor shall not reduce or limit Contractor's contractual obligation to indemnify and defend the Indemnified Parties.
4. **INSURER FINANCIAL RATING:** Insurance shall be maintained through an insurer with an A.M. Best Rating of no less than A: VII or equivalent, shall be admitted to the State of California unless otherwise acceptable by Risk Management, and with deductible amounts acceptable to the County. Acceptance of Contractor's insurance by County shall not relieve or decrease the liability of Contractor hereunder. Self-insured retentions must be declared and approved. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor. The policy language shall provide or be endorsed to provide, that the self –insured retention may be satisfied by either the named insured or County.
5. **SUBCONTRACTORS:** Contractor shall include all subcontractors as an insured (covered party) under its policies or shall verify that the subcontractor, under its own policies and endorsements, has complied with the insurance requirements in this Agreement, including this Exhibit.
6. **JOINT VENTURES:** If Contractor is an association, partnership or other joint business venture, required insurance shall be provided by one of the following methods:
   - Separate insurance policies issued for each individual entity, with each entity included as a "Named Insured" (covered party), or at minimum named as an "Additional Insured" on the other's policies. Coverage shall be at least as broad as in the ISO Forms named above.
   - Joint insurance program with the association, partnership or other joint business venture included as a "Named Insured".
7. **CANCELLATION OF INSURANCE:** Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice of cancellation provided to the County in accordance with policy terms and conditions.
8. **CERTIFICATE OF INSURANCE**: Before commencing operations under this Agreement, Contractor shall provide Certificate(s) of insurance and applicable insurance endorsements as set forth in the provisions of this Agreement and this Exhibit C, in forms satisfactory to County, evidencing that all required insurance coverage is in effect. However, failure to obtain the required documents prior to the work beginning shall not waive the Contactor's obligation to provide them. The County reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

STAFF REPORT

Item D. 7.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Diana Cangco, Senior Civil Engineer
SUBJECT	Adopt a Resolution Authorizing the City Manager to Execute a Project Specific Maintenance Agreement with the State of California through its Department of Transportation (Caltrans) for State Route (SR) 880 and Mowry Avenue Crossing

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute a Project Specific Maintenance Agreement with the State of California through its Department of Transportation (Caltrans) for State Route (SR) 880 and Mowry Avenue crossing.

EXECUTIVE SUMMARY

An intersection improvement project at Mowry Avenue and Alpenrose Drive extends into lands owned by the State of California. As a result of the proposed project and as part of the encroachment permit process with the State of California through its Department of Transportation (Caltrans), the City is required to enter into a Project Specific Maintenance Agreement for the State Route (SR) 880 (also known as Interstate 880) and Mowry Avenue crossing.

BACKGROUND

In 1959, the City and Caltrans entered into a Freeway Maintenance Agreement for SR 69 between Mowry Avenue and Decoto Road. In 1993, the City and Caltrans entered into a Freeway Agreement for certain portions of SR 880 (also known as Interstate 880), including Mowry Avenue. The 1993 Freeway Agreement was for the closing and relocation of City streets, construction of frontage roads, and construction of the freeway. The 1993 Freeway Agreement did not supersede the 1959 Freeway Maintenance Agreement.

DISCUSSION/ANALYSIS

Caltrans is requiring an update to its 1959 Freeway Maintenance Agreement with the City of Newark based on two concerns. One, the freeway construction in 1993 and resultant changes to City streets are not reflected in any updated Caltrans Freeway Maintenance Agreement with the City of Newark. Second, an intersection improvement project at Mowry Avenue and Alpenrose Drive will extend the westbound left-turn pocket into State right-of-way and modifies the City's landscaping and pavement maintenance responsibilities.

The Project Specific Maintenance Agreement for SR 880 and Mowry Avenue will supersede that portion of the 1959 Freeway Maintenance Agreement. The Project Specific Maintenance Agreement indicates the change in maintenance responsibilities including, but not limited to, maintenance of the vehicular overcrossing, landscape areas, and bicycle paths, lanes, and/or cycle tracks within State right-of-way.

FISCAL IMPACT

The City currently maintains the pavement, median landscaping, and pavement markings within State right-of-way at the Mowry Avenue crossing as required under the 1959 Freeway Maintenance Agreement; therefore, there should be no significant fiscal impact caused by the Project Specific Maintenance Agreement.

REVIEW AND APPROVAL

Prepared by – Diana Cangco, Senior Civil Engineer
Reviewed by – Jayson Imai, Assistant City Engineer
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Resolution Mowry CalTrans

Project Specific Maintenance Agreement v1

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE A PROJECT SPECIFIC MAINTENANCE AGREEMENT WITH THE STATE OF CALIFORNIA THROUGH ITS DEPARTMENT OF TRANSPORTATION FOR STATE ROUTE 880 AND MOWRY AVENUE CROSSING

WHEREAS, the City and State of California through its Department of Transportation (Caltrans) executed a Freeway Maintenance Agreement for State Route 69 between Mowry Avenue and Decoto Road in 1959; and

WHEREAS, the City and Caltrans executed a Freeway Agreement for closing and relocation of streets, construction of frontage roads, and construction of the freeway in 1993; and

WHEREAS, the 1993 Freeway Agreement did not supersede the 1959 Freeway Maintenance Agreement; and

WHEREAS, a Caltrans encroachment permit is needed for pavement and landscaping modifications on Mowry Avenue within Caltrans right-of-way; and

WHEREAS, as part of the Caltrans encroachment permit process, the City of Newark is required to execute a Project Specific Maintenance Agreement.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute a Project Specific Maintenance Agreement with the State of California, in a form approved by the City Attorney, for State Route 880 and Mowry Avenue crossing.

PROJECT SPECIFIC MAINTENANCE AGREEMENT
WITH CITY OF NEWARK

THIS AGREEMENT is made effective this _____ day of _____, 20__, by and between the State of California, acting by and through the Department of Transportation, hereinafter referred to as "STATE" and the City of Newark; hereinafter referred to as "CITY"; and collectively referred to as "PARTIES".

SECTION I

RECITALS

1. Encroachment Permit Number _____ was issued to CITY for median landscaping and striping left turn pocket at Mowry Ave/Alpenrose Drive on State Route (SR) 880 at Mowry Avenue overcrossing, hereinafter referred to as "PROJECT", and

2. In accordance with said permit, it was agreed by PARTIES that prior to or upon PROJECT completion, CITY and STATE will enter into a Maintenance Agreement, and

3. The PARTIES hereto mutually desire to identify the maintenance responsibilities of CITY for the improvements of PROJECT constructed within the STATE right of way under the Encroachment Permit Number _____, and

4. The degree or extent of maintenance work to be performed, and the standards, therefore, shall be in accordance with the provisions of Section 27 of the Streets and Highways Code and the then current edition of the State Maintenance Manual, and

5. On October 28, 1993, a Freeway Agreement was executed between CITY and STATE, wherein the PARTIES consented to certain adjustments of the local street and road system required for the development of that portion of STATE Highway Route (SR) 880, declared a freeway, within the jurisdictional limits of the CITY, and

6. There is an existing Freeway Maintenance Agreement(s), with CITY dated July 10. 1959.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. PARTIES agree this Agreement shall supersede the portion of said Freeway Maintenance Agreement executed by PARTIES on July 10, 1959 that are included in this Project Specific Maintenance Agreement.

2. Exhibit A consists of plan drawings delineate and describe the areas within STATE right of way which are the responsibility of the CITY to maintain in accordance with this Agreement.

3. If there is mutual agreement on a change in the maintenance responsibilities between PARTIES, the PARTIES can revise the Exhibit A by a mutual written execution of the exhibit.

4. CITY must obtain the necessary Encroachment Permits from STATE's District 4 Encroachment Permit Office prior to entering STATE right of way to perform CITY maintenance responsibilities. This permit will be issued at no cost to CITY.

5. VEHICULAR OVERCROSSINGS

   5.1. CITY will maintain, at CITY expense, the deck wearing surface and drainage system and all portions of the structure above the bridge deck, including, but without limitation, sidewalks, bridge rails and screens, lighting installations, signs, pavement markings, that may be required for the benefit or control of pedestrians and traffic traveling over that overcrossing structure.

   5.2. As directed by section 92.6 of the Streets and Highways Code, at locations determined by STATE, screening shall be placed on STATE freeway overpasses on which pedestrians are allowed. All screens installed under this program will be maintained by STATE, at STATE expense.

6. LANDSCAPED AREAS - CITY is responsible for the maintenance of any plantings or other types of roadside improvements of PROJECT lying outside of the fenced area restricting walk-on access to the freeway.

7. BICYCLE PATHS, LANES, AND CYCLE TRACKS constructed as permitted encroachments within STATE's right of way, CITY is solely responsible for all permitted improvements, including but not limited to the delineation, fencing, guard railing, drainage facilities, slope and structural adequacy. CITY will maintain, at CITY expense, a safe facility for bicycle travel along the entire length of the path/lane/cycle track by providing sweeping and debris removal when necessary; and all signing and striping, and pavement markings required for the direction and operation of that non-motorized facility.

8. LEGAL RELATIONS AND RESPONSIBILITIES

8.1. Nothing within the provisions of this Agreement is intended to create duties or obligations to or rights in third parties not parties to this Agreement or to affect the legal liability of a PARTY to the Agreement by imposing any standard of care with respect to the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.

8.2. Neither CITY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by, under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE shall fully defend, indemnify and save harmless CITY and all of their officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

8.3. Neither STATE nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.

9. PREVAILING WAGES:

9.1. Labor Code Compliance- If the work performed under this Agreement is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public works" in that it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY must conform to the provisions of Labor Code sections 1720 through 1815, and all applicable provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage requirements in its contracts for public works. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.

9.2. Requirements in Subcontracts - CITY shall require its contractors to include prevailing wage requirements in all subcontracts when the work to be performed by the subcontractor under this Agreement is a "public works" as defined in Labor

Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements set forth in CITY's contracts.

10. INSURANCE

10.1. SELF-INSURED - CITY is self insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of $1 million per occurrence and $2 million in aggregate and $5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to STATE, certifying that CITY meets the coverage requirements of this section. This Letter of Self-Insurance shall also identify the Mowry Avenue location as depicted in EXHIBIT A. CITY shall deliver to STATE the Letter of Self-Insurance with a signed copy of this AGREEMENT. A copy of the executed Letter of Self-Insurance shall be attached hereto and incorporate as Exhibit B.

10.2. SELF-INSURED using Contractor - If the work performed under this AGREEMENT is done by CITY's contractor(s), CITY shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of $1 million per occurrence and $2 million in aggregate and $5 million in excess. Coverage shall be evidenced by a certificate of insurance in a form satisfactory to the STATE that shall be delivered to the STATE with a signed copy of this Agreement.

11. TERMINATION - This Agreement may be terminated by mutual written consent by PARTIES or by STATE for cause., CITY's failure to comply with the provisions of this Agreement may be grounds for a Notice of Termination by STATE.

12. TERM OF AGREEMENT - This Agreement shall become effective on the date first shown on its face sheet and shall remain in full force and effect until amended or terminated as set forth in Article 11 above.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this Agreement and have delegated to the undersigned the authority to execute this Agreement on behalf of the respective agencies and covenants to have followed all the necessary legal requirements to validly execute this Agreement.

IN WITNESS WHEREOF, the PARTIES hereto have set their hands and seals the day and year first above written.

THE CITY OF NEWARK

By: _____
DAVID BENOUN
City Manager

ATTEST:

By: _____
SHEILA HARRINGTON
City Clerk

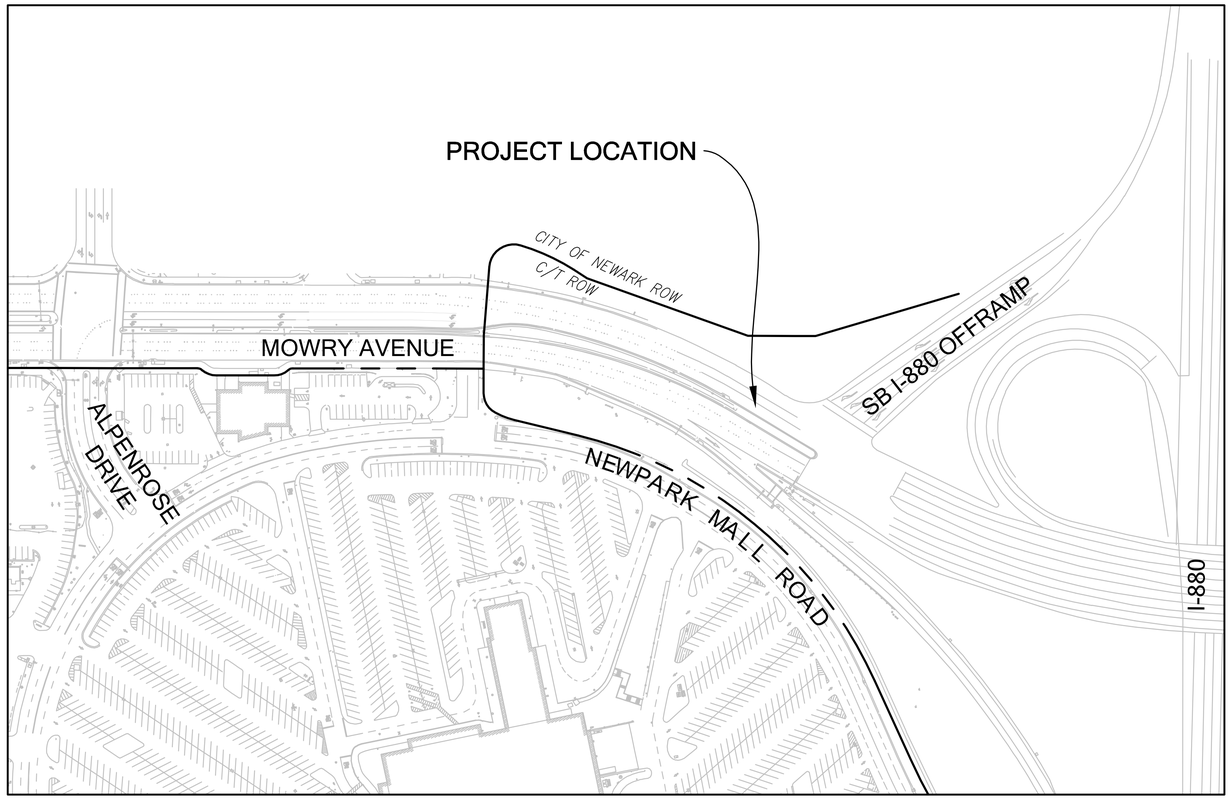
By: _____
KRISTOPHER KOKOTAYLO
City Attorney

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By: _____
LEAH BUDU Date
Deputy District Director
Maintenance District 4

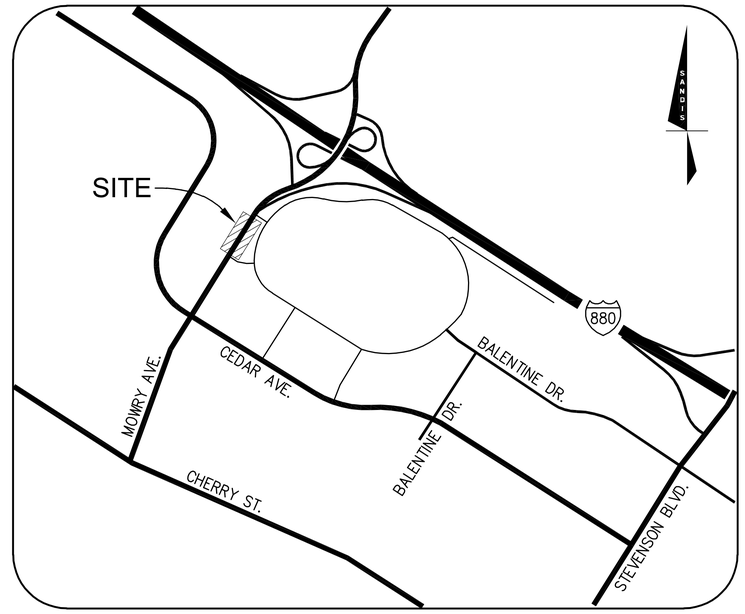
MOWRY AVENUE
MAINTENANCE AGREEMENT

NEWARK, CA



SITE MAP

1"=100'



VICINITY MAP

N.T.S.

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SANDIS | CIVIL ENGINEERS SURVEYORS PLANNERS
636 Ninth Street | Oakland, CA 94607 | P. 510.873.8866 | www.sandis.net
SILICON VALLEY TRI-VALLEY CENTRAL VALLEY EAST BAY/SF

DATE :	01/04/2022
SCALE :	
DRAWN BY:	BP
APPROVED BY:	JE
DRAWING NO.:	616062

ALA 880 PM 7.30

No.	REVISION	DATE	BY

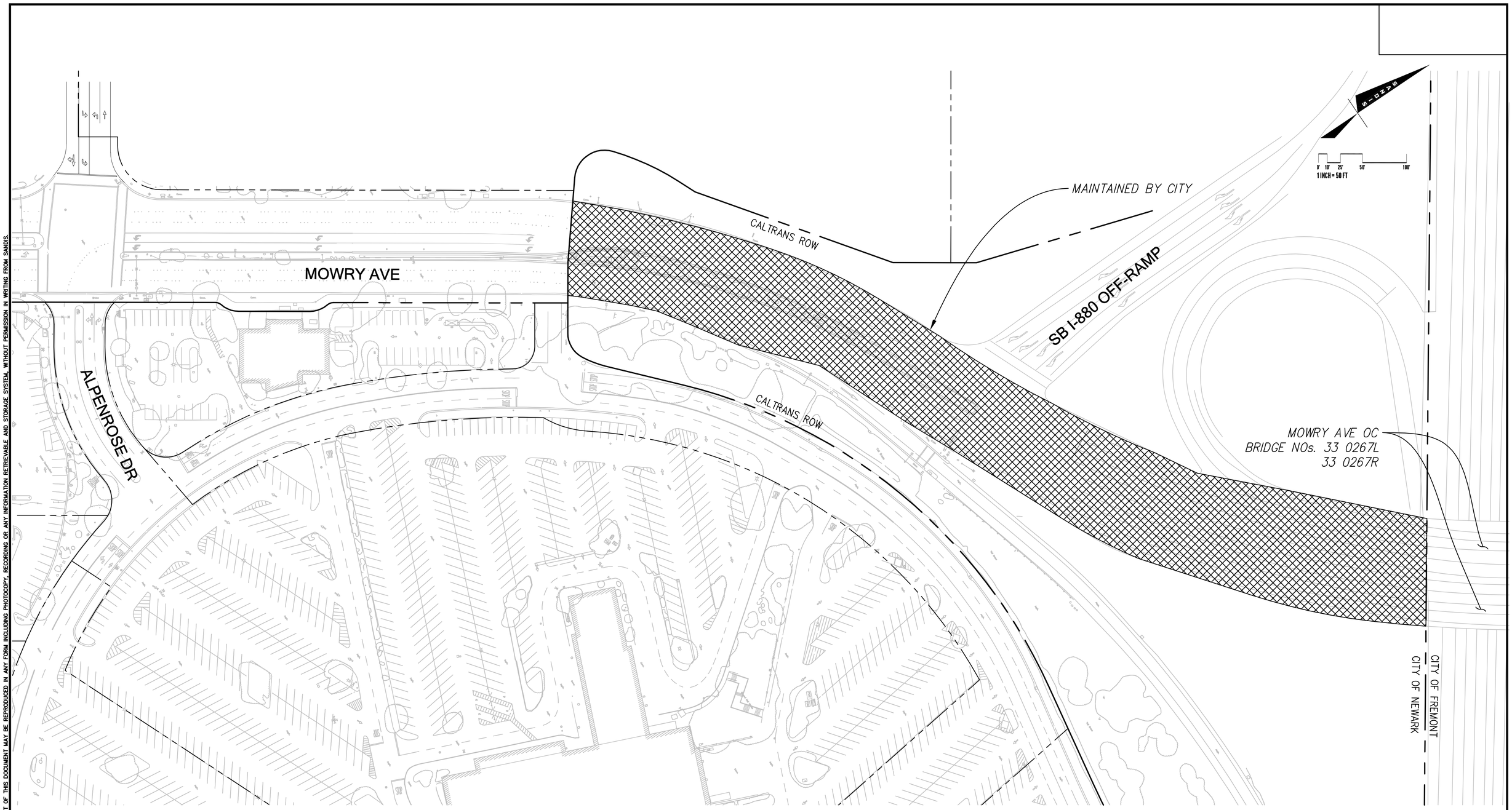
MAINTENANCE AGREEMENT
EXHIBIT A

NEWARK CALIFORNIA

SHEET **EX-1** OF **2** SHEETS

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LEGEND

MAINTAINED BY CITY

SANDIS | CIVIL ENGINEERS SURVEYORS PLANNERS
636 Ninth Street | Oakland, CA 94607 | P. 510.873.8866 | www.sandis.net
SILICON VALLEY TRI-VALLEY CENTRAL VALLEY EAST BAY/SF

DATE:	01/04/2022
SCALE:	1"=50'
DRAWN BY:	BP
APPROVED BY:	JE
DRAWING NO.:	616062

ALA 880 PM 7.30

No.	REVISION	DATE	BY

MAINTENANCE AGREEMENT
EXHIBIT A

NEWARK CALIFORNIA

SHEET **EX-2** OF **2** SHEETS

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STAFF REPORT

Item D. 8.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Jennifer Solito, Human Resources Director
SUBJECT	Adopt a resolution approving an amendment to the Management, Supervisory, and Professional Employee Group Compensation and Benefit Plan to add the class specification of Crime Analyst.

RECOMMENDATION

Staff recommends that the City Council approve a resolution to amend the Management, Supervisory and Professional Employee Group Compensation and Benefit Plan to add the class specification of Crime Analyst.

EXECUTIVE SUMMARY

On January 27, 2022, the Council approved the creation of one full-time Crime Analyst position. At that time, the Crime Analyst was assigned to the Newark Police Management Association (NPMA) for purposes of employee representation. Through subsequent discussion with the NPMA, it was determined that NPMA is not the best fit to represent this job classification and the classification more appropriately aligns with the unrepresented Management, Supervisory and Professional Employee Group. A resolution by City Council is required to assign the position of Crime Analyst to the Management, Supervisory and Professional Employee Group through a compensation and benefit plan amendment.

BACKGROUND

On January 27, 2022, City Council approved the creation of the new job classification of Crime Analyst and added one-full time position to the Fiscal Year 2022-2023 budget. Each time a new job classification is created, the employee associations are notified and provided an opportunity to discuss their association representing the classification. When the Crime Analyst position was created, the Newark Police Management Association (NPMA) advocated for its inclusion in NPMA. No other employee association requested to represent to the position. After discussion with NPMA and considering the unrepresented employee groups, the position was placed in NPMA. The City Council previously approved a salary schedule establishing the salary for the Crime Analyst position, however, the Crime Analyst position has remained vacant since its creation.

DISCUSSION/ANALYSIS

On March 17, 2022, the City commenced negotiations with NPMA towards a successor Memorandum of Understanding (MOU). During those negotiations, the position of Crime Analyst was discussed and it was agreed that the Crime Analyst classification would be removed from the NPMA. The City Council approved a successor MOU with NPMA on June 23, 2022 that became effective July 1, 2022. On the effective date of the MOU, the Crime Analyst position was removed from the MOU and no longer represented by NPMA.

