



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, February 23, 2023
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 employee

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 the February 9, 2023 minutes
3. Adopt a resolution to vacate excess City right-of-way located between Interstate Highway 880 and 38600 Cedar Boulevard, and adopt a resolution to declare that certain excess right-of-way and the street remnant of Timber Street exempt surplus land, authorize the City Manager to execute the Purchase Sale Agreement, deed and all related documents necessary to complete the sale and conveyance to Cedar Boulevard Townhomes, LLC for \$156,000, and recognize the sale proceeds as revenue in the General Fund. Exempt from CEQA Review per CEQA Guidelines Section 15312 (Surplus Government Property Sales).

4. Adopt a resolution authorizing the City Manager to execute Task Order No. 26 to the Joint Powers Agreement with the City of Fremont for case management services
5. Adopt a resolution approving and authorizing the City Manager to execute a Memorandum of Agreement and Funds Transfer Agreement with the Federal Highways Administration for Thornton Avenue Complete Streets, Project No. 1284

E. PUBLIC HEARINGS

F. OTHER BUSINESS

1. Adopt a resolution approving funding for small business assistance in the Old Town neighborhood and citywide, approve a fifth amendment to the Consulting Services Agreement for Spectrum Small Business Services, authorize the City Manager to execute marketing contracts for small business assistance, and approve the associated budget amendment to the 2022-2024 Biennial Budget for Fiscal Year 2023 and 2024

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

1. Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: City Manager Benoun, Assistant City Manager Hovorka, and Human Resources Director Solito; Employee Group: the Newark Police Association

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 Hannon, Vice Mayor Collazo, and Council Members Jorgens, Bucci, 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/UC383NGSxaPwZP1IkJbo2T8A>

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/85911346467>

From a telephone dial 1- 669-900-9128, Webinar ID Number 859 1134 6467

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 02/23/2023
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Introduction of employee

Danielle Cranon-Jones was recently hired as an Administrative Support Specialist II for the Silliman Activity & Family Aquatic Center. Ms. Cranon-Jones will be introduced at the City Council meeting.



STAFF REPORT

Item D. 1.

DATE 02/23/2023
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: 01/26/2023

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE						
Check	01/26/2023	7543	Accounts Payable	ACCESS		110.00
	Invoice		Date	Description		Amount
	9908677		12/31/2022	SHREDDING SVCS DECEMBER 2022		110.00
Check	01/26/2023	7544	Accounts Payable	AFLAC		920.48
	Invoice		Date	Description		Amount
	970374		01/17/2023	AFLAC STD - AFLAC SHORT TERM DISABILITY*		920.48
Check	01/26/2023	7545	Accounts Payable	TREASURER OF ALAMEDA COUNTY		2,768.00
	Invoice		Date	Description		Amount
	DEC'22		01/04/2023	CRIME LAB FEES DECEMBER 2022		2,768.00
Check	01/26/2023	7546	Accounts Payable	ALAMEDA COUNTY WATER DISTRICT		26,989.86
	Invoice		Date	Description		Amount
	1025-010523		01/17/2023	ACWD CITYWIDE WATER 10/25-01/05/23		26,989.86
Check	01/26/2023	7547	Accounts Payable	BAILEY FENCE COMPANY INC		1,141.00
	Invoice		Date	Description		Amount
	83353		01/04/2023	FENCE REPAIR		1,141.00
Check	01/26/2023	7548	Accounts Payable	BARG COFFIN LEWIS & TRAPP, LLP		110.00
	Invoice		Date	Description		Amount
	47375		12/31/2022	LEGAL SERVICES THROUGH 12/31/2023		110.00
Check	01/26/2023	7549	Accounts Payable	BAY CENTRAL PRINTING		321.34
	Invoice		Date	Description		Amount
	194066		12/13/2022	BUSINESS CARDS - IT STAFF		257.07
	193894		11/22/2022	BUSINESS CARDS - IT STAFF		64.27
Check	01/26/2023	7550	Accounts Payable	BEAR ELECTRICAL SOLUTIONS, INC.		13,443.02
	Invoice		Date	Description		Amount
	17674		12/28/2022	STREET LIGHT MAINTENANCE (DECEMBER 2022)		13,443.02
Check	01/26/2023	7551	Accounts Payable	BURTON'S FIRE INC		582.13
	Invoice		Date	Description		Amount
	S 58653		01/06/2023	FIRE TRUCK SUPPLIES-LINER DOOR		524.13
	S 58956		01/03/2023	FIRE TRUCK SUPPLIES-SWITCH		58.00
Check	01/26/2023	7552	Accounts Payable	CAL SAFETY INC		343.53