Removal of the Crime Analyst classification from NPMA was based on the facts it is not a management-level classification and will not have supervisory or autonomous program management duties. Staff recommends that the Crime Analyst classification be added to the Management, Supervisory and Professional Employee Group (Group). This Group includes all other analyst-level job classifications in the City, and is the most appropriate placement based on the professional nature of the position, community of interest, and will align with similarly situated classifications.

FISCAL IMPACT

The full-time position of Crime Analyst is already funded in the 2022-2024 Biennial Budget and Capital Improvement Plan approved by City Council on June 23, 2022. An amendment to add the Crime Analyst classification to the Management, Supervisory and Professional Employee Group results in no fiscal impact.

REVIEW AND APPROVAL

Prepared by – Jennifer Solito, Human Resources Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Crime Analyst Resolution

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING AN AMENDMENT TO THE MANAGEMENT, SUPERVISORY, AND PROFESSIONAL EMPLOYEE GROUP COMPENSATION AND BENEFIT PLAN TO INCLUDE CLASS SPECIFICATION OF CRIME ANALYST.

WHEREAS, on January 27, 2022, the City Council approved Resolution No. 11,313, approving the addition of the new class specification of Crime Analyst; and

WHEREAS, the City Council previously approved a salary schedule that included the specification of Crime Analyst; and

WHEREAS, Resolution No. 11,313 also authorized adoption of a side letter agreement between the City of Newark and the Newark Police Management Association ("NPMA") to establish the classification of Crime Analyst be represented by the NPMA; and

WHEREAS, the City Manager or designee met and conferred in good faith with the representatives of NPMA to reach agreement on a successor Memorandum of Understanding between the City of Newark and the NPMA adopted by City Council on June 23, 2022; and

WHEREAS, after an evaluation of the duties and shared community interests of the Crime Analyst classification, the successor Memorandum of Understanding between the City of Newark and the NPMA adopted by City Council on June 23, 2022, removed the Crime Analyst classification effective July 1, 2022; and

WHEREAS, following the removal of the Crime Analyst classification from the NPMA, all employee associations were provided an opportunity to review the Crime Analyst class specification and request to represent the classification of Crime Analyst; and

WHEREAS, the City, based on evaluation, has determined that the classification of Crime Analyst is more appropriately an unrepresented position subject to the Management, Supervisory and Professional Employee Group Compensation and Benefit Plan.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Management, Supervisory, and Professional Employee Group Compensation and Benefit Plan is hereby amended to include the classification of Crime Analyst.

STAFF REPORT

Item D. 9.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Adopt a Resolution approving a Contractual Services Agreement with Surf to Snow Environmental Resource Management, Inc. to conduct inspections of industrial and commercial facilities as required by the City's stormwater discharge permit

RECOMMENDATION

Staff recommends that the City Council adopt a resolution authorizing the City Manager to execute a contractual services agreement with Surf to Snow Environmental Resource Management, Inc. to conduct inspections of industrial and commercial facilities to ensure compliance with the requirements of the Municipal Regional Stormwater Permit.

EXECUTIVE SUMMARY

The San Francisco Bay Regional Water Quality Control Board (Water Board) issues the City a permit to discharge stormwater. This permit requires the City to conduct inspections of stormwater treatment systems and commercial and industrial facilities to ensure that the treatment systems are operating properly and that the facilities are implementing "best management practices" to prevent pollutants from contaminating stormwater discharges. The City had a contract for these services that expired on June 30, 2022. Staff released a request for proposal and received proposals from three firms. Staff recommends that the City contract for services with Surf to Snow Environmental Resource Management, Inc. with a not to exceed amount for Fiscal Year 2022-2023 of $55,120.

BACKGROUND

The City, along with the other cities, unincorporated areas, and flood control districts in Alameda, Contra Costa, Santa Clara, and San Mateo counties, is issued a National Pollutant Discharge Elimination System (NPDES) Permit from the Water Board for discharges from its storm sewer system. This permit is referred to as the Municipal Regional Stormwater Permit or MRP. The Water Board adopted a revised MRP on May 11, 2022 which went into effect on July 1, 2022. The MRP requires the City to implement numerous activities to prevent pollutants from contaminating its stormwater discharges. Staff recommends that the City enter into contracts to assist with meeting four of these requirements:

1) *Provision C.3.h. Operation and Maintenance of Stormwater Treatment Systems*: The

City is required to inspect all the installed stormwater treatment systems to ensure that they are operating properly and to require additional maintenance if needed.
2) *Provision C.4. Industrial and Commercial Site Controls*: The City is required to inspect all industrial and commercial sites that could cause or contribute to pollution of stormwater discharges to ensure that proper best management practices (BMPs) are being implemented and to require corrective action as needed.
3) *Provision C.5. Illicit Discharge Detection and Elimination*: The City is required to effectively prohibit non-stormwater discharges from entering the storm drain system and to respond to any discharges or complaints of discharges, and to ensure the discharges cease and are cleaned up.
4) *Provision C.10 Trash Load Reduction*: The City is required to reduce the discharge of trash to its storm drain system by 90% (from 2009 levels) by June 30, 2023, and 100% by June 30, 2025. To meet this target, the discharge of trash/litter from commercial properties will need to be significantly reduced.

DISCUSSION/ANALYSIS

The City has had a contract with Surf to Snow Environmental Resource Management, Inc. (S2S) for the past three years. Under this contract, S2S has conducted inspections of stormwater treatment systems and industrial/commercial facilities and has provided on-call spill/illicit discharge response. That contract ended on June 30, 2022. Staff released a request for proposals for these services. Three proposals were received. S2S and Wood Environment & Infrastructure Solutions, Inc. (Wood) were the top two ranked firms. Both S2S and Wood provide well-qualified personnel and competitive rates. Staff is in the process of executing an agreement with Wood with a not to exceed contract amount of $40,000, which can be executed by the City Manager. City Council approval is required for the proposed agreement with S2S due to the proposed contract amount of $55,120.

As the City's requirements have increased under the reissued Municipal Regional Stormwater Permit (MRP), staff recommends that the City retain the services of both firms to assist the City in meeting current and future MRP requirements. Examples of increasing requirements include:

(1) *Provision C.3.h. Inspection of Stormwater Treatment Facilities*: All development projects with over 5,000 square feet of impervious surface are required to install stormwater treatment facilities to treat stormwater prior to discharge to the municipal storm drain system. As additional projects are completed, there are more facilities that need to be inspected.
(2) *Provision C.4. Inspection of Commercial and Industrial Facilities*: The previous permit did not require inspections of restaurants for compliance with stormwater discharge regulations. The reissued permit now requires inspections of restaurants and other food service businesses.
(3) *Provision C.10. Trash Load Reduction*: The reissued permit now requires a 90% reduction in the discharge of trash (from 2009 levels) by June 30, 2023, and a 100% reduction by June 30, 2025. Meeting these targets will require significant reductions in the trash discharge from private commercial properties that discharge directly into the municipal storm drain system.

FISCAL IMPACT

The 2022-2024 Biennial Budget and Capital Improvement Plan contains sufficient funding for this scope of work. No budget modifications are necessary.

REVIEW AND APPROVAL

Prepared by – James Scanlin, Environmental Services Manager
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Resolution

S2S Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACTUAL SERVICES AGREEMENT WITH SURF TO SNOW ENVIRONMENTAL RESOURCE MANAGEMENT, INC., FOR MUNICIPAL STORMWATER INSPECTION SERVICES

WHEREAS, the State of California has issued to the City of Newark Waste Discharge Requirements and a National Pollutant Discharge Elimination System (NPDES) Permit (No. CAS612008) for the discharge of stormwater runoff from the municipal separate stormwater system; and

WHEREAS, the City is required by the terms of the Permit to conduct inspections of stormwater treatment systems and industrial and commercial facilities to ensure that the systems are operating properly and that the facilities are implementing appropriate best management practices; and

WHEREAS, the City issued Requests for Proposals ("RFP") for Municipal Stormwater Inspection Services; and

WHEREAS, a total of three responses to the RFP were received and based on staff's evaluation, Surf to Snow Environmental Resource Management, Inc., and Wood Environment & Infrastructure Solutions, Inc. were determined to be the most qualified firms and provided the two highest ranking proposals; and

WHEREAS, both firms have demonstrated the ability to successfully fulfill the City's needs;

WHEREAS, an agreement with Wood Environment & Infrastructure Solutions, Inc. in an amount not to exceed $40,000.00 and in a form approved by the City Attorney will be approved at staff level.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute an agreement with Surf to Snow Environmental Resource Management, Inc. (S2S Agreement) in an amount not to exceed $55,120.00 in a form approved by the City Attorney; and

BE IT FURTHER RESOLVED that the City Manager is authorized to take all actions necessary to effectuate the intent of this Resolution.

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this day of , 2022 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and Surf to Snow Environmental Research Management, Inc., a California corporation ("Consultant"), collectively the "Parties".

W I T N E S S E T H:

WHEREAS, City requested proposals to perform Municipal Stormwater Inspection Services.

WHEREAS, in response to City's request, Consultant submitted a proposal (hereinafter "Proposal"), now on file with the City Public Works Department and incorporated herein by reference; 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 the Proposal, City finds that Consultant has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested Services.

NOW, THEREFORE, the Parties hereto agree as follows:

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

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

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

3. COMPENSATION.

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

Notwithstanding the foregoing, the combined total of compensation and costs payable hereunder shall not exceed the sum of Fifty-Five Thousand One Hundred Twenty Dollars ($55,120.00) unless the performance of services and/or reimbursement of costs and expenses in excess of said amounts have been approved in advance of performing such services and/or incurring such costs and expenses by City, evidenced in writing as Additional Services by Task Order (see Section 4. Additional Services of this Agreement).

B. Method of Billing. To request payment, Consultant shall submit monthly invoices to City identifying Services performed and the charges therefore (including an identification of personnel who performed Services, hours worked, hourly rates, and reimbursable expenses), based upon Consultant's billing rates (set forth on Exhibit "B" hereto).

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

Invoices shall be sent to:

City of Newark
Public Works Department
37101 Newark Blvd.
Newark, CA 94560

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

C. Payment. Upon receipt of 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 the Proposal. Therefore, Consultant shall not replace its Authorized Representative, or any of the designated personnel or subconsultants identified in the Proposal, without the prior written consent of City. All Services shall be performed by, or under, the direct supervision of Consultant's Authorized Representative.

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

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

8. INFORMATION AND DOCUMENTATION.

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

B. Consultant's Accounting Records. Consultant shall maintain all accounting records related to this Agreement in accordance with generally accepted accounting principles and state law requirements, and in no event for less than four (4) years. Consultant's accounting records shall include, at a minimum, all documents which support Consultant's costs and expenses related to this Agreement, including personnel, subconsultants' invoices and

payments, and reimbursable expenses. Consultant's accounting records shall be made available to City within a reasonable time after City's request, during normal business hours.

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

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

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

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

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

A. Verification of Coverage.

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

B. Minimum Scope of Insurance.

Coverage shall be at least as broad as:

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

E. Claims Made Policies.

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

F. Wasting Policies.

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

G. Remedies.

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

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

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

3. Terminate this Agreement.

H. Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City. 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 and shall not be canceled during the term of this Agreement without notice to the 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 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 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. REPORTING DAMAGES. If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

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

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

16. TERM/TERMINATION.

A. The term of this Agreement shall commence upon the date first hereinabove written and shall expire on June 30, 2023. At the end of the term, the City may

renew this Agreement for two (2) one-year terms as authorized by the by the Public Works Director, City Manager, or City Council.

B. Notwithstanding the provisions of paragraph 16 section A above, City may terminate this Agreement at any time and without cause upon written notification to the Consultant. Consultant may cancel this Agreement upon thirty (30) day's 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.

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

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

SURF TO SNOW ENVIRONMENTAL RESOURCE MANAGEMENT, INC.	**CITY OF NEWARK**
Elizabeth Frantz	PUBLIC WORKS DIRECTOR
Chief Operating Officer	**Administrator**
Address: Surf to Snow 696 San Ramon Valley Blvd. #368 Danville, CA 94526 Attn: Elizabeth Frantz	City of Newark Attn: Public Works Director 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

City of Newark

David J. Benoun

City Manager

Dated _____

Surf to Snow Environmental Resource Management, Inc.

Elizabeth Frantz

Chief Operating Officer

Dated _____

Attest:

Sheila Harrington, City Clerk

Dated _____

Approved as to form:

Kristopher Kokotaylo, City Attorney

Dated _____

EXHIBIT A

SCOPE OF SERVICES

Consultant Stormwater Inspection services required pertain to the Municipal Regional Stormwater NPDES Permit Order No. R2-2022-0018 (MRP).

MRP C.3. Inspections
Consultant to provide inspection services and related duties pertaining to MRP C.3. Operation and Maintenance (O&M) Verification Inspections of sites with stormwater treatment and hydromodification management measures. Consultant will conduct inspections of approximately 10-15 Regulated Projects. Out of those inspections, approximately 50% will require a second inspection and 10-15% will require a third inspection. As the number of Regulated Projects with installed stormwater management measures increases, the number of required annual inspections will increase as well, with the target number of inspections equal to about one-third of the total number of Regulated Projects. Vault-based stormwater management measures within the City are inspected by third-party inspectors, as allowed under MRP C.3. Review of these third-party inspections is included under this scope.

MRP C.4. Inspections
Consultant to provide inspection services and related duties pertaining to MRP C.4., inspections of Best Management Practices at industrial and commercial facilities. Consultant will conduct an average of 90 first inspections on a yearly basis. Out of these it is expected that approximately 10-15% will require a second inspection and approximately 5% will require a third inspection. City staff will provide the anticipated inspection list to Contractor each year of the contract. However, the inspection list may be modified on occasion in response to business opening/closure or complaints.

Related tasks include, but are not limited to:

- Review of O&M/Inspection records
- Scheduling of inspections and interfacing with business owners/site representatives
- Knowledge of and adherence to City's Enforcement Response Plans for MRP Provisions C.3. and C.4.
- Completion of County-wide standard SSBIR/SSFIR forms
- Collection of geographic information system (GIS) mapping data for each stormwater management measure
- Distribution of appropriate informational literature provided by the City
- Resolution of active or potential violations or deficiencies
- Documentation and reporting as required by City representatives

MRP C.5 Illicit Discharge Response

Consultant to provide on-call illicit discharge and spill response services. The Consultant follow all applicable safety and injury and illness prevention protocols and the City's Enforcement Response Plan if called up on to investigate reported spills, develop actions plans, assist with spill containment, assist with recordkeeping and time tracking, conduct follow-up work, or other activities as required by the City.

EXHIBIT B

Surf to Snow Environmental Resource Management, Inc.

Pricing Summary

MRP Provision C.3 O&M Verification Inspections (Unit Rate)

Units	Unit Rate	Number of Locations per Year	Fiscal Y1 Estimated Total
C.3 O&M Inspection (Initial)	$ 315.00	12.00	$ 3,780.00
C.3 O&M Inspection (1st Re-Insp)	$ 250.00	6.00	$ 1,500.00
C.3 O&M Inspection (2nd Re-Insp)	$ 250.00	1.00	$ 250.00
C.3 Inspection Total			**$ 5,530.00**

MRP Provision C.4 Business Inspections (Unit Rate)

Units	Unit Rate	Number of Locations per Year	Fiscal Y1 Estimated Total
C.4 Business Inspection (Initial)	$ 315.00	90.00	$ 28,350.00
C.4 Business Inspection (1st Re-Insp)	$ 250.00	11.00	$ 2,750.00
C.4 Business Inspection (2nd Re-Insp)	$ 250.00	1.00	$ 250.00
C.4 Inspection Total			**$ 31,350.00**

Spill & Discharge Response (Unit Rate)

Task	Unit Rate	Number of Locations per Year	Fiscal Y1 Estimated Total
Illicit Discharge - Typical Spill Response	$ 714.00	9.00	$ 6,426.00
Illicit Discharge - Emergency Weekend/After-Hours Spill Response	$ 1,329.00	1.00	$ 1,329.00
Spill & Discharge Response Total			**$ 7,755.00**

Post-Inspection Reporting & Deliverables (T&M)

Task	Fiscal Y1 Estimated Total
Monthly Reporting	$ 720.00
Weekly Reporting	$ 3,120.00
Post-Inspection Reporting & Deliverable Total	**$ 3,840.00**

Project Management & QAQC (T&M)

Task	Fiscal Y1 Estimated Total
Project Management & QAQC	$ 5,790.00
Communication with City (meetings/calls)	$ 855.00
Project Management & QAQC Total	**$ 6,645.00**

Estimated Year 1 Total	**$55,120.00**

T&M Rates

Labor Category	Normal Hourly Rates	Weekend/ After Hours Hourly Rate
Contract Manager	$ 165.00	$ 247.50
Assistant PM/Field POC	$ 120.00	$ 180.00
QSD	$ 140.00	$ 210.00
QSP	$ 110.00	$ 165.00
DI	$ 95.00	$ 142.50
GIS	$ 98.00	$ 147.00

Assumptions

1 Initial C.3/C.4 inspection units include time for research, scheduling, onsite inspection, reporting, & time to collect GIS data for the City's database. Assume total of 3 hours per inspection on average.

2 C.3/C.4 re-inspection units include time for research, scheduling, onsite inspection, & reporting. Assume total of 2.5 hours per inspection on average.

3 Assume 90 initial C.4 inspections yearly. Assume 12% need 2nd inspection. Assume 5% need 3rd inspection.

4 Assume 12 initial C.3 inspections yearly. Assume 50% need 2nd inspection. Assume 12% need 3rd inspection.

5 Assume 10 spill responses yearly. Assume 4 hours per inspection per site, 1.5 hours follow up per site, & 60 miles roundtrip. The Weekend/After-Hours Spill Response rate includes 1.5xhourly rate for inspection & assumes follow up after inspection occurs during normal working hours.

6 Assume QA/QC required for each inspection/spill response report. Assume 0.25 hours per report.

7 Assume project support active for 6-7 months of the year. Assume 2 hours per month of PM time will be required during these active months.

8 Assume up to 3 meetings with the City yearly (kickoff meeting, meeting to discuss database, & meeting 60 days prior to end of contract term).

9 T&M and Unit Rates are an average rate for the 3-year duration. If performance period extends beyond 3 years, rates will be subject to increase.

STAFF REPORT

Item D. 10.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Steven Turner, Community Development Director
SUBJECT	Adopt a Resolution Authorizing the County of Alameda to Execute a HOME-American Rescue Plan fund contract with Allied Housing, Inc. for the Cedar Community Apartments Homekey Project.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution acknowledging and authorizing the County of Alameda as lead agency of the HOME Investment Partnership Consortium to execute a HOME-American Rescue Plan fund contact agreement between the County of Alameda and Allied Housing Inc. for the Cedar Community Apartments Homekey project.

EXECUTIVE SUMMARY

The City of Newark, along with other smaller cities in Alameda County (County) as well as the unincorporated County areas, have formed "Urban County", that is eligible for federal funds from the Community Development Block Grant program and the HOME Investment Partnership program. In 2021, the County issued a Request for Proposals for HOME-American Rescue Plan (HOME-ARP) program funds to be used for affordable housing projects associated with the State of California's Homekey program. In response, the City submitted a proposal requesting $4,000,000 of HOME-ARP funds for the Cedar Community Apartments Homekey project. In January 2022, the County issued a conditional commitment of the requested funds based upon (among other requirements) a Homekey award from the state. The City is proceeding with activities in preparation of a Homekey grant that would result in efficiencies and time-savings for development of Cedar Community Apartments with Allied Housing Inc. The City and County desire to have the County contract directly with Allied Housing Inc. for the use of the conditionally committed HOME-ARP funds. The County requests that City acknowledge and provide the necessary authorization for this HOME-ARP contract agreement approach.

BACKGROUND

The City of Newark, along with the cities of Albany, Dublin, Emeryville, Piedmont, and the unincorporated areas of Alameda County, have formed an entity, Urban County, that is eligible for federal funds from the Community Development Block Grant (CDBG) program and the HOME Investment Partnership program (HOME). Federal funds are provided through the United States Department of Housing and Urban Development

(HUD) to the Urban County and administered by the County of Alameda (County). In 2020, Newark and the County executed a three-year Urban County participatory agreement that includes expectations and requirements for Newark's participation as a member of Urban County and the County's administration of federal funds. The County is the lead agency of the HOME Consortium, of which Newark is a member through Urban County. The Urban County agreement expires in 2023.

Each year, through Urban County, Newark receives federal funds through the CDBG program. Newark requests CDBG funds for a variety of eligible uses, including capital projects such as park pathway and sidewalk ADA ramp improvements that provide long-term accessibility and mobility benefits to Newark residents. Other CDBG funds expenditures include participation in the Minor Home Repair Program administered by the Alameda County Healthy Homes Department. CDBG program administrative costs are also an eligible use of CDBG funds, thereby reducing the burden on the City's general fund.

In addition to the CDBG program, the City may also request funds that are available through the HOME program. In 2021, the County issued a Request for Proposals (RFP) for HOME-American Rescue Plan (HOME-ARP) program funds to be used for affordable housing projects associated with the State of California's Homekey program. In response, the City submitted a proposal requesting $4,000,000 of HOME-ARP funds for the Cedar Community Apartments Homekey project. In January 2022, the County issued a conditional commitment of the requested funds based upon (among other requirements) a Homekey award from the state. If all requirements are met, the County Board of Supervisors would authorize the HOME-ARP funds through a subrecipient agreement that includes Newark and County requirements for the use and administration of these funds. After receiving the conditional commitment, the City and Allied Housing Inc. (who would develop Cedar Community Apartments) submitted an application to the state for Homekey funds. As of the preparation of this staff report, the state has not released public information regarding an award of funds.

DISCUSSION/ANALYSIS

Although Homekey award public information is not yet available, the City is proceeding with activities in preparation of a Homekey grant that would result in efficiencies and time-savings for development of Cedar Community Apartments. If a Homekey grant is awarded and in lieu of a HOME subrecipient agreement, the City and County desire to have the County contract directly with Allied Housing Inc. for the use of the conditionally committed HOME-ARP funds. This arrangement would reduce the HOME subrecipient agreement administrative burden between the City and Alameda County, and streamline issuance of HOME-ARP funds directly to Allied Housing Inc, which would own the Project and assume the subrecipient requirements that would have applied to the City. The HOME-ARP funds would be used for environmental and professional services, project audit costs, affirmative marketing, and fair housing services to prospective tenants. A contact between Allied Housing Inc. and the County of Alameda, through the Home Consortium, would be prepared and approved by the County Board of Supervisors. Newark would not be a party to this agreement. The City and County staffs, as well as Allied Housing Inc. are supportive of this approach.

The County requests that City acknowledge and provide the necessary authorization for this HOME-ARP contract agreement approach. Staff recommends that the City Council adopt a resolution providing this acknowledgement and authorization.

FISCAL IMPACT

The staff recommendation has no fiscal impact to the City.

REVIEW AND APPROVAL

Prepared by – Steven Turner, Community Development Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Resolution ARPA Allied and County

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK ACKNOWLEDGING AND AUTHORIZING THE PREPARATION OF A HOME INVESTMENT PARTNERSHIP CONTRACT BETWEEN THE COUNTY OF ALAMEDA AND ALLIED HOUSING INC. FOR THE CEDAR COMMUNITY APARTMENTS HOMEKEY PROJECT

WHEREAS, the City of Newark (City) is a member of the Alameda County Urban County and, as such, is eligible for Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) funds; and

WHEREAS, on June 11, 2020, the City Council adopted Resolution No. 11,067 which authorized the City's participation in the Urban County for the years 2021, 2022, and 2023 and authorized the City Manager to execute a cooperation agreement with the County of Alameda (County); and

WHEREAS, in 2021, the County issued a Request for Proposals (RFP) for grants associated with HOME-American Rescue Plan (ARP) program funds for affordable housing projects associated with the State of California's Homekey program. In response, the City submitted a proposal requesting $4,000,000 of HOME-ARP funds associated with the Cedar Community Apartments Homekey project that includes the conversion of an extended stay hotel into 124 units of supportive, affordable housing for extremely low-income households; and

WHEREAS, on January 13, 2022, the City Council adopted Resolution 11,303 authorizing the joint application with Allied Housing Inc. for participation in and the subsequent City Council approval and receipt of Homekey grant program funds; and

WHEREAS, on January 18, 2022, the County issued a conditional commitment of the requested funds, based upon (among other requirements) a Homekey award from the state. If all requirements are met, the County Board of Supervisors would authorize the HOME-ARP funds through a subrecipient agreement that includes Newark and County requirements for the use and administration of these funds; and

WHEREAS, if a Homekey grant is awarded, and in lieu of a HOME subrecipient agreement, the City and County desire to have the County contract directly with Allied Housing Inc. for the use of the conditionally committed HOME-ARP funds. This arrangement would reduce the HOME subrecipient agreement administrative burden between the City and County and streamline issuance of HOME-ARP funds directly to the Allied Housing Inc, which would own Cedar Community Apartments and assume subrecipient requirements that would have applied to the city.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby acknowledges and authorizes the preparation of a Home Investment Partnership contract

between the County of Alameda and Allied Housing Inc. for the Cedar Community Apartments Homekey Project.

STAFF REPORT

Item D. 11.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Kristopher Kokotaylo, City Attorney
SUBJECT	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 July 28 Pursuant to AB 361.

RECOMMENDATION

Staff recommends that the City Council adopt a resolution to continue conducting City Council and all other City Council appointed Board and Commission meetings remotely due to health and safety concerns for the public and making related findings in compliance with AB 361 (2021).

EXECUTIVE SUMMARY

Since near the start of the COVID-19 pandemic the City has been able to conduct meetings of its legislative bodies remotely pursuant to Executive Order N-29-20, which suspended certain provisions of the Brown Act allowing the City to conduct its meetings virtually. On June 11, 2021, Governor Newsom issued an Executive Order that ends the clauses of Executive Order N-29-20 which suspended those provisions of the Brown Act on September 30, 2021. Governor Newsom signed AB 361 into law on September 16, 2021. AB 361 allows the City to continue conducting virtual meetings where the Governor has proclaimed a State of Emergency and state or local officials have imposed or recommended social distancing or where the City Council has declared the need to meet remotely due to imminent risks to the health or safety of attendees.

On September 23, 2021, the City Council made the necessary findings pursuant to AB 361 to continue to conduct virtual meetings. AB 361 requires that the City Council revisit the need to continue conducting virtual meetings every 30 days. The City Council last made the necessary findings on July 14, 2022.

Staff and the City Attorney recommend that the City Council adopt a resolution making the necessary findings pursuant to AB 361 to continue conducting virtual meetings. Absent further action of the City Council, the City's legislative bodies would need to continue in-person meetings 30 days after July 14, 2022.

BACKGROUND

On March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State address the broader spread of COVID-19.

On March 17, 2020, the City Council adopted a Resolution ratifying the proclamation of a local state of emergency by the Director of Emergency Services due to COVID-19.

On March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20, which suspended certain provisions of the Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means. Additionally, the State implemented a shelter-in-place order, requiring all non-essential personnel to work from home.

The City has established virtual meetings for all City Council and City Council appointed Board and Commission meetings. The virtual meetings have allowed the Council and advisory bodies to continue to conduct City business from remote locations while ensuring the public's continued access to government meetings in a safe manner.

On June 11, 2021, Governor Newsom issued Executive Order N-08-21, which among other things, rescinded certain clauses of Executive Order N-29-20 after September 30, 2021, including clauses that suspended certain provisions of the Brown Act. Thus, effective October 1, 2021, agencies would have had to transition back to public meetings held in full compliance with the Brown Act.

Since the Governor issued Executive Order N-08-21, the highly contagious Delta variant has emerged, causing a spike in cases throughout the state and within the Alameda County. Additionally, since then, the highly contagious Omicron variant and sub-variants BA.2 and BA.2.12.1, and BA.5 have emerged. The BA.5 sub-variant has led to a surge and an increase in hospitalizations across the state and in the county Currently, state and local officials strongly recommend wearing masks indoors. State officials further recommend the use of masks when social distancing is not possible.

On September 16, 2021, the Governor signed AB 361 (2021) which allows for local legislative and advisory bodies to continue to conduct meetings via teleconferencing under specified conditions and includes a requirement that the Council make specified findings. AB 361 took effect immediately.

The City Council adopted a resolution pursuant to AB 361 on September 23, 2021 in order to allow the City's legislative bodies to continue conducting virtual meetings after September 30, 2021. The resolution included all of the necessary findings required pursuant to AB 361. The City Council has adopted continued resolutions since that time.

DISCUSSION/ANALYSIS

The California Legislature approved AB 361 and the Governor signed the bill into law on September 16, 2021. AB 361 allows local legislative bodies to continue to meet remotely after the expiration of the clauses of Executive Order N-29-20 which suspended certain Brown Act provisions. Under AB 361, the City and its legislative bodies will be allowed to continue to meet remotely when:

• The local agency holds a meeting during a declared state of emergency;
• State or local health officials have imposed or recommended measures to promote social distancing;
• Legislative bodies declare the need to meet remotely due to present imminent risks to the health or safety of attendees.

The City meets the requirements to continue holding meetings remotely in order to ensure the health and safety of the public:

• The Governor has declared a State of Emergency, and the City Council has ratified the proclamation of a local emergency by the Director of Emergency Services;
• The CDC recommends social distancing of at least six feet due to COVID-19, and CalOSHA recommends social distancing under certain circumstances and maintaining six feet of distance can avoid close contacts requiring quarantine;
• The Delta and Omicron variants of COVID-19 have resulted in a significant increase of COVID-19 cases within the state and throughout Alameda County;
• Meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies, and staff.

Pursuant to AB 361, the City Council is required to declare every 30 days that the City's legislative bodies must continue to meet remotely in order to ensure the health and safety of the public.

The proposed resolution includes the necessary findings pursuant to AB 361 to allow the City Council and the City's legislative bodies to continue meeting remotely.

FISCAL IMPACT

There is no direct fiscal impact of adopting this Resolution.

REVIEW AND APPROVAL

Prepared by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

AB 361 Resolution July 24

RESOLUTION NO. xxxx

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK 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 JULY 28 PURSUANT TO AB 361

WHEREAS, all meetings of the City of Newark's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch the City's legislative bodies conduct their business; and

WHEREAS, on March 4, 2020, Governor Newsom declared a State of Emergency to make additional resources available, formalize emergency actions already underway across multiple state agencies and departments, and help the State prepare for a broader spread of the novel coronavirus disease 2019 ("COVID-19"); and

WHEREAS, on March 17, 2020, the City Council adopted a Resolution ratifying the proclamation of a local emergency by the Director of Emergency Services due to COVID-19; and

WHEREAS, on March 17, 2020, in response to the COVID-19 pandemic, Governor Newsom issued Executive Order N-29-20 suspending certain provisions of the Ralph M. Brown Act in order to allow local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, as a result of Executive Order N-29-20, staff set up virtual meetings for all City Council meetings and meetings of all legislative bodies within the City; and

WHEREAS, on June 11, 2021, Governor Newsom issued Executive Order N-08-21, which, effective September 30, 2021, ends the provisions of Executive Order N-29-20 that allows local legislative bodies to conduct meetings telephonically or by other means; and

WHEREAS, on September 16, 2021, Governor Newsom signed AB 361 (2021) which allows for local legislative bodies and advisory bodies to continue to conduct meetings via teleconferencing under specified conditions and includes a requirement that the City Council make specified findings. AB 361 (2021) took effect immediately; and

WHEREAS, AB 361 (2021) requires that the Governor declare a State of Emergency pursuant to Government Code section 8625; and

WHEREAS, AB 361 (2021) further requires that state or local officials have imposed or recommended measures to promote social distancing, or, requires that the legislative body

determines that meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist in the City, specifically, Governor Newsom has declared a State of Emergency due to COVID-19; and

WHEREAS, since issuing Executive Order N-08-21, the highly contagious Delta and Omicron variants, in addition to Omicron sub-variants, of COVID-19 have emerged, causing an increase in COVID-19 cases throughout the State and Alameda County; and

WHEREAS, on August 3, 2021, in response to the Delta variant of COVID-19, the Alameda County Health Officer issued an order for nearly all individuals to wear masks when inside public spaces; and

WHEREAS, following the Alameda County Health Order the Omicron variant emerged and was designated as a variant of concern by the United States; and

WHEREAS, the emergence of the highly contagious Omicron variant has resulted in the greatest nationwide COVID-19 infection rate since the beginning of the COVID-19 pandemic; and

WHEREAS, the Centers for Disease Control and Prevention ("CDC") continues to recommend physical distancing of at least 6 feet from others outside of the household and CalOSHA recommends social distancing under certain circumstances and maintaining six feet of distance can avoid close contacts requiring quarantine. State and local officials currently strongly recommend wearing masks indoors and state officials further recommend the use of masks when social distancing is not possible; and

WHEREAS, because of the rise in cases due to the Delta and Omicron variant of COVID-19, and now the Omicron sub-variant, the City is concerned about the health and safety of all individuals who intend to attend City Council and meetings of the City's other legislative bodies; and

WHEREAS, on September 23, 2021, the City Council found that the presence of COVID-19 and the increase of cases due to the Delta variant would present imminent risks to the health or safety of attendees, including the legislative bodies and staff, should the City's legislative bodies hold in person meetings; and

WHEREAS, the highly contagious Omicron variant has since resulted in several highly contagious sub-variants, including the new BA.5, which has become the dominant strain of COVID-19; and

WHEREAS, due to the presence of the highly contagious Omicron sub-variants, especially BA.5, there has been an increase in hospitalizations within the state; and

WHEREAS, the City Council has subsequently found that the presence of COVID-19 and the number of cases due to the Delta and Omicron variants would present imminent risks to the health or safety of attendees, including the legislative bodies and staff, should the City's legislative bodies hold in person meetings; and

WHEREAS, the City Council finds that the imminent risks of the City's legislative bodies holding in person meetings to the health or safety of attendees continues to exist due to the Delta and Omicron variants of COVID-19; and

WHEREAS, the City shall ensure that it's meetings comply with the provisions required by AB 361 (2021) for holding teleconferenced meetings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark as follows:

1. The above recitals are true and correct, and incorporated into this Resolution.

2. In compliance with AB 361 (2021), and in order to continue to conduct teleconference meetings without complying with the usual teleconference meeting requirements of the Brown Act, the City Council makes the following continued findings:

   a) The City Council has reconsidered the circumstances of the state of emergency; and

   b) The state of emergency, as declared by the Governor and City Council, continues to directly impact the ability of the City Council and the City's legislative bodies, as well as staff and members of the public, from meeting safely in person; and

   c) The CDC continues to recommend physical distancing of at least six feet due to COVID-19, state and local officials continue to recommend wearing masks and physical distancing under certain circumstances, and as a result of the presence of COVID-19 and the increase of cases due to the Delta and Omicron variants, meeting in person would present imminent risks to the health or safety of attendees, the legislative bodies and staff.

3. City Council and City's legislative bodies may continue to meet remotely in compliance with AB 361, in order to better ensure the health and safety of the public.

4. The City Council will revisit the need to conduct meetings remotely within 30 days of the adoption of this resolution.

STAFF REPORT

Item D. 12.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	James Scanlin, Environmental Services Manager
SUBJECT	Adopt a resolution approving a second amendment to the contractual services agreement between the City and Abbe and Associates to assist with the implementation of commercial organics waste collection and related services and amending the 2022-2024 Biennial Budget and Capital Improvement Plan

RECOMMENDATION

Staff recommends that the City Council approve a resolution authorizing the City Manager to execute a second amendment to the contractual services agreement with Abbe and Associates for Commercial Organics Collection Program Consulting Services and amend the 2022-2024 Biennial Budget and Capital Improvement Plan. The cost for these additional services is $99,260 and can be funded with the City's current accumulated Measure D fund balance.

EXECUTIVE SUMMARY

The City oversees the collection and disposal or diversion of solid waste, recyclables, and organics. State law and the City Municipal Code include requirements for residents and businesses regarding the management of their discarded material including: (1) three-stream collection service (solid waste, recycling, and organics); (2) proper sorting of materials; (3) recycling of construction and demolition debris; and (4) annual reporting to CalRecycle. Approval of this contract modification with Abbe and Associates will allow the City to make necessary improvements in the implementation of these requirements. Through this contract Abbe and Associates will also assist the City with implementing an organics diversion program at Newark Days, bulky waste collection events, and developing a proposed sustainable food ware program.

BACKGROUND

The City previously released a request for proposals for Commercial Organics Collection Program Services and selected Abbe and Associates. The City contracted with Abbe and Associates in February 2017 for a not to exceed amount of $63,400.00. On April 12, 2018, Council approved the First Amendment to the contract for a new not to exceed amount of $213,400.00. Abbe and Associates has successfully completed the scope of work in the Agreement and the First Amendment. Due to the significant amount of work that needs to be completed in a timely manner related to recycling and organics services, staff recommends a Second Amendment to the agreement to implement the additional related tasks and increasing the contract amount by

$99,260.00 for a revised not-to-exceed amount of $312,660.00.

DISCUSSION/ANALYSIS

The proposed Scope of Services associated with the Second Amendment would be as follows:

Organics Collection Service: State law and the City Municipal Code require businesses and multi-family dwellings of five or more units (together referred to as "commercial generators") to have a three-stream waste service (solid waste, recycling, organics). A commercial generator may be granted a waiver of the requirement to have organics service if they can demonstrate that they generate very little organic waste. Virtually all commercial generators in the City have solid waste and recycling service. However, about 40% of the commercial generators (287 accounts) do not have organics service currently. This task will be to contact each of these accounts and conduct site visits to encourage them to set up organics service and provide necessary training. Abbe and Associates will also assist with reporting on the results to CalRecycle.

Construction and Demolition Debris Recycling: State law and the City Municipal Code require that applicable demolition projects recycle 100% of the cement and asphalt concrete as well as other recyclable debris. It appears that these requirements may not be being fully implemented by contractors within the City. Abbe and Associates will assess the current level of implementation and provide recommendations for improvements.

Assistance with City Events: Abbe and Associates will provide staffing to assist with the diversion of organics at Newark Days and with the City's bulky waste drop off events.

Sustainable Food Ware: In response to concerns expressed by Newark residents and potential benefit towards meeting the City's trash reduction requirements under the Municipal Regional Stormwater Permit, staff recommends pursuing a sustainable food ware ordinance. Abbe and Associates will assess the costs and benefits of various options and provide recommendations for staff to bring to Council.

FISCAL IMPACT

An amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan is necessary to appropriate an additional $99,260 of Measure D funds for the proposed contractual services with Abbe and Associates.

REVIEW AND APPROVAL

Prepared by – James Scanlin, Environmental Services Manager
Reviewed by – Soren Fajeau, Public Works Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Resolution
Agreement and First Amendment
Second Amendment

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK AUTHORIZING THE CITY MANAGER TO EXECUTE THE SECOND AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT WITH ABBE & ASSOCIATES FOR COMMERCIAL ORGANICS COLLECTION PROGRAM CONSULTING SERVICES AND AMENDMENT OF THE 2022-2024 BIENNIAL BUDGET AND CAPITAL IMPROVEMENT PLAN

WHEREAS, the City and Abbe & Associates ("Consultant") entered into an Agreement between City and Consultant for Commercial Organics Collection Program Consulting Services effective February 23, 2017 (Agreement); and

WHEREAS, pursuant to Resolution No. 10768 the City Council approved an amendment to the Agreement between City and Consultant for Commercial Organics Collection Program Consulting Services effective April 12, 2018 (First Amendment); and

WHEREAS, Abbe & Associates have satisfactorily completed the scope of services in the Commercial Organics Collection Program Consulting Services Agreement and First Amendment to the Agreement; and

WHEREAS, a budget amendment is necessary to allocate additional Measure D funding for this scope of activity; and

WHEREAS, the City intends, upon mutual written agreement by both parties to add tasks assisting with completion of the implementation of commercial organics collection requirements of AB 1826 and the development and adoption of a sustainable food ware ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute the second amendment to the Contractual Services Agreement with Abbie and Associates., in a form approved by the City Attorney, to provide assistance with completion of the implementation of commercial organics collection requirements of AB 1826 and the development and adoption of a sustainable food ware ordinance and to increase the not to exceed amount of the Agreement by $98,260.00 for a total not to exceed amount of $312,660.00.

BE IT FURTHER RESOLVED by the City Council of the City of Newark hereby approves an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for the appropriation of $98,260.00 of unallocated fund balance from Fund 215 to expenditure account 215.60.063.631.6221 in fiscal year 2022-2023.

a17004
R10768

FIRST AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF NEWARK AND ABBE & ASSOCIATES FOR ADDITIONAL RECYCLING CONSULTING SERVICES

This Amendment to the Agreement for Recycling Consultant Services is effective as of April 12, 2018, by and between the City of Newark and Abbe & Associates.

RECITALS

WHEREAS, the City and Abbe & Associates ("Consultant") entered into a certain Agreement between City and Consultant for Recycling Consulting Services effective February 23, 2017 (Agreement); and

WHEREAS, Abbe & Associates have satisfactorily prepared a Long-Term Range Diversion Plan for the City and assisted with auditing the material stream and negotiation the Commercial Organics Collection Program with Republic Services; and

WHEREAS, the City intends, upon mutual written agreement by both parties to add the tasks of preparing outreach material, providing technical assistance and assisting with creating a page on the City's web page devoted to recycling and diversion information.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

(1) Notwithstanding Section 1 of the Agreement, the parties hereby agree to add the additional services to the scope of the Agreement as contained in Exhibit A.
(2) The cost data listed for the additional services is contained in **Exhibit A**.

The First Amendment of the Agreement for Recycling Consulting Services has been executed by the parties as of the date first set forth above.

CITY OF NEWARK
a municipal corporation

BY _____
Alan L. Nagy
Mayor

Date 4/12/2018

Attest: _____
City Clerk

Date 4/12/2018

Approved as to form:

_____
City Attorney

Date: 4-13-18

Abbe & ASSOCIATES
a California professional corporation

By _____
Name: RUTH C. ABBE

Title: PRINCIPAL

Date: 4-19-18

First Amendment to the Agreement between the City of Newark and Abbe & Associates for Additional Recycling Consulting Services

Exhibit A: Scope of Work for Short-Term Programs

The City of Newark is considering implementation of a Long-Range Plan to comply with new state laws and county ordinances requiring increases in recycling and composting, including food waste reduction and food recovery. The City has expanded its organics program to include multifamily and commercial customers and will be rolling out new programs to the Newark schools. The cost estimates for implementing the short-term programs identified in the plan are included in the table below along with some additional first-year costs associated with new programs (organics collection at schools and events recycling).

Recommended Programs	Cost Estimate	Annual Cost
Enhanced Outreach Materials and Website	200 hours at $125/hour	$25,000
Enhanced Outreach and Technical Assistance	1,000 hours at $75/hour	$75,000
Recycling Equipment and Containers	500 internal recycling and composting containers at $25 each 1,200 stickers and posters at $5 each Miscellaneous custodial carts, pickers and aprons	$12,500 $6,000 $1,500
Newark Green Schools Initiative	30 hours per school at $50/hour	$18,000
Events Recycling Support	Policy development 16 hours at $165/hour Outreach support at 4 City events (5 staff at $35/hour) Recycling equipment (Clearstreams, bags, signage)	$2,640 $5,600 $3,760
Total		$150,000

Enhanced outreach materials and website

For this task, we will expand the information available on the City's website to provide more social media and marketing to its residents and businesses. We will provide content for the City's webmaster to post a dedicated webpage within the City's website. We will develop on-line information about the recycling and composting programs, food waste prevention and food donation opportunities in the local area, develop Frequently Asked Questions (and answers), provide announcements about local activities (including the Fix-It Clinics at the Newark Library), and provide other relevant information to ensure that the City's residents and businesses have easy access to the information that they need to fully comply with the City's programs.

Enhanced Outreach and Technical Assistance

For this task, we will partner with Republic Services to provide outreach and technical assistance to the City's commercial businesses and multifamily complexes. We will assist customers with information about the new organics program and help them to "right-size" their recycling, organics and trash collection service. Our goal will be to help customers to cost-effectively comply with the new program. We will

provide information to food generating business about food waste prevention and food donation opportunities (pursuant to Senate Bill 1383). We will also provide on-site training for commercial businesses and door-to-door outreach to multifamily complexes.

Newark Green Schools Initiative

For this task, we will help the Newark Unified School District to fully implement the recycling and composting programs required under state law and countywide ordinances. Schools require an increased amount of hand-holding and technical assistance. We will recruit on-site green team members, and train custodial staff, faculty, and students in best management practices for recycling and composting. There are 12 schools within Newark Unified, including the pre-school and adult school. Each of the district's sites will be targeted for implementation. Should time and resources allow, we will expand our assistance to private and parochial schools within the City.

Events Recycling Support

The City has identified Events Recycling Requirements as a short-term policy for implementation. For this task, we propose to work with City staff to develop the new policy which could require event sponsors to provide recycling at all permitted events. We will also provide outreach assistance at four public events in Newark during the first year of implementation to demonstrate best practices and assist event organizers in planning and implementing recycling (and potentially composting) at events within the City.

C17004
R10595

CONTRACTUAL SERVICES AGREEMENT

CONSULTANTS

This Service Agreement (hereinafter "Agreement") is made and entered into this 23 day of FEBRUARY, 2017 by and between the **CITY OF NEWARK**, a municipal corporation ("City"), and ABBE & ASSOCIATIONS, a Limited Liability Company ("Consultant"), collectively the "Parties".

WITNESSETH:

WHEREAS, City requested proposals to perform the services generally including: **PREPARE A LONG-TERM RECYCLING PLAN, ASSIST WITH IMPLEMENTING THE COMMERCIAL ORGANICS COLLECTION PROGRAM AND AUDIT OF MATERIAL STREAM REPORTING.**

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 Sixty Three thousand, four hundred and forty and No/100 Dollars ($63,440.00) 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. **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 12 shall include a "wasting" policy limit (ie. limit that is eroded by the cost of defense).

G. **Remedies.**

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

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

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

3. Terminate this Agreement.

H. **Acceptability of Insurers.**

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

I. **Other Insurance Provisions.**

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

1. Additional Insureds. City, its officers, officials, directors, employees and volunteers ("Additional Insureds") are to be covered as insureds 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 12 is a material element of this Agreement and failure to maintain or renew coverage or to provide evidence of coverage or renewal may be treated by City as a material breach of this Agreement.