	Invoice	Date	Description	Amount
Check	29454	01/04/2023	EMERGENCY FLOOD SIGNS	343.53
	01/26/2023	7553 Accounts Payable	CALICO CENTER	5,923.00
	Invoice	Date	Description	Amount
Check	LE2023NPD	12/30/2022	2023 CHILD ABUSE FORENSIC INTERVIEWING, SUPPORT SVCS, AND TRAINI	5,923.00
	01/26/2023	7554 Accounts Payable	CALIFORNIA BUILDING STANDARDS	3,549.60
	Invoice	Date	Description	Amount
Check	0701-093022	01/24/2023	BUILDING STANDARDS FEES - JULY TO SEPT 2022	2,833.20
	1001-123122	01/24/2023	BUILDING STANDARDS FEES - OCT TO DEC 2022	716.40
	01/26/2023	7555 Accounts Payable	CALIFORNIA DEPARTMENT OF CONSERVATION	14,568.96
Check	Invoice	Date	Description	Amount
	0701-093022	01/24/2023	STRONG MOTION FEES - JULY TO SEPT 2022	12,724.89
	1001-123122	01/24/2023	STRONG MOTION FEES - OCT TO DEC 2022	1,844.07
Check	01/26/2023	7556 Accounts Payable	CIVICPLUS, LLC	783.12
	Invoice	Date	Description	Amount
	250449	12/19/2022	FULL-SERVICE SUPPLEMENTATION SUBSCRIPTION 12/15/22 - 6/30/25	783.12
Check	01/26/2023	7557 Accounts Payable	CLEARGOV INC.	1,677.08
	Invoice	Date	Description	Amount
	2023-12716	01/01/2023	CG CAPITAL BUDGETING SUITE 01/01/23 -03/16/23	1,677.08
Check	01/26/2023	7558 Accounts Payable	DELTA DENTAL OF CALIFORNIA	17,996.95
	Invoice	Date	Description	Amount
	BE005288439	01/17/2023	DELTA PPO - JANUARY PREMIUMS	17,996.95
Check	01/26/2023	7559 Accounts Payable	DELTA DENTAL INSURANCE COMPANY	263.30
	Invoice	Date	Description	Amount
	BE005286589	01/17/2023	DELTA CARE - JANUARY PREMIUMS	263.30
Check	01/26/2023	7560 Accounts Payable	DEPARTMENT OF JUSTICE	326.00
	Invoice	Date	Description	Amount
	627650	01/05/2023	FINGERPRINTING FEES-12/22	326.00
Check	01/26/2023	7561 Accounts Payable	DLT SOLUTIONS, LLC	22,780.12
	Invoice	Date	Description	Amount
	SI593452	01/18/2023	AUTODESK SUBSCRIPTION 01/31/23 - 01/30/24	22,780.12
Check	01/26/2023	7562 Accounts Payable	ENVIRONMENTAL LOGISTICS	6,735.25
	Invoice	Date	Description	Amount
	115986	10/31/2022	HAZARDOUS WASTE REMOVAL 10/31/22	6,735.25
Check	01/26/2023	7563 Accounts Payable	FEHR & PEERS	977.50
	Invoice	Date	Description	Amount
	161890	01/18/2023	ON-CALL ENGINEERING & TRANSPORTATION PLANNING 11/26-12/30/22	977.50
Check	01/26/2023	7564 Accounts Payable	FIDELITY SECURITY LIFE INSURANCE/EYEMED	2,468.02
	Invoice	Date	Description	Amount

Check	165583535 165571587	01/17/2023 01/17/2023	EYE MED JANUARY PREMIUMS EYE MED COBRA JANUARY PREMIUMS	2,408.83 59.19
	01/26/2023	7565 Accounts Payable	FLOCK SAFETY	26,250.00
	Invoice	Date	Description	Amount
Check	INV-7978	01/06/2023	FLOCK SAFETY ADVANCED SEARCH 10/31/22-10/30/24	26,250.00
	01/26/2023	7566 Accounts Payable	GYM DOCTORS	225.00
	Invoice	Date	Description	Amount
Check	00138427	01/05/2023	1/4/23 SILLIMAN FITNESS CENTER MAINTENANCE	225.00
	01/26/2023	7567 Accounts Payable	HARRIS COMPUTER SYSTEMS	1,651.61
	Invoice	Date	Description	Amount
Check	CERMN0000097	12/20/2022	FINANCIAL SOFTWARE MAR 2023 TO FEB 2024	1,651.61
	01/26/2023	7568 Accounts Payable	HOME DEPOT CREDIT SERVICES	1,217.04
	Invoice	Date	Description	Amount
Check	DEC'22	12/13/2022	HDCC-SUPPLIES 12/13/22	1,217.04
	01/26/2023	7569 Accounts Payable	INDUSTRIAL PLUMBING SUPPLY, LLC.	119.91
	Invoice	Date	Description	Amount
Check	105390	01/05/2023	SILLIMAN HANDLE REPAIR KIT	119.91
	01/26/2023	7570 Accounts Payable	KELLY-MOORE PAINT COMPANY INC	33.28
	Invoice	Date	Description	Amount
Check	617-00000714635	01/24/2023	SILLIMAN PAINT SUPPLIES-POINT OF SALE	33.28
	01/26/2023	7571 Accounts Payable	KARL KREUTZER	4,000.00
	Invoice	Date	Description	Amount
Check	FALLSEM2022EXP-2	01/26/2023	EDUCATIONAL REIMBURSEMENT 08/19/2022-12/06/2022	4,000.00
	01/26/2023	7572 Accounts Payable	LANGUAGE LINE SERVICES	175.07
	Invoice	Date	Description	Amount
Check	10709540	12/31/2022	INTERPRETATION SVCS DECEMBER 2022	175.07
	01/26/2023	7573 Accounts Payable	OCCU-MED LTD	40.00
	Invoice	Date	Description	Amount
Check	0123050	12/31/2022	PRE-EMPLOYMENT PHYSICALS - 12/21/2022	40.00
	01/26/2023	7574 Accounts Payable	OCCUPATIONAL HEALTH CENTERS OF CALIFORNIA	72.00
	Invoice	Date	Description	Amount
Check	77912620	01/11/2023	PRE-EMPLOYMENT/ DOT PHYSICALS -01/05/23	72.00
	01/26/2023	7575 Accounts Payable	PROFORCE LAW ENFORCEMENT	3,464.59
	Invoice	Date	Description	Amount
Check	504777	01/04/2023	TASER SUPPLIES-PATROL	3,464.59
	01/26/2023	7576 Accounts Payable	REDFLEX TRAFFIC SYSTEMS, INC.	17,400.00
	Invoice	Date	Description	Amount
Check	INV0046583	12/31/2022	REDLIGHT CAMERA MONITORING DEC 2022	17,400.00
	01/26/2023	7577 Accounts Payable	SONITROL	8,672.16

Invoice	Date	Description	Amount
323559	01/24/2023	12/1/22-2/28/23 CCTV MAINTENANCE	2,200.08
316273	01/24/2023	9/1/22-11/30/22 CCTV MAINTENANCE	2,200.08
308246	01/24/2023	6/1/22-8/31/22 CCTV MAINTENANCE	2,136.00
302509	01/24/2023	2/1/22 BALANCE CCTV MAINTENANCE	2,136.00
01/26/2023	7578 Accounts Payable	STANDARD INSURANCE COMPANY	1,556.86
Invoice	Date	Description	Amount
JANUARY PREMIUMS	01/17/2023	STANDARD - STANDARD INSURANCE COMPANY*	1,556.86
01/26/2023	7579 Accounts Payable	SYNERCO, INC	8,844.00
Invoice	Date	Description	Amount
11548	01/04/2023	SOFTWARE IMPLEMENTATION	8,844.00
01/26/2023	7580 Accounts Payable	T-MOBILE USA, INC	100.00
Invoice	Date	Description	Amount
9520482304	01/03/2023	TIMING ADVANCE 10/24/22 - 11/23/22	100.00
01/26/2023	7581 Accounts Payable	JESSENNIA TAIMANI	65.93
Invoice	Date	Description	Amount
010923EXP	01/17/2023	1/9/23 EXP REM FOR WARRIORS COACHES CLINIC MILEAGE & PARKING	65.93
01/26/2023	7582 Accounts Payable	HDL COREN & CONE	4,081.25
Invoice	Date	Description	Amount
SIN024914	01/24/2023	PROPERTY TAX CONSULTING - JAN-MAR 2023	4,081.25
01/26/2023	7583 Accounts Payable	TIREHUB, LLC	3,355.38
Invoice	Date	Description	Amount
27753265	06/16/2022	TIRES - GY EAGLE ENFORCER	1,635.63
28325643	07/13/2022	TIRES - GY G622 RSD	1,719.75
01/26/2023	7584 Accounts Payable	UNIVERSAL BUILDING SERVICES & SUPPLY	263,095.28
Invoice	Date	Description	Amount
2022-0701	07/28/2022	JANITORIAL SERVICES JULY 2022	36,046.00
503930	07/28/2022	JANITORIAL & PORTER SERVICES - LIBRARY JULY 2022	6,572.00
504878	07/31/2022	JANITORIAL SERVICES - LIBRARY 7/11-7/14/22	2,069.00
504879	07/31/2022	JANITORIAL SERVICES JULY 2022	524.88
504877	07/31/2022	JANITORIAL SERVICES JULY 2022 - ASH STREET SCHOOL	1,440.00
2022-0801	08/31/2022	JANITORIAL SERVICES AUGUST 2022	36,046.00
506018	08/31/2022	JANITORIAL SERVICES AUGUST 2022	524.88
505132	08/31/2022	JANITORIAL & PORTER SERVICES - LIBRARY AUGUST 2022	6,572.00
2022-0901	09/30/2022	JANITORIAL SERVICES SEPTEMBER 2022	36,046.00
507074	09/30/2022	JANITORIAL SERVICES SEPTEMBER 2022	612.36
507073	09/30/2022	JANITORIAL SERVICES SEPTEMBER 2022	699.84
506198	09/30/2022	JANITORIAL & PORTER SERVICES - LIBRARY SEPTEMBER 2022	6,572.00
2022-1001	10/31/2022	JANITORIAL SERVICES OCTOBER 2022	36,046.00
508061	10/31/2022	JANITORIAL SERVICES OCTOBER 2022	466.56
507190	10/31/2022	JANITORIAL & PORTER SERVICES - LIBRARY OCTOBER 2022	6,572.00
2022-1101	11/30/2022	JANITORIAL SERVICES NOVEMBER 2022	36,046.00
508250	11/30/2022	JANITORIAL & PORTER SERVICES - LIBRARY NOVEMBER 2022	6,572.00

509127	11/30/2022	JANITORIAL SERVICES NOVEMBER 2022	524.88
2022-1201	12/23/2022	JANITORIAL SERVICES DECEMBER 2022	36,046.00
509359	12/23/2022	JANITORIAL & PORTER SERVICES DECEMBER 2022	6,572.00
510166	12/31/2022	JANITORIAL SERVICES DECEMBER 2022	524.88
Check	01/26/2023	7585 Accounts Payable	19,677.01
	Invoice	Date	Amount
	JAN '23	01/16/2023	19,677.01
Check	01/26/2023	7586 Accounts Payable	150.00
	Invoice	Date	Amount
	1222-NPD-LB	01/06/2023	150.00
Check	01/26/2023	7587 Accounts Payable	50.00
	Invoice	Date	Amount
	665917	01/17/2023	50.00
EFT	01/26/2023	479 Accounts Payable	772.95
	Invoice	Date	Amount
	12272022-GENERAL	12/27/2022	772.95
		SM BUS SUPPORT - TRAVEL (MIKE B) 12/11-12/13/22	

Transactions: 46

DAP ZBA ACCOUNTS PAYABLE Totals:

Checks: 45 \$489,074.63
EFTs: 1 \$772.95

LIVE Newark CA LIVE

Payment Batch Register

Bank Account: AP - ZBA ACCOUNTS PAYABLE

Batch Date: 02/02/2023

Type	Date	Number	Source	Payee Name	EFT Bank/Account	Transaction Amount
Bank Account: AP - ZBA ACCOUNTS PAYABLE						
Check	02/02/2023	7588	Accounts Payable	4LEAF INC		16,980.00
	Invoice		Date	Description		Amount
	J39620		12/22/2022	TEMPORARY PROFESSIONAL PLANNING SERVICES - 11/1/22-11/30/22		16,980.00
Check	02/02/2023	7589	Accounts Payable	ALAMEDA COUNTY FIRE DEPARTMENT		991,257.35
	Invoice		Date	Description		Amount
	2022-23-196		01/24/2023	FIRE TRUCK SERVICE/REPAIR #241N,252, 243N,242N,241N 1/24/2023		4,261.52
	2022-23-190R		01/25/2023	CONTRACT FIRE SERVICES - 01/23		985,729.83
	2022-23-204		01/26/2023	FIRE TRUCK REPAIR #242N 01/19/23		1,266.00
Check	02/02/2023	7590	Accounts Payable	AMERICAN FLOOR SANDING		8,891.00
	Invoice		Date	Description		Amount
	707		12/17/2022	SILLIMAN GYM FLOOR REFINISH 12/17/2022		8,891.00
Check	02/02/2023	7591	Accounts Payable	AQUATIC HARVESTING		9,999.99
	Invoice		Date	Description		Amount
	20562		12/14/2022	EMERGENCY ALGAE HARVESTING AT LAKESHORE PARK 10/26/22		9,999.99
Check	02/02/2023	7592	Accounts Payable	JEREMY BECK		797.81
	Invoice		Date	Description		Amount
	0109-011123EXP		01/25/2023	EXPENSE REIMBURSEMENT-ADVANCED CSI		797.81
Check	02/02/2023	7593	Accounts Payable	CALNENA INC.		1,575.00
	Invoice		Date	Description		Amount
	122022-0748-0733		12/01/2022	CALNENA CONFERENCE 3/5-3/8/23-MARISA H		625.00
	012023-0002-0002		01/04/2023	CALNENA CONFERENCE 3/5-3/8/23-JESSICA H		475.00
	012023-0001-0001		01/03/2023	CALNENA CONFERENCE 3/5-3/8/23-DAWN P		475.00
Check	02/02/2023	7594	Accounts Payable	CITY OF FREMONT		13,861.00
	Invoice		Date	Description		Amount
	326109		11/02/2022	SHELTER OPERATING EXPS NOVEMBER 2022		13,861.00
Check	02/02/2023	7595	Accounts Payable	CLASSIC GRAPHICS		6,003.16
	Invoice		Date	Description		Amount
	46670		07/12/2022	OUTFITTING NEW VEH 2021-12-LOGOS 7/12/22		1,456.36
	46721		07/26/2022	2017 FORD EXPLORER REPAIR-FRONT HOOD 7/26/22		3,510.57
	47330		12/15/2022	FORD EXPORTER FRONT HOOD REPAIR/DECALS 12/15/22		1,036.23

Check	02/02/2023	7596 Accounts Payable	TONYA CONNOLLY	59.16
	Invoice	Date	Description	Amount
Check	012523EXP	01/26/2023	FOOD FOR HAZWOPER TRAINING 1/25/23	59.16
	02/02/2023	7597 Accounts Payable	COTTON, SHIRES AND ASSOCIATES, INC.	2,790.00
	Invoice	Date	Description	Amount
Check	123180	01/26/2023	SEISMIC HZARD GEOTECH REVIEW-PROLOGIS PRJCT-12/22/22-1/5/23	2,790.00
	02/02/2023	7598 Accounts Payable	CYNTHIA M KIRBY	4,200.00
	Invoice	Date	Description	Amount
Check	2302015	02/01/2023	POLYGRAPH TESTING SERVICES - 10/22 - 1/26/23	4,200.00
	02/02/2023	7599 Accounts Payable	EAST BAY LAWN MOWER	560.41
	Invoice	Date	Description	Amount
Check	37431	01/27/2023	FLEET PARTS-SOFT DISCHARGE HOSE 1/27/23	560.41
	02/02/2023	7600 Accounts Payable	ESS UNIVERSAL USA LLC	1,279.69
	Invoice	Date	Description	Amount
Check	3935	01/30/2023	PD BUNK BEDS	1,279.69
	02/02/2023	7601 Accounts Payable	KARL FREDSTROM	1,011.63
	Invoice	Date	Description	Amount
Check	0109-011123EXP	01/27/2023	EXPENSE REIMBURSEMENT-ADVANCED CSI	1,011.63
	02/02/2023	7602 Accounts Payable	GACHINA LANDSCAPE MANAGEMENT, INC.	3,500.00
	Invoice	Date	Description	Amount
Check	E 205555B	01/01/2023	TREE MAINTENANCE - 1/1-1/31/23	3,500.00
	02/02/2023	7603 Accounts Payable	PATRICIA HADDOCK	356.25
	Invoice	Date	Description	Amount
Check	12302022	12/30/2022	BUSINESS WRITING/EDITING COACHING/CONSULTING	356.25
	02/02/2023	7604 Accounts Payable	SHEILA HARRINGTON	505.32
	Invoice	Date	Description	Amount
Check	1027-120723	01/23/2023	EXPENSES FOR LASERFICHE MTG, HENNEBERRY TRIAL, MONTEREY NEW LAW	505.32
	02/02/2023	7605 Accounts Payable	YAMA HOMAYOUN	447.62
	Invoice	Date	Description	Amount
Check	0109-011123EXP	01/27/2023	EXPENSE REIMBURSEMENT-SLI SESSION 3	447.62
	02/02/2023	7606 Accounts Payable	THE MEJORANDO GROUP	34,779.29
	Invoice	Date	Description	Amount
Check	63-2022	01/09/2023	TRAINING/LEARNING WORKSHOPS	34,779.29
	02/02/2023	7607 Accounts Payable	KELLY-MOORE PAINT COMPANY, INC	140.76
	Invoice	Date	Description	Amount
Check	812-00000605421	01/23/2023	SILLIMAN PAINT SUPPLIES-POINT OF SALE 1/23/23	140.76
	02/02/2023	7608 Accounts Payable	KIM TURNER	175.00
	Invoice	Date	Description	Amount
	INVOICE-2460	01/12/2023	DE-ESCALATION FOR DISPATCHERS-5/8/23-DAWN P	175.00