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

13. **REPORTING DAMAGES.** If any damage (including but not limited to death, personal injury or property damage) occurs in connection with the performance of this Agreement, Consultant shall immediately notify the City Risk Manager's office by telephone at 510-578-4428, and Consultant shall promptly submit to the City's Risk Manager and the City's Administrator (see paragraph 18, hereinbelow) a written report (in a form acceptable to City) with the following information: (a) name(s) and address(es) of the injured or deceased person(s), (b) name(s) and address(es) of witnesses, (c) name(s) and address(es) of Consultant's insurance company(ies), and (d) a detailed description of the damage(s) and whether any City property was involved.

14. **INDEMNIFICATION/SAVE HARMLESS.** To the fullest extent permitted by law, the Consultant shall: (1) immediately defend, and (2) indemnify City, its, officers, officials, directors, employees, and volunteers from and against all liabilities regardless of nature or type

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

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

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

16. TERM/TERMINATION.

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

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

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

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

Abbe & Associates, LLC	CITY OF NEWARK
Ruth Abbe, Pincipal	_____
Consultant	**Administrator**
Address: 1028 Fair Oaks Ave Alameda, CA 94501	City of Newark Attn: Susie Woodstock 37101 Newark Boulevard Newark, CA 94560

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

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

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

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

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

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

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

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

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

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

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

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

CITY OF NEWARK,
a municipal corporation

By _____
City of Newark

Date 2/23/2017

Abbe & Associates, LLC

By _____
Consultant

Date 2-16-17

Ruth C. Abbe, Principal
Printed Name

Attest:
_____
City Clerk

Date 2/23/2017

Approved as to form:
_____
City Attorney

Date 2.27-17

EXHIBIT A

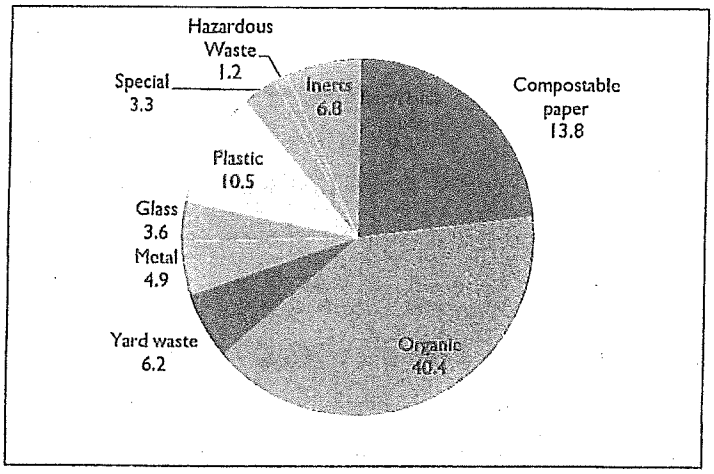
SCOPE OF SERVICES

I. IDENTIFY TARGET SECTORS

Objective: Identify goals and objectives of the Recycling Plan by evaluating opportunities by generator sector.

Approach: There are a number of useful data sources for profiling the generator sectors in the City: reports from Republic Services, recycling reports or invoices prepared for Newark Unified, 2008 Alameda County waste characterization study, the CalRecycle 2014 generator based waste composition study and community profiles based on local demographics, and benchmark studies performed by Stopwaste, among others. We do not anticipate that data from the 2017 Alameda County waste characterization study will be available during the 6-8 month period that the City anticipates for the Recycling Plan. It is unclear whether the methodology to be used in the countywide study will provide enough specific information about the City's generator sectors to be useful for the Recycling Plan. Therefore, we will review available data and create a profile for each generator sector in the City, including: single family, multifamily, commercial, roll-off and schools. Based on these profiles and including information from the Task 6 review of current hauler reporting (discussed below), we will identify the generator sectors that should be targeted for the Recycling Plan. The results of this task will inform the development of the goals and objectives for the Recycling Plan.

2008 Aggregate Waste Composition by Major Material Group



Source: 2008 Alameda County Waste Characterization StudyStopaste.org
Note: Over 60% of discarded material is compostable.

Deliverables: One draft and one final memo identifying the targeted sectors, goals and objectives. We anticipate that the memo will be incorporated into a section of the Recycling Plan.

II. REVIEW CURRENT PROGRAMS

Objective: Prepare a description of the City's existing policies, programs and regional facilities and identify opportunities for expansion or improvement.

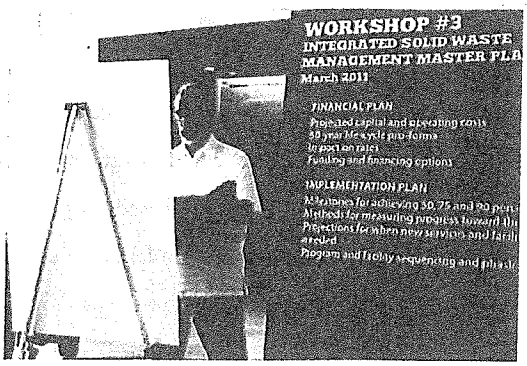
Approach: For this task, we will prepare a description of each of the City's existing policies, programs and regional facilities. Based on available information provided by City staff and Republic, we will identify the participation and capture rates, historic recycling and refuse tonnage over time, the years when programs were implemented, and the successes achieved (in tons and dollars, where available). We will provide a brief evaluation and identify the opportunities for expansion and enhancement, where appropriate.

Deliverables: One draft and one final memo describing the current programs and identifying opportunities for expansion and enhancement to contribute to the sector-specific goals and objectives identified in task 1. We anticipate that the memo will be incorporated into a section of the Recycling Plan.

III. RECOMMEND PROGRAMS

Objective: Based on discarded materials generation, characterization, local markets, and demographic data, we will identify the opportunities for decreasing the volume of discarded materials generated by: single-family, multi-family, commercial, roll-off and schools.

Approach: We will review and discuss the opportunities for increased diversion from each generator sector. We will discuss program improvement opportunities and options for increasing diversion. We are familiar with the City's collection contract services and will discuss opportunities for increasing incentives for diversion by the contractor and the generators. We will review the current service contracts and identify opportunities for future changes in the service contract, rate structure or compensation mechanism.



Our team members were key staff to the U.S. EPA in the development of a new website: ***Managing and Transforming Waste Streams – A Tool for Communities*** (See: http://www2.epa.gov/managing-and-transforming-waste-streams-tool-communities). This website includes a tool that highlights best practices for community-wide procurement and contracting for solid waste and recycling services at: http://www2.epa.gov/managing-and-transforming-waste-streams-tool-communities/contracting-best-practices-resources-used. We will review this tool with City staff and identify the programs recommended for implementation.

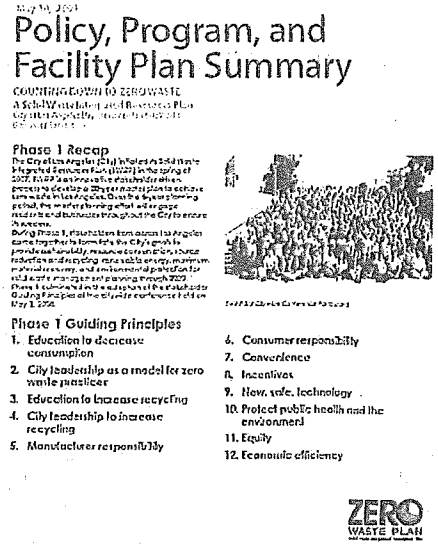
Deliverables: One draft and one final memo identifying the recommended programs. We anticipate that the memo will be incorporated into a section of the Recycling Plan. One public meeting, either a Council study session or community workshop, is included in this task to present the recommendations and receive community input.

IV. ESTIMATE DIVERSION POTENTIAL AND COSTS

Objective: Prepare diversion estimate, economic analysis and implementation plan, highlighting the Recycling Plan steps for meeting the goals and objectives identified pursuant to Task 1.

Approach: For this task, we will identify the planning level costs associated with each of the proposed policy, program and facility initiatives and identify an appropriate funding source for each initiative. We will estimate the potential diversion rates and greenhouse gas reductions based on diverted tons using the U.S. EPA Waste Reduction Model.

We will also develop an implementation plan, identifying all of the action steps required to implement the Recycling Plan elements. The implementation plan will include an estimate of staff time necessary for implementation along with the opportunities for partnerships. The implementation plan will include a phasing schedule and diversion estimate by goal year and will serve as the "workbook" for City staff.



Deliverables: One draft and one final memo presenting the diversion and economic analysis and implementation plan. We anticipate that the memo will be incorporated into a section of the Recycling Plan. Compilation of the memos, findings and research into the Recycling Plan are included in this task. We anticipate preparing one draft and one final of the Recycling Plan.

V. EVALUATE RATE STRUCTURE

Objective: Determine whether changes in collection rates would increase recycling behaviors.

Approach: We know that the City's rates are tiered to incentivize customers to right-size their containers. Single-family residential customers pay more for more refuse volume and recycling and organics collection are included in the refuse rates. Commercial rates include a lower rate for recycling and organics collection compared to the same size container for refuse. The City and Republic have taken a step toward a cost of service model that would stabilize rates over time as customers migrate to smaller refuse containers. This avoids the "death spiral" where rate revenues do not match the costs to provide service. However, based on the current commercial and industrial recycling rates, it is possible that changes to the rate structure could change recycling behavior. Alternative approaches for keeping cost of service rates intact while also providing an incentive to recycling have been hard to achieve. For this task, we will survey 8 to 10 local governments about the success of different rate structures and profile each approach, discussing the pros and cons. For example, the Central Contra Costa Solid Waste Authority's contract with Republic provides commercial recycling and organics collection at no extra charge to the commercial customers (similar to single family). As a result, all of the schools in the service area are now fully participating in recycling and composting collection services and have collectively achieved a 56% diversion rate. San Francisco has been experimenting with commercial rates by having Recology charge by volume for all services and then providing a discount for more recycling or organics collection (similar to Newark's approach). San Francisco is also having Recology enforce their mandatory recycling and compost collection ordinance by charging a 50% surcharge to customers who contaminate their refuse with recyclables or compostables or contaminate their recycling and composting with refuse.



The Death Spiral

Deliverables: One draft and one final memo presenting the results of the survey and recommendations for the City. We anticipate that the profiles for each community will be incorporated into an appendix of the Recycling Plan.

VI. REVIEW AND EVALUATE CURRENT HAULER REPORTING

Objective: Establish current diversion rates, compare these to other similar communities, and identify areas where the City and Republic can improve diversion.

Approach: For this task we will review all of the reports that the City currently receives from Republic and request additional available data from Republic, if appropriate. We will calculate the citywide franchise diversion rate and the diversion rate for each generator sector (single family, multi-family, commercial and roll-off/industrial). Year-to-date 2016 reports provided by the City show an approximately 50-53% diversion rate for residential customers and a 5-8% diversion rate for roll-off and front load service,

resulting in a 27% diversion rate citywide. We will dig more deeply into this data to understand the factors that are contributing to these diversion rates and identify opportunities for program improvement. Using City staff input we will identify 8 to 10 "peer cities" based on demographics and similar basic collection programs. Then we will compare diversion results, program implementation strategies, and contract provisions that could improve diversion in the City and meet state mandates.

Deliverables: One draft and one final report detailing the findings and recommendations.

VII. REVIEW CURRENT COMMERCIAL ORGANICS COLLECTION PROGRAM PROPOSAL

Objective: Evaluate the current commercial organics collection program proposal and identify the most cost-effective means for implementing the program and meeting the objectives of state and local mandates.

Approach: We will review the current commercial organics collection program proposal provided by Republic and compare this to other successful organics collection programs that have been implemented in our area. In our experience, organics collection program implementation requires hand-holding and technical assistance. Training in languages other than English may be desirable based on the demographics of the City. We will evaluate Republic's approach for meeting the needs of its customers and identify opportunities from ensuring that the program is successful. A key issue is Republic's plans for charging organics collection rates to its customers and the opportunities for "right-sizing" trash collection. The City and Republic will need to balance the incentives to the rate-payers with the need to ensure that enough revenue is generated to cover the system costs.

Deliverables: One draft and one final report detailing the findings and recommendations.

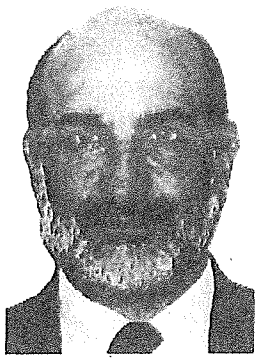
Task	Deliverable	Meeting	Schedule
I. Identify Target Sectors	Memo	Kickoff	Month 1
II. Review Current Programs	Memo		Month 2
III. Recommend Programs	Memo	Community or Council	Month 3
IV. Estimate Diversion Potential and Costs	Memo Report	Staff	Month 4 (memo) Month 6 (report)
V. Evaluate Rate Structure	Memo Appendix		Month 5
VI. Review and Evaluate Current Hauler Reporting	Report	Staff	Month 1
VII. Review Current Commercial Organics Collection Program Proposal	Report	Staff	Month 2

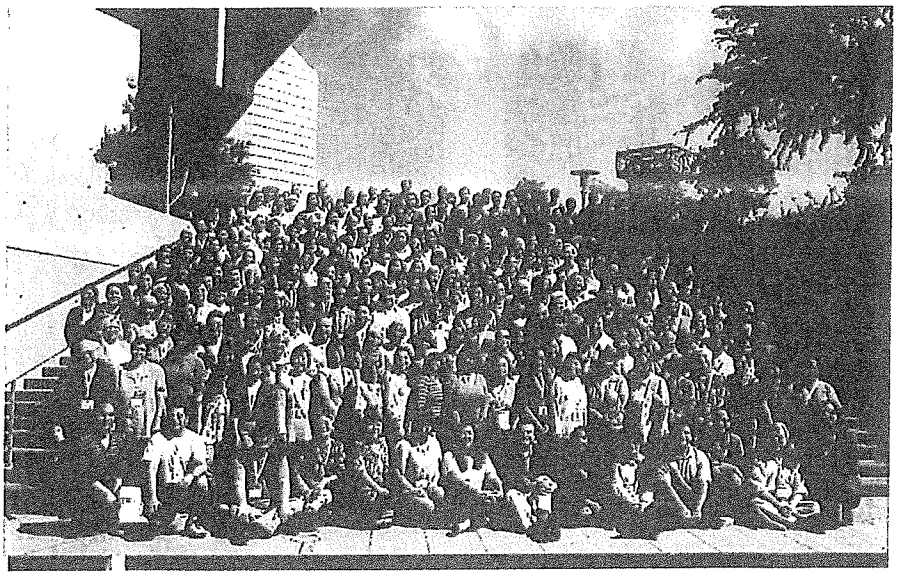
EXHIBIT B

PAYMENT

Task	Hours	Cost	Lead	Support
I. Identify Target Sectors	48	6800	Ruth	Gary
II. Review Current Programs	48	6200	Richard	Portia Ruth
III. Recommend Programs	80	10000	Portia	Richard Ruth
IV. Estimate Diversion Potential and Costs	64	10320	Ruth	Kevin
V. Evaluate Rate Structure	64	11040	Kevin	Ruth
Subtotal Recycling Plan	304	44,360		
VI. Review and Evaluate Current Hauler Reporting	60	10,380	Gary	Kevin Ruth
VII. Review Current Commercial Organics Collection Program Proposal	60	8700	Rich	Ruth
Total	424	63,440		

Staff	Rate
Ruth	150
Kevin	180
Rich	125
Richard	125
Portia	125
Gary	125





RICHARD ANTHONY, SERVICE OPPORTUNITIES

Education

B.A., M.A., Political Science (Public Administration), California State University, Long Beach, California

Professional Affiliations

Board of Directors Grassroots Recycling Network (1996-present)
Board of Directors; California Resource Recovery Association (1975-1979, 1980-1993, 1994-96, 2000-present)
Board of Directors; Keep California Beautiful (1991- present)
Board of Directors; Mount Carmel Soccer Booster Club dba Sun Devil Recycling (1991-96)
Founding member and former Board of Director; National Recycling Coalition (1980-1993)
California State University Long Beach, Associated Students Ecology Commission (1971-1974)
Board of Directors; Zero Waste International Alliance (ZWIA) (2003-present)

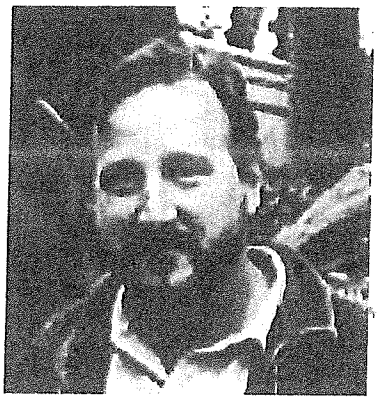
Expertise

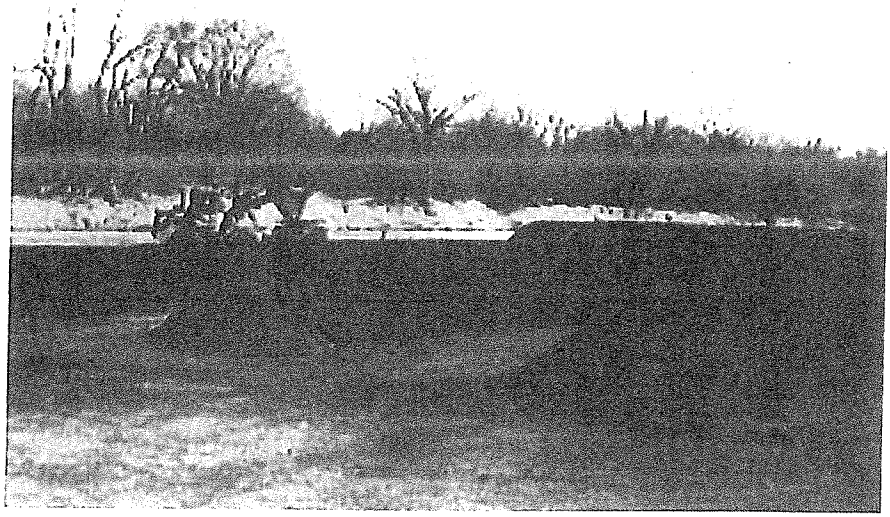
- Economic and Community Development
- Market Development
- Policy Development and Analysis
- Program Planning and Management

Richard V. Anthony began his career in Public Administration in 1971 as a manager of the California State University Long Beach Recycling Center. He received a MS in Public Administration in 1974. Rick has worked his entire career in environmental program management positions, beginning in Fresno County. As a Solid Waste Manager he wrote and then implemented Solid Waste plans for Fresno County (1979-1987). While in Fresno County, he supported the development of the American Avenue Landfill and staffed the County's solid waste commissions. He hosted the first National Recycling Congress in Fresno County, which highlighted the County's policies and programs. He was the Solid Waste Manager for San Diego County (1987-1998) and expanded the County's recycling programs and solid waste infrastructure.

He has participated in developing high diversion and Zero Waste plans as a consultant since 1998.

He is an internationally recognized and published expert in the area of Resource Management using the Zero Waste Systems approach. He has led International Dialogs on Zero Waste in Nanaimo Canada, Berkeley and San Francisco USA, Florianopolis, Brazil, Puerto Princesa, Philippines, and Naples, Italy. Richard Anthony is a founder and member of the Board of Directors of the California Resource Recovery Association, the Grassroots Recycling Network, the Zero Waste International Alliance, and the U.S. Zero Waste Business Council. He has been a Professor of Zero Waste at Irvine Valley College and an Instructor in the California Resource Recovery Association Certificate Program.





RICH FLAMMER, ORGANICS ANALYSIS

Education

B.A., in Communications, with concentration in Public Relations from the University of Dayton

Professional Affiliations

Zero Waste San Diego, President

California Organics Recycling Council

California Resource Recovery Association

Expertise

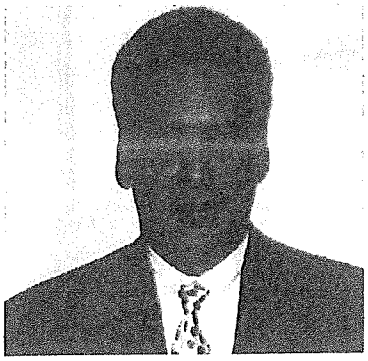
- Composting
- Resource Management
- Sustainable Farming
- Public Relations

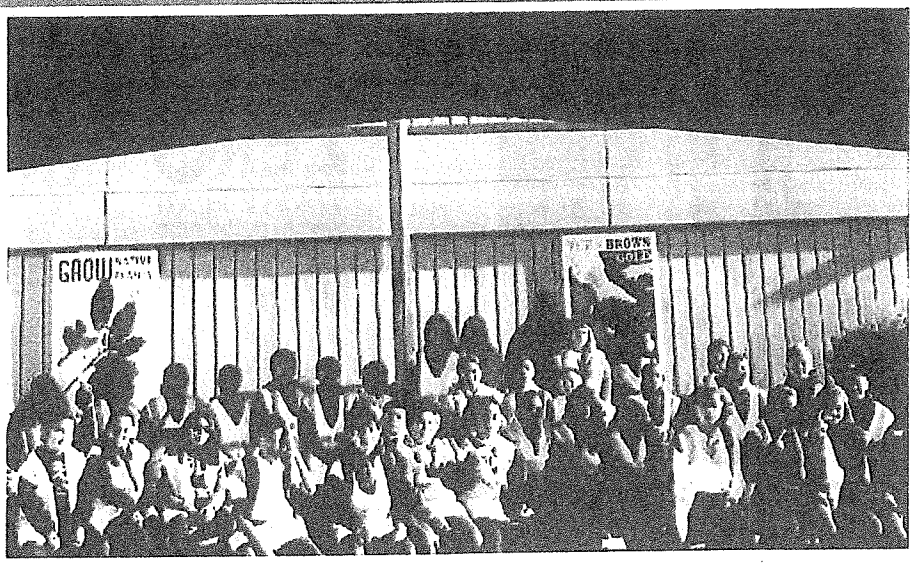
Rich has more than 25 years of hands-on composting experience working extensively in nine U.S. states and Mexico. He has designed, managed, permitted, evaluated, and/or remediated ore than 75 large-scale composting facilities for both private and public sector clients. He has also been involved in public policy formation, rulemaking development for state composting regulation, composting technology assessment and development, and regional studies evaluating organic resource management.

With extensive experience in permitting and regulatory compliance, Rich has provided permitting and regulatory compliance services for more than 30 private and public sector clients in the continental U.S., Hawaii and Mexico, and is familiar with OMRI and NOP rules, CEQA, CalRecycle composting regulations, US EPA Part 503, NPDES, zoning and local land use rules in various regions of the state, as well as air and water board rules and composting regulations in other states.

A specialist in public relations and education, Rich does frequent outreach work, writes instructional manuals, promotional materials, editorial pieces, and gives lectures and workshops on a regular basis. He is Contributing Editor, BioCycle, Journal of Composting & Organics Recycling. He has designed three permanent home composting exhibits and has appeared in two instructional videos, one of which won an Emmy.

Rich is President and founding board member of Zero Waste San Diego. He is also a member of the San Diego County Farm Bureau and the Surfrider Foundation.





KEVIN MCCARTHY, RATES AND SERVICE ANALYSIS

Education

B.S., Environmental Policy Analysis and Planning, University of California at Davis

Professional Affiliations

California Resource Recovery Association

Solid Waste Association of North American, Gold Rush Chapter

Expertise

- Executive and Program Management
- Diversion Program Analysis, Long Range Planning and Implementation
- Contract Negotiation and Management
- Facility Operations and Master Planning
- Financial Analysis and Budgeting

Kevin McCarthy has over 27 years of experience in both the private and public sector developing and implementing environmentally and economically sustainable programs, notably in the areas of recycling and solid waste management, and environmental education.

Kevin has served in a variety of private and public sector recycling/solid waste planning roles including: providing operational oversight, management and environmental compliance at solid waste transfer stations and material recovery facilities (MRFs); management of a national electronics recycling business; and Executive Director for a twelve member public joint powers agency (SBWMA/RethinkWaste) in California representing nearly 500,000 residents and 10,000 businesses. He is a results-oriented manager with skills and advanced knowledge and expertise in: executive management, contract negotiation and management, program management, financial analysis, facility operations and master planning, public speaking and communications, and public policy development.

Kevin is currently managing facility operations procurement in Boulder, Colorado and supporting San Benito County with a wide range of projects including contract negotiations with a landfill operator, collection services franchise agreement support and ongoing diversion program technical assistance.





RUTH ABBE, PROJECT MANAGER

Education

B.A., Philosophy and Fine Arts, Amherst College

Professional Affiliations

Solid Waste Association of North American, Gold Rush Chapter, Past President

Californians Against Waste, Board of Directors

Grassroots Recycling Network, President

California Resource Recovery Association, Global Recycling Council, Co-Chair

Northern California Recycling Association, Past President

Expertise

- High Diversion Programs and Infrastructure
- Composition Analysis, Waste Diversion and Generation Projections
- Collection and Facility Procurement, Negotiations, and Contract Development
- Economic Analysis and Financial Planning
- Organics Management, Composting and Anaerobic

Ruth Abbe is a senior management consultant with 25 years of experience in program planning and implementation, facility and collection procurement, contract negotiation, financial analysis, and stakeholder engagement. She is a national leader in Zero Waste planning and works with municipalities across the country to develop the social and physical infrastructure to achieve high diversion. Ruth has worked with more than 50 communities and private sector clients to plan and implement their recycling, organics, construction and demolition debris programs and high diversion strategies. She has provided planning and program implementation services to the Cities of Austin and Dallas, and Fort Collins (CO); Mecklenburg County (NC); and the Cities of Los Angeles, Palo Alto, Pasadena, and San Jose. She has supported the City of San Francisco in Zero Waste Analysis since 2001. She has assisted the Cities of Austin (TX) and Los Angeles to evaluate the feasibility of implementing their mandatory recycling and composting ordinances. She is negotiation new collection and processing contracts for Fresno County, California State University, and the East Bay Regional Park District. She has developed an award-winning recycling and composting program for the Alameda schools (the Alameda Green Schools Challenge) and supports the "Miss Alameda Says, 'Compost!'" program to help implement mandatory recycling and composting requirements at Alameda restaurants and multifamily buildings.

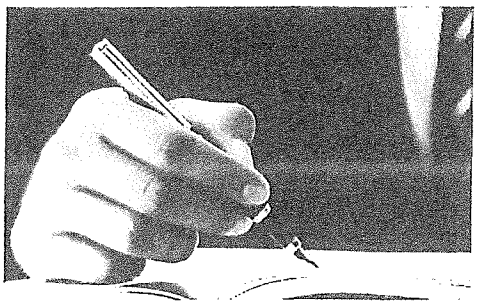
ABBE & ASSOCIATES FIRM QUALIFICATIONS

Abbe & Associates is a full-service management consulting firm specializing in solid waste management program development, economic analysis, collection and processing procurement, contract negotiations, and stakeholder engagement. We work with municipal clients and institutional and commercial generators to plan and implement the social and physical infrastructure needed to reach 75 percent.

Abbe & Associates also has expertise in program analysis, data collection and management, CalRecycle compliance assistance, contract development, and rate analysis. We have performed these services for clients including the Castro Valley Sanitary District; the cities of Fremont, San Francisco and Stockton; the Counties of Fresno, Santa Cruz, and Sonoma; and the South Bayside Waste Management Authority, among others.

Abbe & Associates has extensive experience working with communities to develop solid waste plans and programs similar to those requested by the City. The following table summarizes recent solid waste planning projects undertaken by our team.

Project	Stakeholder Outreach	Program Evaluation	Financial Analysis	Implementation Plan
Austin Resource Recovery Plan	✓	✓	✓	✓
Alameda Zero Waste Plan	✓	✓	✓	✓
Castro Valley Sanitary District Zero Waste Strategic Plan	✓	✓	✓	✓
Dallas Local Solid Waste Management Plan	✓	✓	✓	✓
Fort Collins Road to Zero Waste Plan	✓	✓	✓	✓
Menlo Park Zero Waste Plan	✓	✓	✓	✓
Louisville/Jefferson County Solid Waste Master Plan	✓	✓		
Los Angeles Solid Waste Integrated Resources Plan	✓	✓	✓	✓
Mecklenburg County Solid Waste Management Plan	✓	✓		
Pasadena Zero Waste Strategic Plan	✓	✓	✓	✓
Santa Monica Zero Waste Strategic Operations Plan	✓	✓	✓	✓

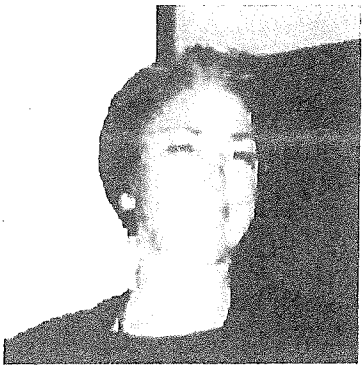


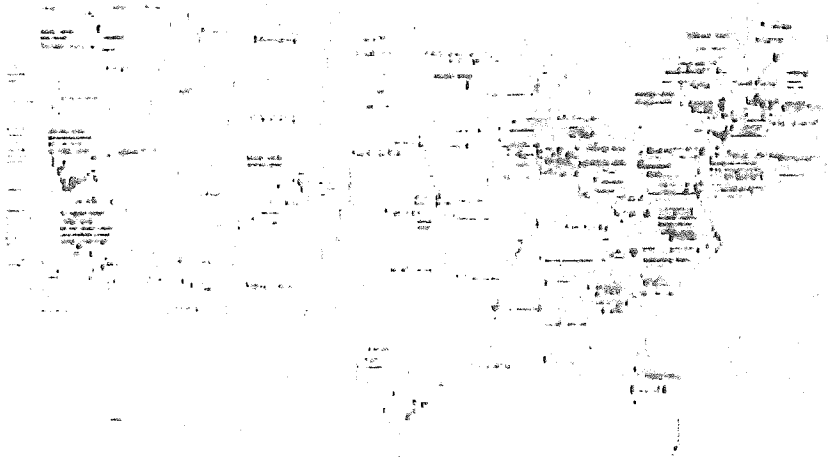
OUR SERVICES INCLUDE

- Sustainability services, including high diversion planning and green house gas accounting
- Independent assessments of waste management technologies and projects
- Waste prevention, reuse, and recycling, including processing and recovery facilities and marketing recovered materials
- Local and regional integrated waste management master plans
- Siting, environmental assessment, and permitting for solid waste facilities
- Economic, environmental, and feasibility analyses
- System and facility procurements
- Organics management
- Collection efficiency studies, rate review, and hauler procurements and negotiations assistance
- Diversion and disposal studies
- Waste composition and generation projections
- Waste reduction technical assistance to large commercial and institutional generators
- In-service training and certification
- CalRecycle compliance assistance
- Construction and demolition debris ordinance development and compliance assistance

EXHIBIT C

QUALIFICATIONS





PORTIA SINNOTT, PROGRAM ANALYSIS

Education
B.A., Interdisciplinary Social Science, San Francisco State University

Professional Affiliations
Northern California Recycling Association, Editor and Past President and Board Member

Global Recycling Council of the California Resource Recovery Association, Executive Committee Member

Zero Waste USA, Program Director

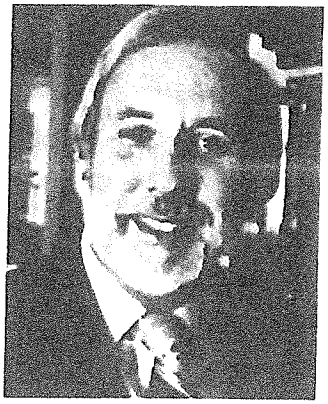
Zero Waste Brain Trust, Convener

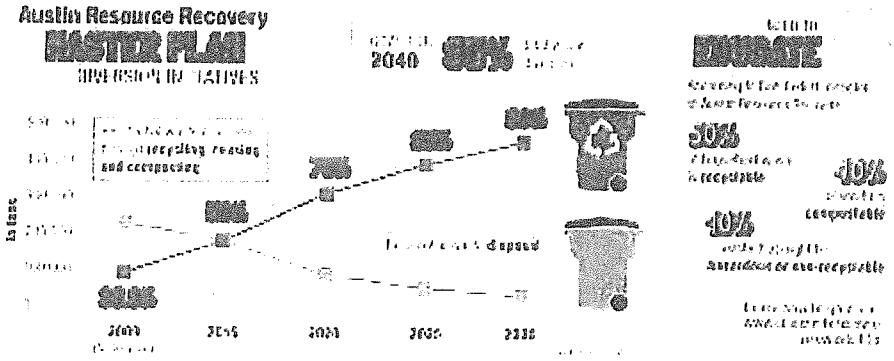
LITE Initiatives - Zero Waste Sonoma County and Community Bikes, Founder and Executive Director

Expertise
- Project Management, Data Management And Programming
- Event and Meeting Production and Facilitation
- Research, Planning And Field Studies
- Public Outreach and Education, Websites and Social Media
- Program Analysis, Design, Implementation And Monitoring
- Reuse and Repair Program Development and Directory Production
- Commercial and Multi-Family

Portia is the owner of Micro Services Plus (MS+), an environmental consultancy committed to the principles of sustainability. Established in 1983, MS+ specializes in innovative, cutting edge projects designed to serve as models for others. MS+ also provides research, data management, programming and project services to US and European agencies including U.S. EPA, City of San Francisco, StopWaste.Org, WASTE (Holland), UN Habitat (Kenya) and USAID (Bulgaria) as well as other consulting firms. Past accomplishments include writing for Resource Recycling Magazine: "The Value of Understanding – Reuse and Repair", "Fine-Tuning Your Multi-Family Recycling Program" and "State of the Art" a national survey of multi-family recycling programs, plus numerous websites, on-line surveys and directories.

A certified federal contractor, recent projects include a resource guide for EPA Region 1- New England and an assessment framework and contracting best practices for EPA Region 9 – Pacific Southwest. These large and comprehensive multi-year contracts provided content for the new EPA website: Managing and Transforming Waste Streams – A Tool for Communities (2015). Portia was the data manager for UN Habitat's 2010 Solid Waste Management in the World's Cities publication and wrote the chapters on the City of San Francisco and Tompkins County New York. She also initiated, co-designed and coordinated the San Francisco State University Extended Education Integrated Waste Management Certificate Program which was used as a model for similar programs at U. C. Berkeley and U. C. Santa Cruz.





GARY LISS, PROGRAM AND REPORTING ANALYSIS

Education

Masters in Public Administration, Rutgers University

B.S., Civil Engineering (Environmental Engineering major), Tufts University

Professional Affiliations

Vice President, U.S. Zero Waste Business Council

Programs Chair, Zero Waste USA

Policy Chair, Zero Waste International Alliance

Board Member, National Recycling Coalition

Expertise

- Zero Waste and High Diversion Planning
- RFPs and Contracts
- Resource Recovery Parks

Gary has more than 42 years of experience in the solid waste and recycling field. He has been President of Gary Liss & Associates since 1998 (18 years), which helps clients on procurement of refuse and recycling systems, strategic analyses of refuse rates and solid waste fees, development of commercial recycling incentives and programs, integrated waste management systems design, community-wide Zero Waste plans, project management, program planning and implementation, policy and program analysis and advocacy, and organizing resource recovery parks.

Gary is the former Solid Waste Manager for the City of San Jose and oversaw the implementation of many of that City's state-of-the-art policies and programs. He has negotiated multiple franchise agreements and operating agreements designed to maximize diversion.

Gary is a leading advocate of Zero Waste and has helped more communities develop Zero Waste plans than anyone else in the U.S. He is a founder and President of the U.S. Zero Waste Business Council that is developing a third party certification program for Zero Waste Businesses. The California Resource Recovery Association selected him as Recycler of the Year in 2005. In 2008 he was elected to Council in Loomis, California and was Mayor in 2010.

SECOND AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT BETWEEN THE CITY OF NEWARK AND ABBE AND ASSOCIATES

This Second Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Abbe and Associates., ("Consultant") dated February 23, 2017 (the "Agreement"), is entered into as of _____ ___, 2022 for the provision of Commercial Organics Collection Program Consulting Services.

RECITALS

WHEREAS, the City and Abbe and Associates ("Consultant") entered into an Agreement between City and Consultant for Commercial Organics Collection Program Consulting Services effective February 23, 2017 (Agreement); and

WHEREAS, the City and Consultant amended the Agreement between City and Consultant for Commercial Organics Collection Program Consulting Services effective April 12, 2018 (First Amendment); and

WHEREAS, Consultant has satisfactorily completed the scope of services in the Commercial Organics Collection Program Consulting Services Agreement and First Amendment to the Agreement; and

WHEREAS, the City intends, upon mutual written agreement by both parties to add tasks assisting with completion of the implementation of commercial organics collection requirements of AB 1826 and the development and adoption of a sustainable food ware ordinance.

NOW, THEREFORE, inconsideration of the foregoing recitals and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

(1) Notwithstanding Section 1 of the Agreement, the parties hereby agree to add the additional services to the scope of the Agreement as contained in Exhibit A.
(2) Notwithstanding Section 3 of the Agreement, the parties hereby agree to revise the payment schedule of the Agreement to the payment schedule as contained in Exhibit B for a revised not to exceed amount of $312,660.00.

The Second Amendment of the Agreement for Commercial Organics Services has been

executed by the parties as of the date first set forth above.

City of Newark

David J. Benoun
City Manager

Dated_____

Consultant

Ruth Abbe, President
Abbe and Associates

Dated_____

Attest:

_____
Sheila Harrington
City Clerk

Approved as to Form:

_____
Kristopher J. Kokotaylo
City Attorney

STAFF REPORT

Item D. 13.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Lenka Hovorka, Assistant City Manager
SUBJECT	Second reading and adoption of an Ordinance amending Chapter 2.09 of the Newark Municipal Code ("City Councilmembers-Salaries") to increase the salaries of City Councilmembers and Mayor by ten percent (10%). (Introduced 7/14/2022)

Attachments

Mayor and Councilmember Salaries Ordinance revisions

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF NEWARK AMENDING CHAPTER 2.09, CITY COUNCILMEMBERS-COMPENSATION, OF THE NEWARK MUNICIPAL CODE TO INCREASE THE SALARIES OF CITY COUNCILMEMBERS AND MAYOR BY TEN PERCENT (10%)

WHEREAS, Chapter 2.09 ("City Councilmembers-Compensation") of the Newark Municipal Code provides for the payment of salaries and benefits to Newark City Councilmembers and the Mayor; and

WHEREAS, Section 2.09.010 authorizes the City to pay Councilmembers a salary of one thousand two hundred forty-seven dollars ($1,247) per month; and

WHEREAS, said section authorizes the City to pay the Mayor a salary of two thousand seven hundred twenty-seven dollars ($2,727) per month; and

WHEREAS, said salaries took effect January 1, 2019; and

WHEREAS, City Councilmembers and Mayor have not received an increase in salary since January 1, 2019; and

WHEREAS, the City Council is authorized by Government Code Section 36516 to increase the salary of Councilmembers and the Mayor in an amount not to exceed five percent (5%) per calendar year from the operative date of the last adjustment of salary; and

WHEREAS, the City Council is authorized by Government Code Section 36516.1 to pay an elected Mayor salary in excess to that which they receive as a Councilmember; and

WHEREAS, at the City Council meetings held on May 26, 2022 and June 23, 2022, City staff presented to the Council regarding the Mayoral and City Council Member salary and benefits; and

WHEREAS, the City Council desires to increase salary of the Councilmembers and Mayor by ten percent (10%) starting January 1, 2023.

NOW, THEREFORE, the City Council of the City of Newark does hereby ordain as follows:

SECTION 1. **Recitals.** The above recitals are true and correct and made a part of this Ordinance.

SECTION 2. **Amendment of Section 2.09.010 the Newark Municipal Code.** Subsections (A) and (B) of Section 2.09.010 (“Salary”) of Chapter 2.09 (“City Council”) of Title 2 ("Administration and Personnel") are hereby amended as follows (replacements in double underline; deletions in ~~strikethrough~~):

2.09.010 Salary.

A. Pursuant to Government Code Sections 36516 and 36516.5, each councilmember, other than the mayor, shall receive a salary of ~~one thousand two hundred forty-seven dollars~~ one thousand three hundred seventy-one dollars per month commencing ~~January 1, 2019~~ January 1, 2023.

B. Pursuant to Government Code Section 36516.1, the elective mayor shall receive compensation in the amount of ~~two thousand seven hundred twenty-seven dollars~~ two thousand nine hundred ninety-nine dollars per month commencing ~~January 1, 2019~~ January 1, 2023.

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 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. In accordance with Government Code section 36516.5, this ordinance shall take effect January 1, 2023. Before expiration of fifteen (15) days after its passage, this ordinance shall be published in the Tri-City Voice, a newspaper of general circulation published and printed in the County of Alameda and circulated in the City of Newark.

STAFF REPORT

Item F. 1.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Anne Stedler, Economic Development Manager
SUBJECT	Adopt a Resolution approving the Agreement between the Newark Chamber of Commerce and the City of Newark in an amount not to exceed $230,500 and authorizing an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for FY 2023 to appropriate American Rescue Plan Act (ARPA) funding of $230,500 for the Chamber Agreement and $25,000 for the Chamber CEO Executive Recruiter for a total appropriation of $255,500.

RECOMMENDATION

Staff recommends that the City Council adopt a Resolution approving the Agreement between the Newark Chamber of Commerce and the City of Newark in an amount not to exceed $230,500 and authorizing an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for FY 2023 to appropriate American Rescue Plan Act (ARPA) funding of $230,500 for the Chamber Agreement and $25,000 for the Chamber CEO Executive Recruiter for a total appropriation of $255,500.

EXECUTIVE SUMMARY

The City of Newark values the Newark Chamber of Commerce (the “Chamber”) and historically provided financial and non-financial (in-kind) support to the Chamber. In addition, the adopted Economic Development Element of the General Plan includes provisions directing partnership and collaboration with the Chamber. There is a long tradition of collaboration on the well-received annual State of the City luncheon and speech, and more recent collaboration on in-person outreach for GiftNewark and pandemic-related small business webinars.

However, the Chamber’s impact and value was markedly diminished in recent years despite increasing numbers of businesses moving into Newark. In 2020, the Chamber lacked funds to attract and hire a CEO after the retirement of the immediate past CEO. This is a threat to the Chamber’s survival because Chamber leadership is a sophisticated skill set and a volunteer Chamber board cannot replace a capable, compensated CEO and administrative staff. In addition to this local threat, chambers across the country are challenged to find a relevant role and build financial support from business constituents. The specter of a closed Chamber is real for lack of a relevant role and funding.

Even with these difficulties, the City wants to encourage and support a strong Chamber. Chambers are unique in their ability and role to serve the business

community, often leading initiatives that are critical to business, and amplifying economic development efforts. This is important to the City and community because business well-being contributes jobs and tax revenue to the local economy and to city services and sustainability. Since the Chamber can be a proactive advocate and partner for the business community, the City has always been prepared to invest funds and effort in partnership with the Newark Chamber.

At this time, there are two clear opportunities to address current challenges facing the Newark Chamber. First, we may learn from the Bend, Oregon Chamber of Commerce, as one model of a modern chamber that has successfully met the challenges of relevancy and funding. The Bend Chamber CEO talks regularly with Bend businesses to learn their concerns. Then it selects specific initiatives to address those concerns and bring improvements to the business community. The initiatives are so important that Bend businesses have increased their financial support, exceeding chamber membership levels. To further strengthen its own finances, the Bend Chamber sells health insurance to businesses. Externally, to the community, the Chamber is recognized as a leader. Internally, they function with clear roles for the chamber board of directors and the essential, appropriately skilled CEO and administrative staff. Bend has clearly replaced the traditional chamber with a modern, relevant, self-funded chamber.

The second opportunity that can help “re-start” the Newark Chamber is one-time American Rescue Plan Act (“ARPA”) federal funding, designated by Congress for investment in local governments and communities following the COVID-19 pandemic. Recognizing this rare opportunity, on October 28, 2021 the Newark City Council designated $280,000 of Newark’s ARPA funds for the Chamber Capacity Building Project. Staff recommends two specific expenditures for the designated funds: 1) $230,500 for initial compensation of the Newark Chamber CEO and administrative staff through the proposed agreement with the Chamber and 2) $25,000 to retain an executive recruiter for the Chamber CEO position. ARPA funds are limited and non-renewable but can provide critical money for CEO and administrative staff compensation, building Chamber capacity as a relevant, local organization for the rapidly growing and competitive Newark business community. These two expenditures total $255,500 and will leave $24,500 unappropriated out of the original $280,000 designation, which can be used to support Chamber needs that are not yet identified.

The Chamber “re-start” and capacity building project are essentially start-up efforts that 1) mobilize the Chamber as a functioning organization and 2) develop business community support and funding over time. Both are evolving processes, and it is uncertain how quickly and how much the business community will support the Chamber. Although City support, especially the ARPA contribution, is essential to a “re-start,” the City cannot and does not wish to be the Chamber’s primary funding source. The proposed $230,500 ARPA contribution would last about eighteen (18) months based on current CEO compensation estimates alone, or about 14 months for both CEO and one full-time administrative staff. Considering these facts, the Chamber needs additional near-term funding through non-city sources as well as mid- and long-term funding through initiatives and accomplishments that the business community funds over time. Therefore, the proposed agreement between the Chamber

and the City includes flexibility and constructive decision-making for those things neither the Chamber nor the City can know today, but which evolve in real time under skillful, proactive CEO leadership.

BACKGROUND

City Support Overview and Initial Chamber Expectations

Prior City Support for the Newark Chamber. From 2016 to 2020 the City provided the Newark Chamber $30,000/year in funds, plus in-kind support that included office facilities and computer and phone equipment. The pattern of support existed in prior years, too. In return, the Chamber organized and hosted the annual, well-received State of the City luncheon. The City provided technical support for the State of the City presentation and many community stakeholders and City staff attended this event.

Board Preparation, Part 1. Newark's Chamber Board of Directors are volunteers who dedicate time to the organization, in addition to running their own business or managing their professional obligations. Substantive, impactful Board training is clearly essential to support their volunteer investment and responsibility directing one of Newark's most important non-profits.