Check	02/02/2023	7609 Accounts Payable	MARK GOTHARD		250.00
	Invoice	Date	Description	Amount	
	012723	01/31/2023	1/19/23 SENIOR CHAIR FITNESS CLASS	250.00	
Check	02/02/2023	7610 Accounts Payable	MEYERS NAVE, A PROFESSIONAL CORPORATION	28,259.34	
	Invoice	Date	Description	Amount	
	201649	01/24/2023	LEGAL SERVICES (THROUGH 12/31/22)	1,304.00	
	200828	12/07/2022	LEGAL SERVICES FOR THE LEPAKSHI PROJECT - SVCS 11/30/22	747.00	
	201638	01/24/2023	LEGAL SVCS - FMC WILLOW - SERVICES THRU 12/31/22	86.60	
	201639	01/24/2023	LEGAL SVCS FOR THE MOWRY VILLAGE PROJECT - SVCS THRU 12/31/22	129.90	
	201637	01/24/2023	LEGAL SVCS FOR NEWPARK REDEVELOPMENT - THRU 12/31/22	86.60	
	196298	07/25/2022	LEGAL SVCS - PROLOGIS PROJECT - THRU 6/30/22	793.40	
	196854	08/17/2022	LEGAL SVCS - PROLOGIS PROJECT - THRU 7/31/22	1,767.50	
	197939	09/16/2022	LEGAL SVCS - PROLOGIS PROJECT - THRU 8/31/22	1,394.50	
	199028	10/20/2022	LEGAL SVCS - PROLOGIS PROJECT - THRU 9/30/22	95.00	
	199961	11/08/2022	LEGAL SVCS - PROLOGIS PROJECT - THRU 10/31/22	95.00	
	201635	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	346.69	
	201641	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	8,975.15	
	201642	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	93.00	
	201643	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	1,612.00	
	201644	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	1,364.00	
	201646	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	6,367.00	
	201647	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	496.00	
	201648	01/24/2023	LEGAL SERVICES THROUGH DECEMBER 31, 2022	2,506.00	
Check	02/02/2023	7611 Accounts Payable	MIKE YORKS INVESTIGATIONS	3,075.00	
	Invoice	Date	Description	Amount	
	2022-28	12/31/2022	BACKGROUND INVESTIGATIONS 12/15-01/27/23	3,075.00	
Check	02/02/2023	7612 Accounts Payable	ANWAR MIRZA	180.00	
	Invoice	Date	Description	Amount	
	012423EXP	01/26/2023	EXPENSE REIMBURSEMENT - PE LICENSE RENEWAL	180.00	
Check	02/02/2023	7613 Accounts Payable	FULLNELSON EMBROIDERY	1,135.00	
	Invoice	Date	Description	Amount	
	08292022	08/29/2022	UNIFORMS-LOGO LABOR ON HATS	1,135.00	
Check	02/02/2023	7614 Accounts Payable	PERFORMANCE PEST MANAGEMENT	267.00	
	Invoice	Date	Description	Amount	
	64890	09/30/2022	PEST SERVICES - CITY HALL #102699 9/30/22	267.00	
Check	02/02/2023	7615 Accounts Payable	PREFERRED ALLIANCE INC	1,515.84	
	Invoice	Date	Description	Amount	
	0184604-IN	12/29/2022	RANDOM & NON RANDOM DRUG TESTING ANNUAL FEE	1,515.84	
Check	02/02/2023	7616 Accounts Payable	S&L BREWER ENTERPRISES, INC.	1,000.00	
	Invoice	Date	Description	Amount	
	2022NEW11	11/27/2022	K9 TRAINING NOVEMBER 2022	500.00	
	2022NEW12	12/26/2022	K9 TRAINING DECEMBER 2022	500.00	

Check	02/02/2023	7617 Accounts Payable	ARIEL SAN PEDRO	604.19
	Invoice	Date	Description	Amount
Check	121422EXP	01/25/2023	EXPENSE REIMBURSEMENT-TASER INSTRUCTOR UPDATE 12/14/22	604.19
	02/02/2023	7618 Accounts Payable	SIEMENS INDUSTRY, INC.	1,402.00
	Invoice	Date	Description	Amount
Check	5330595338	10/20/2022	SILLIMAN CENTER PANEL SERVICE 10/20/22	1,402.00
	02/02/2023	7619 Accounts Payable	SIGNATURE CARPET ONE	2,320.00
	Invoice	Date	Description	Amount
Check	I-13551	08/29/2022	PD WINDOW COVERING 8/29/22	2,320.00
	02/02/2023	7620 Accounts Payable	SMITH & SONS ELECTRIC, INC.	696.82
	Invoice	Date	Description	Amount
Check	22072	10/26/2022	TENNIS COURT LIGHTS 10/26/22	696.82
	02/02/2023	7621 Accounts Payable	CENTERVILLE LOCKSMITH	4.32
	Invoice	Date	Description	Amount
Check	331151	01/03/2023	FLEET KEYS	4.32
	02/02/2023	7622 Accounts Payable	UPLIFT DESK	5,218.54
	Invoice	Date	Description	Amount
Check	EST116376	09/15/2022	PD UPLIFT DESK	5,218.54
	02/02/2023	7623 Accounts Payable	STAPLES	1,381.88
	Invoice	Date	Description	Amount
Check	8068937352	01/15/2023	OFFICE SUPPLIES	1,381.88
	02/02/2023	7624 Accounts Payable	LEHR	36,285.34
	Invoice	Date	Description	Amount
Check	SI81880	12/20/2022	2021 DODGE CHARGER BUILD VIN:2C3CDXAT0MH666090 12/20/22	17,896.17
	SI81884	12/20/2022	2021 DODGE CHARGER BUILD VIN:2C3CDXAT4MH666089 12/20/22	18,389.17
	02/02/2023	7625 Accounts Payable	TARGET SPECIALTY PRODUCTS	4,834.80
	Invoice	Date	Description	Amount
Check	INVP500990184	11/22/2022	PARK SUPPLIES - PROSEED 11/22/22	4,834.80
	02/02/2023	7626 Accounts Payable	TEMPERATURE TECHNOLOGY INC.	415.00
	Invoice	Date	Description	Amount
Check	I2077	09/20/2022	PD LOCKER ROOM HVAC REPAIR 9/20/22	415.00
	02/02/2023	7627 Accounts Payable	JENNIFER TRAN	105.85
	Invoice	Date	Description	Amount
Check	0103-013123EXP	01/31/2023	MILEAGE REIMBURSEMENT 1/3/23-1/31/23	105.85
	02/02/2023	7628 Accounts Payable	TURF & INDUSTRIAL EQUIPMENT CO	2,226.08
	Invoice	Date	Description	Amount
Check	L114977	11/16/2022	PARKS RENTAL EQUIPMENT 11/30-12/7/22	2,226.08
	02/02/2023	7629 Accounts Payable	BOSCO OIL INC DBA VALLEY OIL	26,948.85
	Invoice	Date	Description	Amount