To prepare the Newark Chamber Board members for transformation to a new chamber model, City staff retained Bend Chamber CEO Katy Brooks of KB Strategies. The Bend Chamber came to staff's attention in early 2020 through a search for expertise in building successful and financially independent Chambers. In that search, Ms. Brooks was identified as "one of the best [Chamber executives] on the west coast."

Preparation for the Newark Chamber Board was structured in a two-part Contractual Service Agreement (CSA) with KB Strategies. The first part was an initial $7,000 CSA executed in February 2022. It allowed the consultant to meet with the Newark Chamber Board regularly to explain the Bend Chamber's work as a reference, to address duties and responsibilities of the Board, and to describe the scope and value of the proposed Newark Board training, forecasting the work ahead. The CSA also required the consultant to conduct stakeholder interviews with Newark business executives to identify common business concerns that will guide the Chamber's first relevant initiatives. Findings from five companies are summarized in Attachment B with the potential Chamber initiative defined. The remaining five company interviews will be completed during August 2022.

Board Preparation, Part 2. Using the needs identified in the stakeholder interviews and her understanding of the Newark Chamber, Ms. Brooks wrote the attached CEO position description (Attachment C). The description requires a candidate willing to launch a 'start-up,' to achieve key initiatives identified in the business stakeholder interviews, guide the Chamber's evolution to full operations and self-funding, and form collaborative working partnerships to get initiatives done.

Board Preparation, Part 2 included a 1.5-day Board Training in Bend, Oregon. The

training location allowed Newark Chamber volunteers to see the Bend Chamber's impact (the visible results of new buildings, new funding, and new government regulations for which the Bend Chamber advocated) and observe the partner relationships and board and CEO roles that have made the Bend Chamber successful. The training included an extensive briefing on all aspects of chamber operations: membership, board and CEO roles, fundraising, marketing and social media, tough conversations about funding, legislative advocacy, and the reasons and by-laws for 501(c)(6) and 501(c)(3) organizations. It included examples of the chamber as a convener, partner, facilitator to advocate for business-related solutions and opportunities, and as a forum to develop talent and professional growth in the business community. This broad training allows the Newark Chamber Board to choose small first steps to "re-start" with knowledge of the Chamber's role and long-term potential. The consultant then compiled the training materials, along with a draft business plan and budget template specific to the Newark Chamber.

This second part of the consultant contract was authorized by an amendment to the KB Strategies CSA in the amount of $42,500, for a total contract of $49,500 signed under the City Manager's authority.

The plan to support a new Chamber model that is 1) relevant to businesses and can become financially successful, 2) includes start-up funding that enables the recruitment and hiring of new CEO and administrative staff, and 3) provides training for the Chamber's committed volunteer board, could remove the specter of a closed Chamber. If the uncertain and evolving start-up phase over the next two-to-three years is supported by proactive and sustained partnerships with the Chamber, the business community and City, the Chamber may become capable of things the City cannot do itself, and which substantially help the business community.

Terms of the proposed Agreement that address a sustained, multi-year "re-start" are addressed in the following section.

DISCUSSION/ANALYSIS

For the last five years, the Bend Chamber has led the Bend business community in significant initiatives so important to businesses that Bend Chamber members have stepped-up with increased financial support. This success with initiatives and fundraising is rooted in specific practices that are included within the proposed agreement between the Chamber and the City (Attachment A).

Defined Chamber Role. Following the Bend Chamber example, the agreement requires the Newark Chamber to convene business peers to advise the City and other policymakers on various matters and by implementing the following actions including:

- Actively, regularly talking with businesses and identifying critical issues they have in common.
- Assessing and acting on the impact and importance of legislation, policy and current issues and challenges to businesses.
- Amplifying economic development efforts that support businesses; and,

- Functioning as a voice of business, a convener, and a partner not only to the City but to other institutions and organization.

The Chamber would be unique in its ability to speak for businesses at large and partner to help achieve collective business goals. Those roles cannot be performed by a City, for example, and they are not the purview of any other organization.

Financial Standards and Reports. The Chamber's financial house must be in order. Standard financial reporting, including preparation and City review of monthly financial statements and tax filings would be required, as well as clear communication and effective financial accountability and disclosure with the Board, members, partners, and the business community at large. The City would advance ARPA funds only when financial standards listed in Attachment A are provided with verification.

Business Plan and Progress Reports. The Business Plan is the Chamber's written plan and tracking tool for all work. It was approved by the Newark Chamber Board on July 11, 2022 to address critical functions before the CEO's start date. The CEO is required to submit a comprehensive Business Plan following extensive business-leader interviews within 90 days of CEO start date, with Board approval. The Business Plan shall be kept current and progress on goals and status shall be submitted to the City's Community Development Director (Director) including progress and targets for raising funds from non-City sources, Chamber members, and sponsors that broaden the Chamber's ties to the business community. Business Plan reports are required monthly for the first year and every sixty-days thereafter until the Agreement terminates.

ARPA Payments. The City would make quarterly advances of ARPA funds based on invoices received from the Chamber for the sole purpose of CEO and other staff/contractor's compensation. Payments can be made only if the Chamber has met requirements listed in Attachment A of the Agreement. Quarterly payments would be based on three months compensation for the CEO and other staff, in an amount of approximately $12,500/month. Since this is an initial estimate, the Chamber and Director may agree in writing to adjust the quarterly payments, within a total "not-to-exceed" amount of $230,500. The Chamber would document each use of an advance within ten days of any expenditure by providing written documentation to the Director.

ARPA Regulations. ARPA regulations allow payments to the Chamber to be spent over a multi-year period. The need for ARPA funds will be most critical during the first year while the new CEO establishes a track record that inspires the private sector to help fund the Chamber's relevant work.

Termination. Either party (the City or Chamber) may cancel the agreement with 30-days notice to the other, but both are subject to a dispute resolution clause designed to settle concerns and continue the important work of building a modern, relevant chamber. However, in the unexpected event of a termination, any portion of a City funding advance that remains unspent upon notice of termination must be returned to the City unless specific arrangements are made in writing by the Director and the

Chamber.

Term. The agreement ends when the last ARPA advance is fully expended, those expenses are fully reported, and the progress on the business plan during the period of those expenditures is reported to the Director.

Specific Initiatives. The Chamber has historically hosted the time-honored State of the City event. In addition, it arranged ribbon cuttings to gain membership, and significantly participated in small business webinars and GiftNewark.com outreach. These things and others like them are important, but by themselves they will not "re-start" the Chamber, and by themselves they are unlikely to attract significant corporate support. Therefore, the proposed Agreement permits rather than requires such special initiatives. It requires clear, monthly performance on operational practices, relevant business-responsive initiatives, and a financially sustainable chamber.

Budget Amendment
The proposed Agreement between the Chamber and the City for $230,500, and the proposed CSA for an Executive Recruiter for $25,000 are a total obligation of $255,500. Staff recommends Council authorize a budget amendment to provide these funds by adopting the attached Resolution.

FISCAL IMPACT

ARPA funds are proposed for these one-time costs. There is no direct cost to the General Fund, and no ongoing obligations are anticipated. The proposed amendment to the 2022-24 Biennial Budget and Capital Improvement Plan for FY 2023 is:

Increase 382.50.051.510.6220 (Economic/Public Assistance)	$255,500
Decrease 382 3000 (Other Federal Grants and Awards)	$255,500

REVIEW AND APPROVAL

Prepared by – Anne Stedler, Economic Development Manager
Reviewed by – Steven Turner, Community Development Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

Resolution Chamber Re-Start
Attachment A - Agreement
Attachment B - Stakeholder Interview Report
Attachment C - CEO Job Description
Presentation

RESOLUTION NO

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING THE AGREEMENT WITH THE NEWARK CHAMBER OF COMMERCE FOR THE CHAMBER "RE-START" IN AN AMOUNT NOT TO EXCEED TWO HUNDRED THIRTY THOUSAND AND FIVE HUNDRED DOLLARS ($230,500) AND AUTHORIZING AN AMENDMENT TO THE 2022-24 BIENIAL BUDGET FOR FY 2023 TO APPROPRIATE AMERICAN RESCUE PLAN ACT (ARPA) FUNDING OF $230,500 FOR THE AGREEMENT WITH THE NEWARK CHAMBER OF COMMERCE AND $25,000 FOR AN EXECUTIVE RECRUITMENT OF THE CHAMBER CEO FOR A TOTAL APPROPRIATION OF $255,500

WHEREAS, the goals, policies and actions stated in the approved Economic Development Element (the "Element") of the General Plan direct the City to actively partner and work with the Newark Chamber of Commerce for the common goal of supporting the Newark business community; and

WHEREAS, the Element supports a strong, independent chamber of commerce in Newark; and

WHEREAS, many recent circumstances require a "Re-Start" for the Newark Chamber of Commerce that defines its near-term business plan, the expertise needed by a Newark Chamber CEO and administrative staff to carry out that work program, and the organizational mobilization required of the Chamber; and

WHEREAS, the goal for the Chamber "Re-Start" is to identify and implement work that benefits the Newark business community, is directly relevant to collective business needs, but which cannot be accomplished except through collective effort; and

WHEREAS, collective work to benefit the Newark business community provides a reason for businesses themselves to invest and participate in the Chamber's work; and

WHEREAS, the amount of funding designated in the Agreement between the Newark Chamber and the City for the "Re-Start" is $230,500; and

WHEREAS, the $230,500 is expected to provide seed funding to compensate a new CEO and additional staff needed to carry out the Chamber "Re-Start" work plan; and

WHEREAS, the City of Newark seeks to provide an executive recruiter to identify candidates for the Chamber CEO position at an estimated cost of $25,000; and

WHEREAS, the City Council adopted Resolution 11275 on October 28, 2021, approving the American Rescue Plan Act ("ARPA") Recovery Plan, and designating $280,000 over a multi-year period for the Chamber of Commerce Capacity Building Project, which amount will fund both the proposed Chamber Agreement and the executive recruiter.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark does hereby:

(1) Approve the agreement with the Newark Chamber of Commerce for the Chamber "Re-Start" for an amount not-to-exceed $230,500 and authorizes the City Manager to execute the agreement in substantive form attached hereto and incorporated herein by reference as approved to form by the City Attorney.
(2) Appropriates $230,500 of the City of Newark ARPA Recovery Plan funds for the agreement with the Newark Chamber of Commerce for the Chamber "Re-Start."
(3) Appropriates $25,000 of the City of Newark ARPA Recovery Plan funds for an executive recruitment for the Chamber of Commerce CEO.

BE IT FURTHER RESOLVED that the City Council does hereby approve an amendment to the 2022-24 Biennial Budget and Capital Improvement Plan for fiscal year 2023 as follows:

Increase 382.50.051.510.6220 Economic/Public Assistance	$255,500
Decrease 382 3000 Other Federal Grants and Awards	$255,500

Contractual Agreement
Newark Chamber of Commerce and City of Newark

This Agreement is made this _____day of _____2022 (the "Effective Date"), by and between the City of Newark, a California municipal corporation ("City") and the Newark Chamber of Commerce ("Chamber"), the Parties ("Parties") to this Agreement.

WHEREAS, City seeks a thriving and sustainable commercial and industrial base to support and sustain City services as a goal of the Economic Development Element of the General Plan; and

WHEREAS, a thriving and sustainable commercial and industrial base requires benefits and clear advantages for existing and prospective property owners, businesses, and employees that create an economic development advantage; and

WHEREAS, the Economic Development Element of the General Plan, specifies and encourages support for and collaboration with the Chamber for the purpose of supporting the thriving and sustainable commercial and industrial base; and

WHEREAS, the competitive environment in Northern California and the San Francisco Bay Region necessitates proactive, forward-thinking initiatives, problem-solving and advocacy on economic development issues common to the business community to create benefit and value for businesses in Newark; and

WHEREAS, the Chamber seeks to "Re-Start" its Business Plan, organizational capacity, fundraising performance and recruit and hire a new CEO, all for the purpose of addressing such initiatives and thereby creating quantifiable and qualitative economic benefits and advantages for the Newark business community; and

WHEREAS, the American Rescue Plan Act ("ARPA"), approved by Congress in early 2021, provides funds to build the capacity of community organizations such as chambers of commerce; and

WHEREAS, the City Council designated seed funding for a Chamber Capacity Building Project through its ARPA Recovery Plan approved on October 28, 2021; and

WHEREAS, the Chamber desires to receive the funding and associated consultant services to guide its "Re-Start" and seeks to enter a contract with the City for funding for this "Re-Start".

NOW, THEREFORE, the Parties hereto agree as follows:

Definitions

The words below shall have the defined meanings as provided for in this Agreement.

"Advance" is a payment from the City to the Chamber as provided in the Agreement.

"Agreement" refers to this Agreement between the Parties.

"Ambassadors" are volunteers designated by the Chamber to represent the Chamber in a range of outreach roles in the Newark business community and the Newark community in general as designated by the Board.

"Board" shall be those persons designated as the board of directors according to the Chamber By-laws and charged and responsible for governing the Chamber.

"Business Plan" is the written plan approved by the Transition Board or any future Board to accomplish the Chamber's work.

"By-laws" are the governing laws of Chamber as the Chamber may change them by due process from time to time.

"Capacity Evaluation" is the report that tracks Chamber increasing capacity to deliver benefits to the Newark business community and build a strong, sustainable Chamber.

"Start Date" shall be that date on which the Transition Board directs CEO to commence CEO duties and responsibilities for compensation.

"CEO Report Date" is the first business day that is ninety (90) days following CEO Start Date.

"CEO" is the person engaged by the Transition Board or any future Board who is responsible to the Transition Board and any future Board for the operations, planning, and mission delivery of the organization according to its Business Plan.

"City" is the City of Newark, California.

"Director" is the Community Development Director for the City of Newark, or his/her designee, who administers the Agreement for the City.

"Effective Date" is the date the final signature is added to this agreement, and entered in the opening paragraph.

"Expenditure Verification" documents the Chamber's expenditure of Advances under this Agreement

"Financial Statements" are monthly financial reports for the Chamber of Commerce.

"Monthly Report" is the performance record showing implementation of the Business Plan, and includes Financial Statements, and Capacity Evaluations.

"Partners" are entities which formalize a relationship with the Chamber approved by the Transition Board or any future Board for purposes of collaboration and joint effort to achieve any portion of the Chamber's Business Plan and may include companies, corporations, government entities, institutions, non-profit or not-for-profit organizations and persons and sole proprietorships.

"Transition Board" is that Board of Directors defined in the By-laws serving through June 30, 2023.

"Work Plan" is the CEO's detailed plan to implement the Business Plan.

Duties of Parties

The duties and obligations of the Chamber are provided in Exhibit A. The duties and obligations of the City are stated in Exhibit B. Duties the Chamber and City carry out jointly are stated in Exhibit C. Exhibits A, B and C are attached hereto and incorporated herein by reference.

Term

This agreement shall terminate when the final Expenditure Verification for the last Advance, and the Monthly Report covering the activities supported by that Expenditure Verification are submitted and accepted by the Director.

Termination and Dispute Resolution

The Parties may mutually agree to terminate this Agreement at any time. Additionally, either party may terminate this Agreement with a 30-day written notice. Prior to termination, the Parties agree to follow the dispute resolution process identified below:

Dispute Resolution. If any dispute arises between the Parties that cannot be settled after engaging in good faith negotiations, City and Chamber agree to resolve the dispute in accordance with the following:

- Each party will designate an executive level representative to negotiate the dispute. Through good faith negotiations, the representatives will attempt to resolve the dispute.

- If the dispute remains unresolved after fifteen (15) days of good faith negotiations, the Parties shall attempt to resolve the disagreement by mediation through a disinterested third person as mediator selected by both Parties. Mediation will begin within thirty (30) days of the selection of this disinterested third party, and will end fifteen (15) days after commencement. The Parties shall equally bear the costs of any such mediation. Should the parties mutually agree that mediation is unnecessary, then they may dispose of this requirement.

- The alternative dispute resolution process in this section is a material condition to this Agreement and must be exhausted prior to issuing a notice of termination.

Expenditure verifications for funds advanced by City to the Chamber are due ten (10) days following any termination of this Agreement. All ARPA funds not expended on the date of notice of termination shall be returned to the City within 90 days of the date of notice termination unless specifically allowed in writing by the Director of Community Development for identified expenses and amounts.

Insurance and Indemnification

Indemnification.

To the fullest extent permitted by law, the Chamber 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 Chamber's performance of the services under this

Agreement, or any negligent or wrongful act or omission of Chamber or Chamber'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. Chamber'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, Chamber's indemnification obligation shall be reduced in proportion to the established comparative liability of the indemnified party.

In the event that Chamber or any employee, agent, or subconsultant of Chamber 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, Chamber shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Chamber 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 Chamber's duty to indemnify. Chamber shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by City immediately upon tender to Chamber 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 Chamber 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 Chamber 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, Chamber may submit a claim to City for reimbursement of reasonable attorneys' fees and defense costs.

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

Chamber'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. Insurance.

Chamber 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 Chamber, its agents, representatives, subconsultants, or employees.

A. Verification of Coverage.

Chamber 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. Chamber 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 Chamber'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.

Chamber 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) Chamber 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 Chamber changes insurance carriers Chamber 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 Chamber changes to a new carrier.

F. Wasting Policies.

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

G. Remedies.

In addition to any other remedies City may have if Chamber 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 Chamber'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 Chamber to stop work under this Agreement or withhold any payment that becomes due to Chamber hereunder, or both stop work and withhold any payment, until Chamber 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 Chamber 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 Chamber; including materials, parts or equipment furnished in connection with such work or operations.

2. Primary Coverage. For any claims related to services provided under this Agreement, Chamber'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 Chamber's insurance and shall not be contribute with it. Chamber'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. Chamber 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 Chamber for City.

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

Communication between the Parties

All communication between the City's Director and the Chamber related to this Agreement shall include all members of the Executive Board and the CEO and may include others as designated by the City's Director, the CEO, the Executive Board, or the Board. The Parties shall endeavor to insure clear, current communication that informs at least the Executive Committee, the CEO and the City's Director through the monthly Business Plan Reports.

Relationship as Contractor

The relationship of the Chamber to the City shall be that of an independent contractor and not as an agent or employee. The Chamber may engage contractor or subcontractors as necessary for the effective execution of this Agreement.

Records and Financial Responsibilities Appropriate to a Non-Profit Organization

The Chamber shall maintain its books and records consistent with generally accepted accounting practices and the federal regulatory requirements of ARPA funding. Said books and records may be examined by the City during normal business hours upon forty-eight (48) hour notice to the CEO of the Chamber. Notice can be verbal or electronic communication. If the CEO is not available notice can be given to the Chair of the Transition Board or the Chair of any future Board.

Chamber shall make all legally required filings and obligations to maintain its status as a non-profit organization in good standing, and plan and report same in the Business Plan and Business Plan Monthly Report. Chamber shall always maintain a positive fund balance, and issue financial statements monthly as part of the Monthly Business Report.

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.

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.

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.

Modifications and Waivers

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

Assignment

The Chamber shall not assign any interest in this Agreement and shall not transfer any interest in the same (whether by assignment, novation, or operation of law) without the prior written consent of the City.

Entire Agreement

This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the Parties concerning the services under this Agreement. 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.

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be executed the date first written above.

NEWARK CHAMBER OF COMMERCE	CITY OF NEWARK
A California 501 c 6 organization	A California Municipal Corporation

By _____

Debbie Montes, Board Chair

By _____

David Benoun, City Manager

By _____

Justin Dorsey, Board Member

By_____

Richard Lipsit, Board Member

By _____

Jonathan Wong, Board Member

By _____

Zaheer Ali, Board Member

By _____

Fallon Tran, Incoming Board Member

By _____

Sohan Sharma, Incoming Board Member

By _____

Long Nguyen, Incoming Board Member

ATTEST City Manager's signature:

By _____

Sheila Harrington, City Clerk

APPROVED AS TO FORM:

By: _____

Kristopher Kokotaylo, City Attorney

Exhibit A
Chamber Duties

Chamber shall take actions and deliver results as set forth below:

Item	Responsible	When & to Whom Delivered	Decision-Maker	City Reviewer
Transition Board's Business Plan	Transition Board	June 2022 to City Director	Board	Director
CEO Business Plan	CEO	90 days after CEO Start Date to Board and City Director	Board	Director
CEO Business Plan Updates	CEO	Periodically, to Board and City Director	Board	Director
Monthly Reports	Transition Board, any future Board, and CEO	Delivered August 1, 2022, and monthly thereafter to Board and City Director	Board	Director
Any Business Plan by Transition Board or the CEO and accepted by the Director is incorporated into this contract by reference.				

Transition Board's Business Plan and Monthly Reports shall address CEO Selection and Hiring, Year 1 Budget and 3-Year Projections of Revenue and Budget; Investigation of Non-Traditional Revenue Streams.

CEO's Business Plan and Monthly Reports shall address all aspects of Chamber 'Re-Start' and build capacity for long-term sustainability. Business Plan and Monthly Reports shall include the following information:

1. Board duties
2. CEO duties
3. Financial Statement
4. New revenue streams
5. Summary of services provided to businesses based on collective business needs
6. Chamber work convening the business community, addressing business community needs and implementing initiatives to address those needs
7. Summary of partnerships and partner activities to implement the Business Plan
8. Capacity Evaluation

Chamber shall maintain the following records as prerequisites for payment of any Advance:

Required Evidence of Capacity and Performance
Financial Statements for the period closing June 30, 2022 and closing during the 30 days period prior to any scheduled advance of funds from the City to the Chamber and approved by the Transition Board or any future Board and available for City inspection.
Tax filings are current as required by taxing entities and evidence of same is provided to Director within three calendar days of date of filing same.
Insurance policies and liability protections required the section of this agreement entitled Insurance and Indemnification are current, updated annually and when coverage changes, and certificates of such policies are on file with the Director and the City Finance Department.
Expenditure Verifications reported within ten (10) calendar days of any portion of an Advance being expended by the Chamber.
Transition Board approves Chamber Business Plan on July 11, 2022, and CEO Business Plan 90 days following CEO Start Date and submits every business plan, new or revised, to Director for acceptance. Monthly Reports tracking Business Plan actions are current, approved by the Transition Board or any future Board, and accepted by the Director.
Chamber complies with the By-laws and evidence of same is provided to the Director in Monthly Business Plan Reports and accepted by the Director starting upon the Effective Date of the Agreement and continuing monthly. Evidence may be a list of Chamber actions and the By-law supporting each, the minutes showing compliance in Board action.
Transition Board shall take action to amend current By-laws to allow for, and to take action to establish, (1) a Transition Board of at least seven (7) persons and (2) confirmation of Transition Board members.

Exhibit B
City Duties

Advances for ARPA Funds

The City shall provide Advances to Chamber for a total sum not to exceed Two Hundred Thirty Thousand and Five Hundred Dollars ($230,500) to be used exclusively for compensation of the CEO and Chamber's staff and contractors as approved by the Transition Board and any future Board, and documented in the Chamber's Business Plan, as amended from time to time.

The first Advance to the Chamber shall be issued upon CEO selection, in an amount not to exceed $37,500 ($12,500/month estimated compensation) and shall be used exclusively for CEO compensation until such time as other staff is contracted or hired, in which case the Advance can be used for compensation for any or all Chamber staff or contractors.

The amount of the Advance may be revised from time to time with written agreement of the Director and approval by the Transition Board and any future Board.

Advance Processing

Advances shall be made quarterly for the quarters starting November, February, May and August in response to the invoices received by the 10th of the preceding month, to allow payment before the first of the month of the quarter. (For example, an advance due for the quarter starting November would be invoiced on or before October 10, the prior month.) If the initial invoice requested upon CEO hiring and in anticipation of the CEO Start Date is submitted later than the 10th of the month preceding the quarter in which payment is due, it shall be for a prorated amount, and the next advance will be made as if the initial advance was made on or before the first of the quarter.

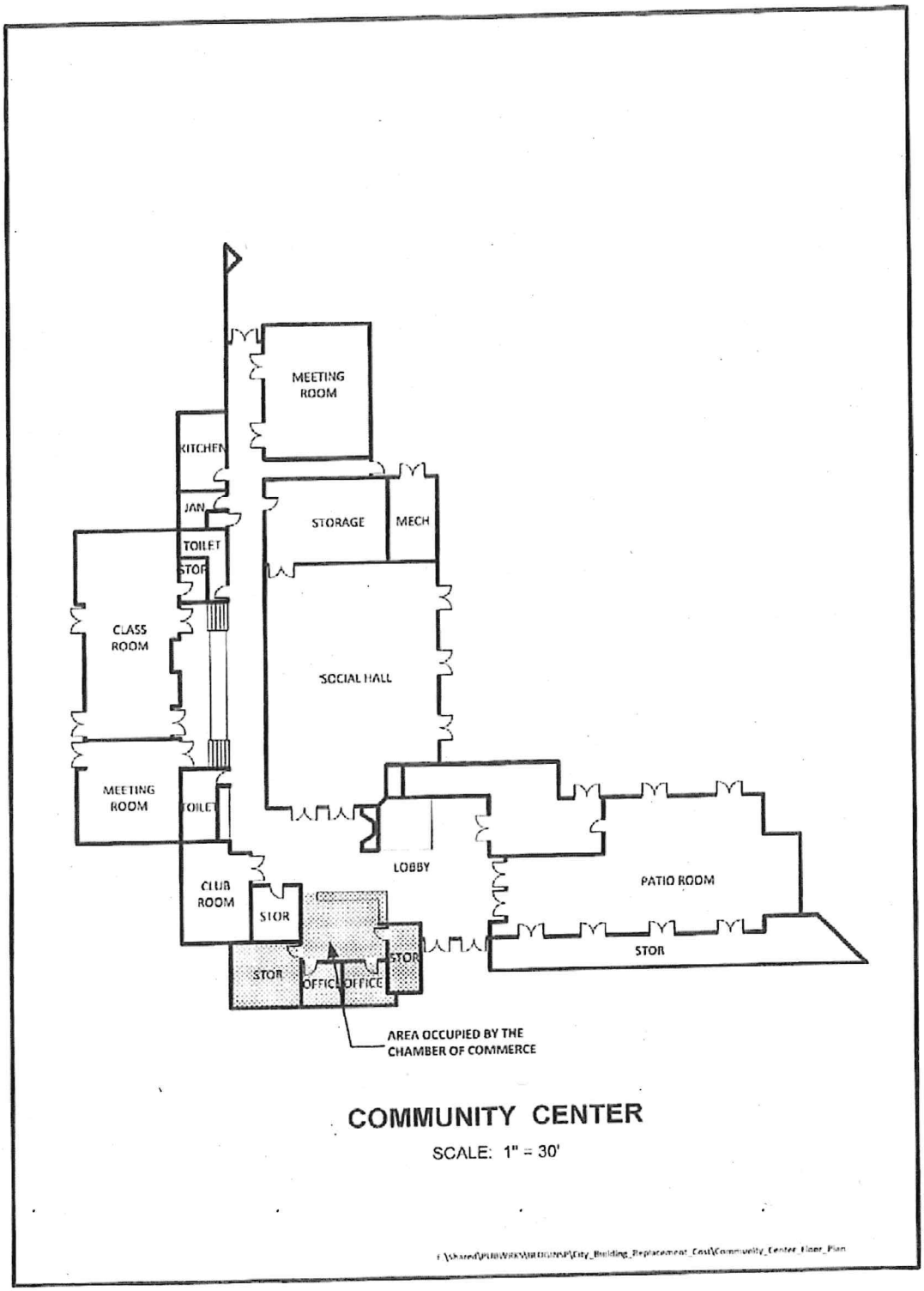
Equipment and Office Space

The City shall provide information technology equipment for office, e-mail, and internet purposes to the Chamber offices housed in City-owned facilities. The list of such equipment and related software and services shall be stated in writing by the Parties and amended from time to time.

The equipment shall be available for use by August 31, 2022, in advance of the CEO Start Date, unless a change of date is agreed to in writing by the Parties.

The City shall provide office space at 35501 Cedar Boulevard, Newark, CA 94560, consisting of two Offices, a reception area, and counter for two people. The City reserves the right to substitute other facilities in effort to provide better and more centrally located space, and to accommodate construction and changes to the premises at 35501 Cedar Boulevard.

The Community Center floorplan is provided on the following page.



COMMUNITY CENTER

SCALE: 1" = 30'

Exhibit C
Chamber and City Joint Duties

The Chamber and the City shall meet monthly during each quarter for which the City provides an Advance to the Chamber. The meetings shall be a joint review the Chamber's Monthly Report including Financial Statements and Capacity Evaluation at a minimum. The Parties shall carefully weigh the following key decision points and may affirm or modify a proposed key decision and even renew or revise the Parties' commitment to continue this Agreement. Other key decision points may be added to the list below by written agreement between the Parties. The sole intent of this review is to increase Chamber capacity and performance and reduce risk.

Item No.	Key Decision Point Requiring Review of Information and Risk Factors
1	Before Director's Acceptance of Initial Business Plan
2	Before Director's Acceptance of any Business Plan Report
3	Before Director's Acceptance of Business Plan submitted by CEO
4	Monthly Reports of Business Plan submitted by CEO
5	Recruiter's Evaluation of CEO Job Description and Compensation
6	When CEO Interviews are complete, and references checked but before any offer is extended
7	Before any Business Plan Proposal for Business Revenue Start-up is accepted by Director
8	Before any Business Plan Proposal for any Initiative is accepted by Director

KBS
K Brooks Strategies

Newark Chamber Stakeholder Report

Interviews

- Claes Gustufsson, Atum Bio
- Lisa Sellers, Vector Laboratories, Inc.
- Martin Lynch, FreeWire
- Ben Beneski, Allogene
- Ric Notini, Cargill
- Connie Lee, Cargill

Summary

1. Employee Attraction/Retention & Workforce Development

Employee attraction and retention was one of the most prominent common needs for each of the interviews. Although location of higher education programs are plentiful in the Bay Area, concern of labor supply is ubiquitous.

These employers are interested in connecting with the higher education institutions, identifying/implementing effective employee retention strategies, and developing their workforce.

An area of great challenge identified by interviewees is the shortage of housing and rising costs as a challenge to employee attraction and retention. Although Newark is more affordable than many places in the Bay Area, it is still one of the most frequent reasons for employee attrition.

Potential Chamber Value –

- Employee retention is an area where chambers can provide training, events, programs and peer groups.
- Chambers identify leaders and future leaders in the community to develop them as internal leaders for their company as well as effective leaders in the greater community.
- Some chambers even identify and develop candidates for elected positions.
- A national leadership development network is available for chambers/business associations which share best practices and training.
- Housing – An ever-increasing need for attainable housing is an opportunity for a key initiative a chamber can convene and lead
- Chambers also work with higher education and small business/workforce development councils to assist businesses in integrating their workforce needs into curriculum and recruitment/development programs.

2. Diversity, Equity and Inclusion

Although most of the interviewees felt their DEI programs were effective and their employee base was diverse, training and policy development was important to some, particularly as their workforce needs increase.

Potential Chamber Value –

- Chambers can develop DEI policies and education to share with their members/the business community.
- Often collaborating with DEI experts and educators, chambers can provide classes, develop website resources and connect employers to information and resources.

3. Transit Connections

Every interviewee mentioned the challenges of connections between BART and CALTrans to their places of business. For companies just moving to the area from around the Bay, employees are used to using transit and are struggling with connections to work. They are looking for a convening of businesses to solve this together with the public sector (city, CALTrans, etc.)

Potential Chamber Value –

- Chambers convene working groups with multiple public agencies and the public sector to form transportation solutions.
- Chambers are advocates at the local, regional, state and federal levels to identify funding, develop new transit/transportation projects and services.

4. City of Newark/Local Government Relations

Most interviews revealed good relations with the City of Newark. Some suggested that the permitting process could be cumbersome, but felt the city was welcoming and solution-oriented. Most companies newly located to Newark also rely on the city to educate/introduce them to community organizations and other information on local issues and connections.

Companies newly located to Newark are enjoying the lower cost of building/operating and the ability to remain within the Bay Area network.

Potential Chamber Value –

- Chambers are often called upon to liaise with cities on behalf of business. This includes policy development, taxes and construction/permitting issues.

5. Integrating Into the Community

Interest varied in becoming a community-minded business. For example, most biotech companies have their own ecosystem in which they do business, share contacts, supply chains, and rely on product development pathways. More traditional companies like Cargill are eager for the chamber to get up and running. They are hungry for networking events and integrating their team into chamber activities.

Naturally most businesses are concerned with their day-to-day operations and growth. Some of the interviewees felt it was very important to become a recognized, respected company in Newark and are interested in guidance and re-engagement.

Potential Chamber Value –

- This is an area where chambers can be essential connectors to local businesses. Networking can be integrated into events, personal introductions, workgroups and other resources.

6. Government Regulation

Several of the companies interviewed are in highly regulated industries that are most often dictated by federal and state rules and regulations. However, government regulation also includes employee laws, taxes and other common areas.

Cargill specifically is looking long-term toward climate change and rising sea levels. They see a role for the chamber, the city and other agencies to form a comprehensive plan to prepare.

Potential Chamber Value –

- Advocacy is a common program included in many, if not most chambers. Chambers represent businesses to local, regional and state governments.
- Chambers can convene common interests around developing policies and legislation to advocate for outcomes conducive to business.
- Chambers are also catalysts for new policies and regulations and often work with policy makers and legislators on new legislation that supports the needs of a particular industry group, or business in general.

7. Energy & Utilities

Many of the businesses interviewed need reliable, reasonably priced energy. Rolling brownouts and other breaks in supply can be devastating to businesses. Some of the businesses interviewed have developed solar power as an energy savings offset and for emergency use.

Rising fuel and energy costs impacts most businesses. Global events, wildfires and other natural disasters are becoming pervasive in supply and reliability.

Potential Chamber Value –

- Most often, chambers are involved in policy development at the state and federal level to protect and develop reliable energy and fuel. This is often connected with legislative changes.
- Some chambers take the lead in forwarding sustainable energy practices and projects, including tax subsidies, and convening multiple stakeholders with sustainable energy developers to promote new projects.

8. Emergency Preparedness

All Bay Area businesses know the risk of earthquakes. Interviewees also mentioned growing awareness of the impacts of climate change and wildfire is becoming more concerning for businesses due to impacts to the environment, their operations and their employees.

Although climate change is a long-term impact there is recognition that it's impacts to a community at sea-level and near recent horrific wildfires. Businesses will need to participate in decisions that will impact their operations and their people as change become apparent from a warming planet.

Potential Chamber Value –

- Potential chamber action could include providing webinars, events, sourcing resources and identifying/advocating emergency preparedness funding, information and planning for businesses.
- There is an opportunity to convene collaborations on climate change impacts to business, people and infrastructure.

Attachment C

NEWARK CHAMBER OF COMMERCE
CEO JOB DESCRIPTION

About the Newark Chamber of Commerce

The Newark Chamber of Commerce is a membership-based business organization dedicated to supporting, creating, and maintaining the economic vitality of our businesses and community. We are poised to revitalize our work by hiring a CEO to lead new efforts to be a valued partner and leader for the dynamic growth of businesses in Newark.

Newark is a city in Alameda County, California and was incorporated in 1955. Located 35 miles south of San Francisco and next to many high-tech hubs, including easy access to highways 880, 580, 680, and the Dumbarton Corridor places Newark in an ideal location for business growth.

This is a very exciting time in Newark with many development projects completed, in progress, or on the horizon. Although Newark is home to many high-tech, bio-med, health science businesses, it still manages to keep a small, hometown charm of the community that endears its citizens to living and working here.

About the Role

- As the Newark Chamber CEO, you will be a change-agent, a high-profile community leader and the catalyst to supporting Newark's businesses.
- You will be looked to for leading efforts and initiatives that support Newark's businesses and their employees and contributing to their success and quality of life.
- You possess a genuine desire to help companies succeed and grow
- You will work with a board of directors focused on a rebooted and energized chamber poised to step up their game and engage businesses and employers who are ready to help make Newark an awesome place to work and live.
- As CEO you will enhance the chamber's role in the community and deepen relationships with businesses, leaders, local government and elected officials.
- You are transparent, productive and accountable for taking the helm of the chamber and transforming it into a trusted, effective organization.
- You are approachable for sharing ideas, concerns and leading efforts to take those ideas to fruition.
- Humility and a passion for businesses' success drives you, no matter who gets the credit

Skills

- Self-Starter and Catalyst - You see a wide pallet of work and know how to distill what is most important, develop strategies and programs and deliver focused, measurable benefit to Newark businesses.
- A Servant Leader – You pursue positive change by supporting businesses and the community, and you see the connection between them.
- Organized and versed in planning and delivering events, programs and initiatives.

- You are adept at building relationships with external stakeholders, including area businesses the Board of Directors, public partners, local associations, industry groups, and others.
- You are a convener and a collaborator with skills that assess needs, identify solutions, galvanize support, and deliver results
- You access and use expertise on the chamber board for continued organizational improvement
- Adept at office suite technology
- Possess financial, budgeting and resource management acumen
- You can build and promote participation in chamber events and programs
- Experience working productively with board members
- Expert communicator
- The ability and desire to productively receive feedback and to turn it into action

Experience

- Bachelors degree or equivalent experience in business leadership
- Experience leading successful economic development agencies or initiatives
- A track record of clear, authentic, and empathetic communication
- Budget and financial management experience
- Experience hiring and managing staff
- Experience crafting, implementing and measuring success of membership and sales initiatives
- An understanding of industry best practice for chambers of commerce and business organizations

Key Responsibilities

- Providing leadership and fostering a common vision for the Newark Chamber of Commerce
- Broadening and deepening revenue streams to support stable operations and growth of the chamber
- Building relationships with community businesses, leaders, elected officials and staff
- Leading and convening collaborative problem solvers to tackle issues impacting Newark businesses
- Crafting, executing and monitoring strategic plans and effectively communicating them to staff, stakeholders, and communities
- Raising funds to achieve best results for Newark's businesses
- Managing chamber finances, including but not limited to, developing and overseeing the annual budget
- Developing and working productively with the Newark Board of Directors
- Developing consistent, effective member communications, including website and other tools

1st Year Priorities

- Interview and listen to Newark businesses and leaders
- Develop a strategic plan
- Develop a board development plan
- Outsource skilled bookkeeping and accounting
- Hire essential staff/contractors
- Meet with City council and staff for ROI on city's investment in the chamber
- Develop and implement high-priority business networking and value-add events
- Update chamber website and develop communications
- Develop priorities for year 2 implementation based on year 1 learnings

Newark Chamber

Re-Start
Funding & Performance Agreement
Presented to Newark City Council

NEWARK
CHAMBER OF COMMERCE

Thank you

Including the Chamber in Newark ARPA Plan Funding Consultant Katy Brooks Consideration of Agreement today

NEWARK CHAMBER OF COMMERCE

Newark Chamber Board:

Debbie Montes	Hospitality Sales
Justin Dorsey	Pacific Office Automation
Richard Lipsit	Grocery Outlet
Zaheer Ali	Hewlett Packard Enterprise
Jonathan Wong	Andreeson & Horowitz

Newark Chamber Board:

Fallon Tran	Lion Newark Shopping Center
Sohan Sharma	Sharmac Corporation
Long Nguyen	VN Investment Group, LLC

Board Preparation & Structure

- Transition board & bylaws update done
- Financials in order
- Re-start workshop completed
- Committees established
  - CEO search
  - Budget

NEWARK CHAMBER OF COMMERCE

Restart Components

- Year 1 business plan in place
- Draft budget w 3-year projections
- CEO job description & recruitment ready

NEWARK CHAMBER OF COMMERCE

Business Plan Elements - Year 1

Start-Up Preparation	CEO Search
Board Established	Job Description & Recruiter
Financials Reviewed	Search Committee Candidate Review
Budget Established	First Round Interviews
Board budget and CEO Search Committees	Final Interviews
Business Plan - Year 1	Selection

NEWARK CHAMBER OF COMMERCE

Business Plan Elements - Year 1

CEO w/ Admin Support - Year 1	Chamber Board - Year 1
Communications Update	Select CEO
Stakeholder Outreach	Oversee financials
Membership Development	Oversee CEO progress
Event & Program Development	Participate, fundraise, advocate
Strategic Plan	Strategic Plan
Board Growth	

NEWARK CHAMBER OF COMMERCE

Stakeholder Interviews

- Bio Sciences & Manufacturing Leaders
- Identified values in chamber membership:
  - Employee attraction/retention
  - Integration into the Newark community
  - Infrastructure/transportation needs
  - Government relations
  - Other business assistance

NEWARK CHAMBER OF COMMERCE

CEO Search

- CEO draft job description complete
- Search committee established
- Forming list of recruitment firms
- Begin search this July
- Target placement September/October

NEWARK CHAMBER OF COMMERCE

Thank you

For investing in the Chamber & Newark

NEWARK
CHAMBER OF COMMERCE

Questions?

NEWARK
CHAMBER OF COMMERCE

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NEWARK CHAMBER OF COMMERCE

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NEWARK CHAMBER OF COMMERCE

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NEWARK CHAMBER OF COMMERCE

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NEWARK CHAMBER OF COMMERCE

Thank you

For investing in the Chamber & Newark

NEWARK
CHAMBER OF COMMERCE

Questions?

NEWARK
CHAMBER OF COMMERCE

STAFF REPORT

Item F. 2.

DATE	07/28/2022
TO	Honorable Mayor and City Council Members
FROM	Jennifer Solito, Human Resources Director
SUBJECT	Adopt a resolution approving and authorizing the City Manager to execute a Side Letter Agreement to extend the Memorandum of Understanding between the City of Newark and the Newark Police Association (NPA).

RECOMMENDATION

Staff recommends that the City Council, by resolution, approve and authorize the City Manager to execute a Side Letter Agreement between the City of Newark and Newark Police Association to extend the Memorandum of Understanding with the Newark Police Association.

EXECUTIVE SUMMARY

The current memorandum of understanding ("MOU") between the City of Newark and the Newark Police Association ("NPA") expires on June 30, 2023. The City Council recently adopted updated terms and conditions of employment for the other four employee groups within the City. The City extended similar terms and conditions to the NPA, in order to preserve parity across City employee groups and achieve labor sustainability. The NPA accepted these terms and staff recommends City Council approval of a Side Letter Agreement to extend the NPA MOU.

BACKGROUND

On June 23, 2022, the City Council approved and adopted Memoranda of Understanding ("MOUs") with the two other represented employee associations within the City, and Compensation and Benefit Plans ("Plans") for the two unrepresented employee groups. The MOUs and Plans included similar salary and benefit terms.

The NPA MOU does not expire until June 30, 2023. However, in the spirit of parity and with the interest of maintaining positive and sustainable employee relations with all employee groups, the City offered terms similar to the June 23, 2022 City Council approved MOUs and Plans to the NPA for consideration. As a result, the City and NPA have agreed to an extension of the current MOU with new terms as outlined below.

DISCUSSION/ANALYSIS

The following is a summary of the new terms recommended for approval in the proposed Side Letter Agreement. The amended terms reflect parity with terms recently adopted for the other four employee groups, as well as certain market equity adjustments similar to those adopted for other groups. The proposed Side Letter Agreement is consistent with authority provided by the City Council and provides fiscal certainty for three years. The members of NPA ratified the terms described below on July 20, 2022.

The term is extended for an additional two years, for a new term of July 1, 2019 through June 30, 2025.

General Salary Increase and Other Compensation:

- A four percent (4.0%) general salary increase on July 1, 2022, and three percent (3.0%) general salary increases on July 1, 2023, and July 1, 2024 for a cumulative ten percent (10.0%) general salary increase for the remaining three-year span of the MOU.

Cafeteria Plan for Medical, Dental and Vision Insurance:

- An increase of 2% per future calendar year to the City's contributions to each eligible NPA employee's cafeteria plan for use towards medical, dental and vision insurance, as well as pro-ration of the plan benefits for regular, permanent staff working less than 30 hours per week, amounts equal to the following:

Effective for the 2023 plan year:
For Regular Full-Time and Regular Part-Time 30-35 hour Employees:
Employee Only: $896
Employee + 1 Dependent: $1,7590
Employee + 2 or more Dependents: $2,364

For Regular Part-Time Employees working 20-25 hours:
Employee Only: $448-$560
Employee + 1 Dependent: $895-$1,119
Employee + 2 or more Dependents: $1,182-$1,478

Effective for the 2024 plan year:
For Regular Full-Time and Regular Part-Time 30-35 hour Employees:
Employee Only: $913
Employee + 1 Dependent: $1,826
Employee + 2 or more Dependents: $2,412

For Regular Part-Time Employees working 20-25 hours:
Employee Only: $457-$571
Employee + 1 Dependent: $913-$1,141
Employee + 2 or more Dependents: $1,206-$1,507

Effective for the 2025 plan year:
For Regular, Full-Time and Regular Part-Time 30-35 hour Employees:
Employee Only: $932

Employee + 1 Dependent: $1,862
Employee + 2 or more Dependents: $2,460

For Regular Part-Time Employees working 20-25 hours:
Employee Only: $466-$582
Employee + 1 Dependent: $931-$1,164
Employee + 2 or more Dependents: $1,230-$1,537

Certificate Incentive Pay:
- Certificate Incentive Pay is amended from a flat-dollar rate to a percentage rate, as follows:

Effective July 1, 2022, Certificate Incentive Pay for sworn personnel will be:
P.O.S.T. Intermediate Certificate 5% of base compensation per month
P.O.S.T. Advanced Certificate 7% of base compensation per month

Effective July 1, 2022, Certificate Incentive Pay for dispatch personnel will be:
P.O.S.T. Intermediate Certificate 2.5% of base compensation per month
P.O.S.T. Advanced Certificate 3.5% of base compensation per month

Holiday-In-Lieu Pay
- Effective July 1, 2022, the compensation in-lieu pay will increase from 5% to 7% of base pay step.

Special Assignment Pay
- Effective July 1, 2022, Special Assignment Pay for Police Officers and Sergeants assigned to one of the following positions shall be increased from $425 per month to 5% of base pay step:
- School Liaison Officer
- School Resource Officer
- Training Officer
- Detective
- Canine Handler
- Motor
- Special Enforcement Team
- Any other position approved by the Police Chief

Other Miscellaneous Revisions:
- Longevity pay is amended to include sworn service time at outside law enforcement agencies.
- Amendment to tuition reimbursement to allow excess annual funds to be used for individual claims above the employee limit, if funds remain at the end of the fiscal year.
- Increase bereavement leave for the loss of a child.
- Amendment to the process for vacation and compensatory time cash out.
- Various non-economic amendments to provide consistency with other City policies and procedures.