137564	01/18/2023	DIESEL FUEL 01/18/23	26,948.85
AP ZBA ACCOUNTS PAYABLE Totals:		Transactions: 42	\$1,217,296.29
Checks:	42	\$1,217,296.29	



STAFF REPORT

Item D. 2.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Sheila Harrington, City Clerk
SUBJECT Approval of the February 9, 2023 minutes

Attachments

Minutes



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



Minutes

Thursday, February 9, 2023

A. ROLL CALL

Mayor Hannon called the meeting to order at 7:00 P.M. Council Members Freitas, Bucci, and Jorgens were noted present. Vice Mayor Collazo was absent.

B. PRESENTATIONS

1. Commending Tali Fa'i

Mayor Hannon presented a commendation to Tali Fa'i in honor of being named the Bay Area New Group "Girls Athlete of the Week" for her performance at the Optimist Club Holiday Basketball Tournament.

2. Commending Officer Alexandria Riddles

Mayor Hannon presented a commendation to Police Officer Riddles in honor of her work in identifying and dismantling a vehicle theft ring.

C. PUBLIC COMMENT

No one requested to speak.

D. CONSENT CALENDAR

Council Member Bucci moved, Council Member Jorgens seconded, to approve Consent Calendar Items D.1 through D.6, 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 the January 26, 2023 minutes
3. Adopt a resolution Finding That There is a Proclaimed State of Emergency; Finding That Meeting in Person Would Present Imminent Risks to the Health or Safety of Attendees as a Result of the State of Emergency; and Authorizing Continued Remote Teleconferenced Meetings of the Legislative Bodies of the City of Newark for the 30 Day Period Beginning February 9 Pursuant to AB 361 Resolution No. 11460
4. Adopt a resolution authorizing the City Manager to execute a Contractual Services Agreement with Storm Water Inspection & Maintenance Services, Inc. (SWIMS) to conduct installation, inspection and maintenance of full trash capture devices in the City's storm drain system and amend the 20222024 Biennial Budget and Capital Improvement Plan
Resolution No. 11461
Contract No. 23003
5. Adopt a resolution approving a Contractual Services Agreement with Hinderliter De Llamas and Associates (HdL) for Utility Users Tax (UUT) Administration and Audit Services and Amend the 2022-2024 Biennial Budget and Capital Improvement Plan
Resolution No. 11462
Contract No. 23004
6. Adopt a resolution approving a Second Amendment to the Consulting Services Agreement with Greensfelder Commercial Real Estate, LLC
Resolution No. 11463
Contract No. 21014

E. PUBLIC HEARINGS

F. OTHER BUSINESS

G. CITY COUNCIL MATTERS

Council Member Bucci stated that Alameda County Supervisor Richard Valle was a champion for kids, working people, and every community he served. He highlighted Mr. Valle's accomplishments and the impact Mr. Valle had on his life. He extended his condolences to the Valle family.

Council Member Freitas expressed his sympathy to the Valle family noting that he was a good and generous person.

Mayor Hannon stated that Supervisor Valle did many things for Newark and mentioned his connection to his parents through Meals on Wheels.

Mayor Hannon read into the record the Mayor Emeritus Alan L. Nagy commendation and the Dr. Martin Luther King, Jr. Day proclamation.

Mayor Hannon thanked City Manager Benoun and staff for Mayor Emeritus Nagy's retirement celebration.

H. CLOSED SESSION

I. ADJOURNMENT

Mayor Hannon adjourned the meeting at 7:25 p.m. in memory of Alameda County Supervisor Richard Valle.



STAFF REPORT

Item D. 3.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Diana Cangco, Principal Civil Engineer
SUBJECT Adopt a resolution to vacate excess City right-of-way located between Interstate Highway 880 and 38600 Cedar Boulevard, and adopt a resolution to declare that certain excess right-of-way and the street remnant of Timber Street exempt surplus land, authorize the City Manager to execute the Purchase Sale Agreement, deed and all related documents necessary to complete the sale and conveyance to Cedar Boulevard Townhomes, LLC for \$156,000, and recognize the sale proceeds as revenue in the General Fund. Exempt from CEQA Review per CEQA Guidelines Section 15312 (Surplus Government Property Sales).

SUMMARY AND RECOMMENDATION

Cedar Boulevard Townhomes, LLC is the developer of the property at 38600 Cedar Boulevard (APNs 092A-2585-012-01 and 092-2858-031). Abutting the property on the north and adjacent to Interstate Highway 880 are parcels of excess City right-of-way and street remnant of Timber Street (formerly Cedar Road). The developer has requested to purchase the excess City right-of-way and the street remnant of Timber Street parcels from the City to incorporate into their project. The street remnant of Timber Street was vacated by City Council on March 13, 1969. The excess City right-of-way has never been vacated by City Council.

Staff recommends that the City Council adopt a resolution vacating the excess City right-of-way parcel per Streets and Highways Code Section 8330. Furthermore, staff recommends that the City Council, by a separate resolution, find that the excess City right-of-way and the street remnant of Timber Street parcels are not needed for any public purpose and declare them exempt surplus land per Government Code Section 54221(f)(1)(E), and authorize the City Manager to execute the Purchase Sale Agreement, deed, and all related documents necessary to complete the sale and conveyance of the excess City right-of-way and street remnant of Timber Street parcels to Cedar Boulevard Townhomes, LLC or its successor(s) in interest at the fair market value of \$156,000. Additionally, staff recommends that the City Council find the sale of the parcels exempt from California Environmental Quality Act (CEQA) review pursuant to CEQA Guideline Section 15312 as the sale of government surplus property and direct staff to recognize the sale proceeds as revenue in the General Fund.

BACKGROUND

Between Interstate Highway 880 and the property located at 38600 Cedar Boulevard (APNs 092A-2585-012-01 and 092-2858-031) are portions of excess City right-of-way and street remnant of Timber Street (formerly Cedar Road). They are City-owned parcels that are small, narrow and generally rectangular-shaped lots that cannot be accessed from a public right-of-way without crossing the adjacent 38600 Cedar Boulevard property.

The excess City right-of-way parcel is located to the west of Interstate Highway 880 and is approximately 4,610 square feet in area. The State of California Director of Public Works determined the land was no longer necessary for State highway purposes. The land was conveyed to the City through a Director's Deed and was accepted by the City on August 13, 1959.

The street remnant of Timber Street parcel is located along the easterly boundary of the 38600 Cedar Boulevard property and is approximately 7,444 square feet in area. City Council Resolution 1786 approved the vacation of this portion of Timber Street on March 13, 1969.

DISCUSSION/ANALYSIS

The developer of 38600 Cedar Boulevard, Cedar Boulevard Townhomes, LLC, has requested to purchase from the City the excess City right-of-way and the street remnant of Timber Street parcels, a combined total area of 12,054 square feet.

Because there is no record of a resolution vacating the excess City right-of-way after it was conveyed to the City, staff is recommending that the excess City right-of-way be summarily vacated. Streets and Highways Code Section 8330 allows a street or highway to be summarily vacated if two conditions exist: 1) for a period of five consecutive years, the street or highway has been impassable for vehicular travel; and 2) no public money was expended for maintenance on the street or highway during such period. Both those conditions exist for this parcel.

The excess City right-of-way and street remnant of Timber Street parcels are not needed for public purposes. Therefore, after vacating the excess City right-of-way, it, together with the vacated street remnant of Timber Street, can be declared exempt surplus land parcels per Government Code Section 54221(f)(1)(E) and can be conveyed to the adjacent property at a fair market rate value of \$156,000, which is the appraised amount provided by an independent appraiser. The sale of the property will not close until after final approval has been granted for all entitlements for the proposed residential project.

FISCAL IMPACT

An independent appraiser determined the fair market rate value of the exempt surplus land to be \$156,000. Therefore, the disposition of the 12,054 square feet of City exempt surplus land would generate a property sale revenue of \$156,000 to the General Fund.

ENVIRONMENTAL/PLANNING COMMISSION REVIEW

The sale of exempt surplus land is categorically exempt under the California Environmental Quality Act (CEQA) section 15312 (Surplus Government Property Sales).

REVIEW AND APPROVAL

Prepared by - Diana Cangco, Principal Civil Engineer

Reviewed by - Jayson Imai, Assistant City Engineer

Reviewed by - Soren Fajeau, Public Works Director

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Resolution 1 Vacating

Resolution 2 Declaration

Location Map

Exhibit A and Exhibit B - Plat and Legals

Purchase and Sale Agreement v3

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK VACATING EXCESS RIGHT-OF-WAY LOCATED
BETWEEN INTERSTATE HIGHWAY 880 AND 38600 CEDAR
BOULEVARD

WHEREAS, Chapter 4 of the Public Streets, Highways and Service Easements Vacation Law, commencing with Streets and Highways Code Section 8330, provides for summary vacation of streets and public services easements; and

WHEREAS, the City of Newark was conveyed land from the State of California through a Director's Deed located between Interstate Highway 880 and 38600 Cedar Boulevard (the "Excess Right-of-Way"); and

WHEREAS, the location of the Excess Right-of-Way is further described and depicted in Exhibit A and Exhibit B, attached hereto and incorporated herein; and

WHEREAS, for a period of five consecutive years, the street or highway has been impassable for vehicular travel; and

WHEREAS, no public money was expended for maintenance on the street or highway during such period; and

WHEREAS, the Excess Right-of-Way is no longer necessary for street or highway purposes.

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

Section 1. Findings and determinations

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City set forth below.

Section 2. No present or prospective public use

The Excess Right-of-Way described and depicted in Exhibit A and Exhibit B, attached hereto and incorporated herein, is unnecessary for present or prospective street or highway purposes, and has been impassable for vehicular travel for a period of five consecutive years.

Section 3. Vacation of Right-of-Way

Pursuant to Chapter 4 of Part 3 of Division 9 of the California Streets and Highways Code, the Excess Right-of-Way is hereby summarily vacated and abandoned. From and after the date this resolution is recorded, the Excess Right-of-Way shall no longer constitute a public street or highway.

Section 4. Certification and Recordation of Resolution

The City Clerk is hereby directed to record a certified copy of this Resolution in the office of Alameda County Recorder pursuant to Street and Highways Code section 8335.

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK DECLARING THAT CERTAIN EXCESS RIGHT-OF-WAY AND THE STREET REMNANT OF TIMBER STREET OWNED BY THE CITY LOCATED BETWEEN INTERSTATE HIGHWAY 880 AND 38600 CEDAR BOULEVARD EXEMPT SURPLUS LAND, FINDING THAT SUCH DECLARATION IS EXEMPT FROM ENVIRONMENTAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE PURCHASE SALE AGREEMENT, DEED, AND ALL RELATED DOCUMENTS NECESSARY TO COMPLETE THE SALE AND CONVEYANCE TO CEDAR BOULEVARD TOWNHOMES, LLC FOR \$156,000

WHEREAS, the City of Newark ("City") is the fee simple owner of that certain excess right-of-way and the street remnant of Timber Street located between Interstate Highway 880 and 38600 Cedar Boulevard ("Property"); and

WHEREAS, under the Surplus Property Land Act, Government Code Sections 54220-54233 ("Act"), surplus land is land owned in fee simple by the City for which the City Council takes formal action in a regular meeting declaring the land is surplus and not necessary for the City's use. The land must be declared either surplus land or exempt surplus land; and

WHEREAS, the Property is approximately 12,054 square feet in size, is a former street, right-of-way or easement and not needed for any public purpose; and

WHEREAS, the City Council desires to declare the Property as exempt surplus land and to convey to the adjacent property owner, Cedar Boulevard Townhomes, LLC, for \$156,000; and

WHEREAS, Cedar Boulevard Townhomes, LLC owns, or has the right to purchase, the real property located adjacent to the Property.