FISCAL IMPACT

The total fiscal impact of the terms and conditions of the Side Letter Agreement to extend the MOU between the City of Newark and the NPA is estimated at $2 million for all three fiscal years, 2022-23, 2023-24, and 2024-25.

REVIEW AND APPROVAL

Prepared by – Jen Solito, Human Resources Director
Reviewed by – Kristopher J. Kokotaylo, City Attorney
Approved by – Lenka Hovorka, Assistant City Manager

Attachments

NPA Side Letter Agreement Resolution

Side Letter Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING AND ADOPTING A SIDE LETTER AGREEMENT BETWEEN THE CITY OF NEWARK AND THE NEWARK POLICE ASSOCIATION, AUTHORIZING THE CITY MANAGER TO EXECUTE THE SIDE LETTER AGREEMENT; AND APPROVING AN AMENDMENT TO THE CITY'S SALARY SCHEDULE IN CONFORMANCE WITH CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 570.5.

WHEREAS, the current Memorandum of Understanding between the City of Newark (the "City") and the Newark Police Association ("NPA") expires on June 30, 2023; and

WHEREAS, on June 23, 2022 the City approved successor Memoranda of Understanding with two other represented employee groups and Compensation and Benefit Plans for two unrepresented employee groups, with terms of July 1, 2022 - June 30, 2025; and

WHEREAS, in order to preserve positive employee relations, provide fiscal certainty, and achieve parity across employee groups, the City offered similar salary and benefit terms to the NPA through a side letter agreement to extend the current Memorandum of Understanding; and

WHEREAS, the representatives of the City and NPA have reached agreement to extend the current Memorandum of Understanding (the "MOU") through June 30, 2025. The side letter is attached hereto and incorporated herein by this reference as Exhibit A (the "Side Letter Agreement"); and

WHEREAS, NPA ratified the Side Letter Agreement as of July 20, 2022; and

WHEREAS, the City Council finds that the terms and conditions of the Side Letter Agreement are proper and in the best interests of the City.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves and adopts a Side Letter Agreement, effective July 1, 2022, amending and extending the NPA MOU, through June 30, 2025 upon the terms and conditions stated therein, and authorizes the City Manager to execute the Side Letter Agreement, in a form approved by the City Attorney, and to take such further actions as may be necessary to implement the Side Letter Agreement including any necessary non-substantive modifications.

BE IT FURTHER RESOLVED that if any provisions contained herein are found

to be in conflict with provisions of any other previous resolutions, the provisions herein shall prevail.

BE IT FURTHER RESOLVED that the City Council hereby approves an amendment to the City's Salary Schedule to reflect the revisions in compensation provided pursuant to the Side Letter Agreement, effective July 1, 2022.

5160593.1

CITY OF NEWARK, CALIFORNIA

To: Newark Police Association (NPA) Executive Board

From: David Benoun, City Manager
Lenka Hovorka, Assistant City Manager

Date: July 21, 2022

This will serve as a side letter to the City of Newark (City) and the Newark Police Association (NPA) July 1, 2019 - June 30, 2023 Memorandum of Understanding (MOU). The purpose of this side letter is to extend the MOU and amend certain terms and conditions of employment. This side letter will become effective upon approval by the City Council.

The City recently negotiated successor MOUs with two other represented employee associations, and amended terms impacting the two unrepresented employee groups. These terms were adopted by the City Council on June 23, 2022. The NPA MOU does not expire until June 30, 2023. The City and NPA desire to extend the MOU upon similar terms were provided for the other represented employee associations.

As a result, the City and NPA have agreed to an extension of the current MOU and amended terms, reflecting parity and market equity adjustments consistent with those adopted for other City employee groups.

The City and NPA agree to the following amendments to the MOU with revisions in redline:

-Title Page of MOU:

Memorandum of Understanding

Between City of

Newark and

Newark Police Association

July 1, 2019

Through

June 30, 2025

Adopted July 11, 2019
Revised
June 25, 2020
Revised
July 28,
2022

- **Section I of MOU:**

I. TERM

This agreement shall be in effect from July 1, 2019 through June 30, 2025.

- **Section IV of MOU:**

IV. LABOR MARKET

The following agencies comprise the designated labor market for the purpose of salary and benefit survey comparisons: Foster City, Fremont, Hayward, Livermore, Menlo Park, Milpitas, Pleasanton, Redwood City, San Leandro, and Union City.

During fiscal year 2022-2023, the City will conduct a Classification and Compensation Study. The Study will include a review the designated labor market, and agree to meet and confer on any proposed changes. The Classification portion will include updating all job classifications to reflect current duties. The Compensation portion will include conducting a Total Compensation Survey for all Association classifications. Implementation of equity adjustments based on the Study will be subject to meet and confer with the Association.

- **Section V.2 of MOU:**

V. SALARY INCREASE

2. General Salary Increase

The salary ranges for all classifications represented by the Association shall be increased as follows:

a. Effective July 1, 2019, salary increase shall be one and one-half percent (1.5%).

b. Effective July 1, 2021, salary increase shall be one and one- half percent (1.5%). If by January 1, 2021, the City's revenues for Fiscal Year 21/22 are projected to be at least $1,250,000 less than actual revenues for Fiscal Year 20/21, at the request of the City, the parties agree to re-open

negotiations on 1.5% increase scheduled for the July 1, 2021.

c. Effective July 1, 2022, salary increase shall be four percent (4.0%).

d. Effective July 1, 2023, salary increase shall be three percent (3.0%).

e. Effective July 1, 2024, salary increase shall be three percent (3.0%).

- **Section VI.C and D of MOU:**

VI. HEALTH AND WELFARE PROGRAM

C. Effective for the 2020 plan year, the City shall contribute to eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution.

Employee Only: $844
Employee + 1 Dependent: $1,687 Employee +
2 or more Dependents: $2,228

Effective for the 2021 plan year, the City shall contribute to eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution.

Employee Only: $861
Employee + 1 Dependent: $1,721 Employee +
2 or more Dependents: $2,273

Effective for the 2022 plan year, the City shall contribute to eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution.

Employee Only: $878
Employee + 1 Dependent: $1,755 Employee +
2 or more Dependents: $2,318

Effective for the 2023 plan year, the City shall contribute to each eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution:

For Regular Full-Time Employees and Regular Part-Time Employees working 30-35 hours:

Employee Only: $896
Employee + 1 Dependent: $1,790
Employee + 2 or more Dependents: $2,364

For Regular Part-Time Employees working 20-25 hours:

Employee Only: $448-$560
Employee + 1 Dependent: $896-$1,119

Employee + 2 or more Dependents: $1,182-$1,478

Effective for the 2024 plan year, the City shall contribute to each eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution:

For Regular Full-Time Employees and Regular Part-Time Employees working 30-35 hours:

Employee Only: $913
Employee + 1 Dependent: $1,826
Employee + 2 or more Dependents: $2,412

For Regular Part-Time Employees working 20-25 hours:

Employee Only: $457-$571
Employee + 1 Dependent: $913-$1,141
Employee + 2 or more Dependents: $1,206-$1,507

Effective for the 2025 plan year, the City shall contribute to each eligible NPA employee's cafeteria plan, an amount equal to the following, minus the Minimum Employer Contribution:

For Regular Full-Time Employees and Regular Part-Time Employees working 30-35 hours:

Employee Only: $932
Employee + 1 Dependent: $1,862
Employee + 2 or more Dependents: $2,460

For Regular Part-Time Employees working 20-25 hours:

Employee Only: $466-$582
Employee + 1 Dependent: $931-$1,164
Employee + 2 or more Dependents: $1,230-$1,537

D. Cash Back / Cash in Lieu of Benefits:

1. Cash-In-Lieu: Employees electing not to participate in the City's cafeteria plan and waiving all medical, dental, and vision benefits, will receive $450 per month "cash-in-lieu" of benefits, which includes the PEMCHA minimum per section A above.

2. Cafeteria Plan Cash-Back: Employees who participate in the cafeteria plan but who do not utilize the full benefit allowance, may receive up to $450 per month of any money not used for the purchase of employer offered benefits. Any "cash-in-lieu" and cafeteria plan "cash back" will be paid to the employee in taxable compensation.

For Regular Part-Time Employees working 30-35 hours the "cash-in-lieu" and "cash back' amount will be $338-$394. For Regular Part-Time Employees working 20-25 hours the "cash-in-lieu" and 'cash back" amount will be $225-$281.

- **Section VIII.K of MOU:**

VIII. VACATION LEAVE

K. Effective July 1, 2017, upon using one-half of the vacation time accrued during the 12-month period from July 1 through June 30, a regular full- time employee may request to receive pay for up to a total of sixty (60) hours per fiscal year of vacation, forty-five (45) to fifty-two and a half (52.5) hours for 30-35 hour employees, and thirty (30) to thirty-seven and a half (37.5) hours for 20-25 hour employees in hourly increments at the current hourly salary rate provided there is a minimum of one (1) week (40 hours) remaining in the employee's vacation bank after the conversion. Requests for vacation buy-back may be made up to two times per fiscal year in October and/or April for payment on December 15 and/or June 15.

For calendar year 2022 only, the total amount of vacation eligible for buy-back will be increased one time to 100 hours for regular full-time employees, 85 to 92.5 for 30-35 hour employees, and 70 to 77.5 for 20-25 hour employees.

Effective November 2022 - By December 1 of each calendar year, eligible employees who want to cash out accrued vacation leave in the following calendar year shall make an irrevocable election to cash out in the next calendar year, subject to the conditions set forth below:

- For regular full-time employees: The employee may cash out up to 80 hours of vacation.
- For regular 30-35 hour part-time employees: The employee may cash out up to 60-70 hours of vacation.
- For regular 20-25 hour part-time employees: The employee may cash out up to 40-50 hours of vacation.
- Employees must have the equivalent of one regular work week remaining in vacation accruals at the time of cash out.
- Employees must submit their Vacation Buy-Back Request Form to Payroll by December 1. This is an irrevocable election by the employee.

For example, to buy back vacation leave that is accrued in calendar year 2023, a full-time employee must elect by December 1, 2022, how many hours they want to buy back. Employees must further ensure they will have at least one work week of vacation accruals remaining at the time of the buy back which will occur in December 2023. The buy back will be paid out in the last full pay period of December 2023, which is December 29, 2023.

The City makes no representation as to the tax consequences of an employee cashing out accrued leave or the vacation buyback program. It is the employee's sole responsibility to address the tax consequences of cashing out accrued leave or the vacation buy-back program.

- **Section XI.C.1 of MOU:**

XI. OTHER LEAVES

C. Bereavement Leave

1. Regular full-time employees represented by the Association may be granted up to a maximum of 40 hours of bereavement leave where there has been a death of a husband, wife, son, daughter, stepson, stepdaughter, sister, brother, mother, father, stepmother, stepfather, grandparent, grandchild, mother-in-law, father-in-law, grandparent-in- law, sister-in-law, brother-in-law, son-in-law, or daughter-in-law of an employee in order that the employee may attend last rites and attend to any pressing matters resulting from the death.

   Effective July 1, 2022, up to 80 hours of bereavement leave may be granted for the death of a son, daughter, stepson, or stepdaughter.

- **Section XII.A of MOU:**

XII. HOLIDAYS

A. Regular full-time employees in the classifications of Police Officer, Police Sergeant, and Public Safety Dispatcher / Lead Public Safety Dispatcher shall receive as compensation in- lieu of holidays an amount equal to 5% of his/her current base pay step, which in-lieu payment shall be paid each pay period. The in-lieu compensation factor of 5% shall not be applied and added to any payment for overtime work or to a lump sum payment for accrued vacation in the case of a terminating employee; or to any other payment to an employee except his/her current base pay step.

Effective July 1, 2022 the in-lieu compensation factor will increase to from 5% to 7%.

- **Section XIV of MOU:**

XIV. CERTIFICATE INCENTIVE PAY

The City shall provide the following Certificate Incentive Pay for sworn personnel represented by the Association who receive a California P.O.S.T. Intermediate or Advanced Certificate:

A. Effective July 1, 2019, Certificate Incentive Pay will be:

P.O.S.T. Intermediate Certificate	$460 per month
P.O.S.T. Advanced Certificate	$650 per month

Effective July 1, 2020, Certificate Incentive Pay will be:
P.O.S.T. Intermediate Certificate $480 per month
P.O.S.T. Advanced Certificate $685 per month

Effective July 1, 2021, Certificate Incentive Pay will be:
P.O.S.T. Intermediate Certificate $500 per month
P.O.S.T. Advanced Certificate $725 per month

Effective July 1, 2022, Certificate Incentive Pay will be:
P.O.S.T. Intermediate Certificate 5% of base compensation per month
P.O.S.T. Advanced Certificate 7% of base compensation per month

The effective date for payment of educational incentive pay shall be the payroll period immediately following the date on the P.O.S.T. certificate.

The provision of educational incentive pay is not intended as an inducement or directive to employees to conduct personal education programs beyond the programs required and/or provided by the City. The course work is undertaken voluntarily by the employee and not subject to remuneration under provisions of the Fair Labor Standards Act.

B. Effective July 1, 2019, Certificate Incentive Pay for dispatch personnel will be:

P.O.S.T. Intermediate Certificate	$120.00 per month
P.O.S.T. Advanced Certificate	$200.00 per month

Effective July 1, 2020, Certificate Incentive Pay for dispatch personnel will be:

P.O.S.T. Intermediate Certificate $160.00 per month
P.O.S.T. Advanced Certificate $250.00 per month

Effective July 1, 2021, Certificate Incentive Pay for dispatch personnel will be:
P.O.S.T. Intermediate Certificate $200.00 per month
P.O.S.T. Advanced Certificate $300.00 per month

Effective July 1, 2022, Certificate Incentive Pay for dispatch personnel will be:
P.O.S.T. Intermediate Certificate 2.5% of base compensation per month
P.O.S.T. Advanced Certificate 3.5% of base compensation per month
The effective date for payment of educational incentive pay shall be the payroll period immediately following the date on the P.O.S.T. certificate.

The provision of educational incentive pay is not intended as an inducement or directive to employees to conduct personal education programs beyond the programs required and/or provided by the City. The course work is undertaken voluntarily by the employee and not subject to remuneration under provisions of the Fair Labor Standards Act.

- **Section XV.C of MOU:**

XV. OVERTIME

C. Compensatory Time Off

Accumulation of compensatory time off shall be limited to 160 hours and shall only be available in accordance with federal regulations implementing the Fair Labor Standards Act. When an employee reaches the maximum accumulation of 160 hours, the employee shall receive overtime pay for time worked in excess of the regularly assigned shift.

Compensatory time accrual may be cashed-out for up to 80 hours per fiscal year. Cash out will be in November and April of the fiscal year.

The City makes no representation as to the tax consequences of an employee cashing out accrued leave or the vacation buyback program. It is the employee's sole responsibility to address the tax consequences of cashing out accrued leave or the vacation buy-back program.
The Association and the City agree to meet and confer prior to December 31, 2022 to develop a process related to the cash out of compensatory time. The new process will be implemented in calendar year 2023 with the goal to comply with constructive receipt requirements in calendar year 2023.

- **Section XIX.B of MOU:**

XIX. TUITION FEES AND BOOK COSTS REIMBURSEMENT

B. The City shall establish a fund of $15,000 which shall be the City's total obligation for financing tuition fees and book costs incurred for courses completed within each

fiscal year of this Memorandum of Understanding by the employees represented by the Newark Police Association. Reimbursement to individual employees shall not exceed $1,500 per employee per fiscal year. Should monies remain in the fund at the end of the fiscal year, the funds will be distributed equitably among employees that had eligible expenses beyond the $1,500 per employee limit, up to their maximum expense incurred. Reimbursements taxable under the IRS will be taxed to comply with IRS regulations.

- **Section XXII of MOU:**

XXII.LONGEVITY PAY

A. Effective July 1, 2019 the regular full-time employees in the classifications of Police Officer and Police Sergeant are eligible for longevity pay as follows:

Upon commencement of 10 years of service 2.5% salary increase Upon commencement of 15 years of service 5.0% salary increase Upon commencement of 20 years of service 7.5% salary increase

Longevity pay is computed on base compensation only. The maximum longevity pay premium is 7.5% of salary for employees in the classifications of Police Officer and Police Sergeant.

B. For service to meet the requirements of longevity pay, it must meet all of the following criteria:

- Full-time sworn classifications represented by the City of Newark Police Association, including probationary time through June 30, 2022. Effective July 1, 2022, full-time sworn service in the classifications of Police Officer, Police Corporal, Police Sergeant, Police Lieutenant, Police Commander, Police Captain, and/or similar sworn position; in a public sector agency, including probationary time; and
- Continuous service or service that qualifies under reinstatement procedures; and
- Active service (in a paid status) or approved leave without pay that qualifies for FMLA, CFRA, PDL, workers' compensation, or other protected leaves per state or federal law.

- **Section XXIII.D of MOU:**

XXIII. SPECIAL ASSIGNMENT PAY

D. Effective July 1, 2019, Police Officers and Sergeants assigned to one of the following positions shall receive special assignment pay of $425 per month:

- School Liaison Officer
- School Resource Officer
- Training Officer
- Detective
- Canine Handler
- Motor

- Special Enforcement Team
- Any other position approved by the Police Chief

Effective July 1, 2022, Police Officers and Sergeants assigned to one of the above listed positions shall receive special assignment pay of 5% of base compensation per month.

Attachment A.2

Effective July 1, 2022 *Monthly salaries are based on a 40-hour workweek for non-sworn NPA employees. Salaries listed for sworn NPA employees are monthly salaries for workweeks as defined in MOU.

ANIMAL CONTROL OFFICER	$38.89	$7,076.95 $40.82	$7,430.79 $42.86	$7,802.33 $45.01	$8,192.45 $47.22
COMMUNITY SERVICE OFFICER	$6,816.43 $39.32	$7,157.25 $41.29	$7,515.11 $43.35	$7,890.87 $45.52	$8,285.41 $47.80
LEAD PUBLIC SAFETY DISPATCHER	$8,261.62 $47.66	$8,674.71 $50.05	$9,108.44 $52.55	$9,563.86 $55.18	$10,042.06 $57.93
POLICE OFFICER	$9,310.30 $53.72	$9,775.81 $56.40	$10,264.60 $59.22	$10,777.83 $62.18	$11,316.73 $65.29
POLICE RECORD SUPERVISOR	$7,379.64 $42.58	$7,748.62 $44.71	$8,136.06 $46.94	$8,542.86 $49.29	$8,970.00 $51.75
POLICE SERGEANT	$11,077.57 $63.91	$11,631.45 $67.10	$12,213.02 $70.46	$12,823.67 $73.98	$13,464.86 $77.68
PUBLIC SAFETY CLERK	$6,414.31 $37.00	$6,735.03 $38.85	$7,071.78 $40.80	$7,425.37 $42.84	$7,796.64 $44.98
PUBLIC SAFETY DISPATCHER	$7,649.66 $44.13	$8,032.14 $46.33	$8,433.75 $48.65	$8,855.43 $51.08	$9,298.21 $53.64
RED LIGHT PHOTO ENFORCEMENT TECHNICIAN	$6,540.62 $37.73	$6,867.65 $39.62	$7,211.04 $41.60	$7,571.59 $43.68	$7,950.17 $45.86

Attachment A.3

Effective July 1, 2023 *Monthly salaries are based on a 40-hour workweek for non-sworn NPA employees. Salaries listed for sworn NPA employees are monthly salaries for workweeks as defined in MOU. Listed salaries are subject to change pursuant to negotiated equity adjustments.

ANIMAL CONTROL OFFICER	$6,942.15 $40.05	$7,289.25 $42.05	$7,653.72 $44.16	$8,036.40 $46.37	$8,438.22 $48.68
COMMUNITY SERVICE OFFICER	$7,020.92 $40.50	$7,371.97 $42.53	$7,740.57 $44.65	$8,127.60 $46.89	$8,533.98 $49.23
LEAD PUBLIC SAFETY DISPATCHER	$8,509.47 $49.09	$8,934.95 $51.55	$9,381.69 $54.13	$9,850.78 $56.83	$10,343.32 $59.67
POLICE OFFICER	$9,589.61 $55.33	$10,069.09 $58.09	$10,572.54 $61.00	$11,101.17 $64.05	$11,656.23 $67.25
POLICE RECORD SUPERVISOR	$7,601.03 $43.85	$7,981.08 $46.05	$8,380.14 $48.35	$8,799.14 $50.77	$9,239.10 $53.31
POLICE SERGEANT	$11,409.90 $65.83	$11,980.39 $69.12	$12,579.41 $72.57	$13,208.38 $76.20	$13,868.80 $80.01
PUBLIC SAFETY CLERK	$6,606.74 $38.11	$6,937.08 $40.02	$7,283.94 $42.02	$7,648.13 $44.12	$8,030.54 $46.33
PUBLIC SAFETY DISPATCHER	$7,879.15 $45.45	$8,273.10 $47.72	$8,686.76 $50.11	$9,121.10 $52.62	$9,577.15 $55.25
RED LIGHT PHOTO ENFORCEMENT TECHNICIAN	$6,736.84 $38.86	$7,073.68 $40.81	$7,427.37 $42.85	$7,798.74 $44.99	$8,188.67 $47.24

Attachment A.4

Effective July 1, 2024 *Monthly salaries are based on a 40-hour workweek for non-sworn NPA employees. Salaries listed for sworn NPA employees are monthly salaries for workweeks as defined in MOU. Listed salaries are subject to change pursuant to negotiated equity adjustments.

ANIMAL CONTROL OFFICER	$7,150.41 $41.25	$7,507.93 $43.32	$7,883.33 $45.48	$8,277.50 $47.76	$8,691.37 $50.14
COMMUNITY SERVICE OFFICER	$7,231.55 $41.72	$7,593.13 $43.80	$7,972.78 $45.99	$8,371.42 $48.29	$8,790.00 $50.71
LEAD PUBLIC SAFETY DISPATCHER	$8,764.76 $50.57	$9,203.00 $53.09	$9,663.15 $55.75	$10,146.30 $58.54	$10,653.62 $61.46
POLICE OFFICER	$9,877.30 $56.99	$10,371.16 $59.84	$10,889.72 $62.83	$11,434.20 $65.97	$12,005.91 $69.27
POLICE RECORD SUPERVISOR	$7,829.06 $45.17	$8,220.52 $47.43	$8,631.54 $49.80	$9,063.12 $52.29	$9,516.27 $54.91
POLICE SERGEANT	$11,752.19 $67.80	$12,339.80 $71.19	$12,956.79 $74.75	$13,604.63 $78.49	$14,284.87 $82.41
PUBLIC SAFETY CLERK	$6,804.95 $39.26	$7,145.19 $41.22	$7,502.45 $43.28	$7,877.58 $45.44	$8,271.45 $47.72
PUBLIC SAFETY DISPATCHER	$8,115.52 $46.81	$8,521.30 $49.16	$8,947.36 $51.61	$9,394.73 $54.19	$9,864.47 $56.90
RED LIGHT PHOTO ENFORCEMENT TECHNICIAN	$6,938.95 $40.03	$7,285.89 $42.03	$7,650.19 $44.13	$8,032.70 $46.34	$8,434.33 $48.66

Dated: _____

For the City of Newark:

_____

David J. Benoun, City Manager

For the Newark Police Association:

_____

Patrick Smith, President