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

Section 1. Findings and determinations

The City Council hereby finds and determines that the above recitals are true and correct and have served as the basis, in part, for the findings and actions of the City set forth below.

Section 2. Exempt Surplus Land

The Property is exempt surplus land pursuant to Government Code Section 54221(f)(1)(E).

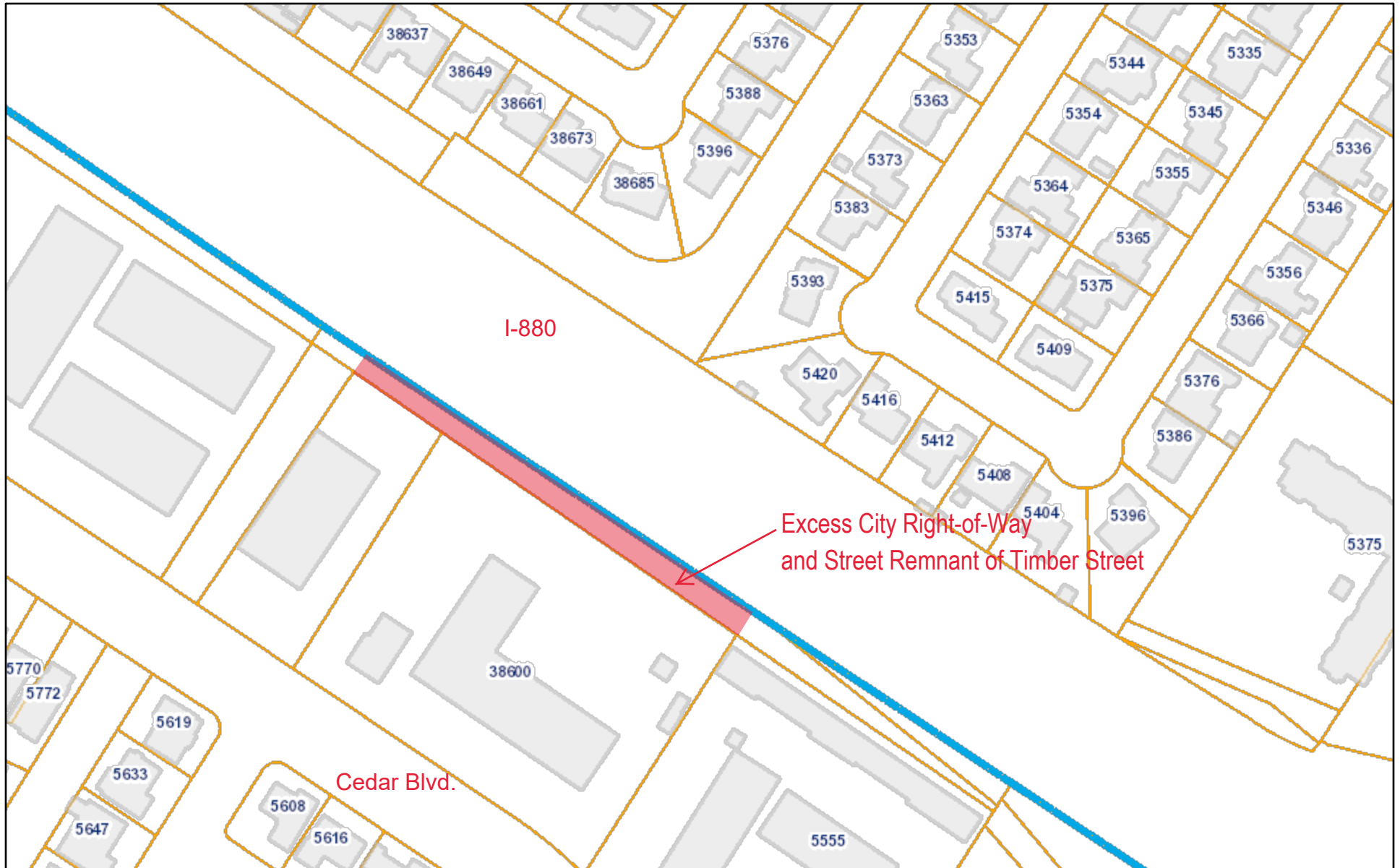
Section 3. Exempt from California Environmental Quality Act (CEQA)

The Property sale is categorically exempt under CEQA section 15312 (Surplus Government Property Sales).

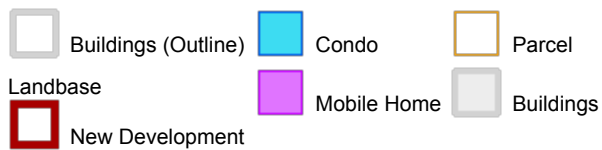
Section 4. Sale of Property

The City Manager is authorized to execute the Purchase Sale Agreement, deed, and all related documents necessary to complete the sale and conveyance to Cedar Boulevard Townhomes, LLC, for \$156,000. The sale of the Property shall not be completed until: 1) thirty (30) days after a copy of this Resolution is provided to the California Department of Housing and Community Development, and 2) Cedar Boulevard Townhomes, LLC has obtained fee title to the real property located adjacent to the Property. After the sale of the Property, staff is directed to recognize the sale proceeds as revenue in the General Fund.

City of Newark



12/14/2022, 10:45:45 AM



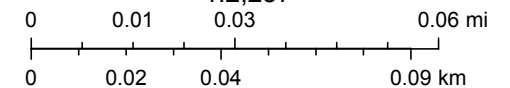
Units

Addresses



Fremont
Packet Page 27

1:2,257



City of Fremont - GIS Division

Web AppBuilder for ArcGIS
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EXHIBIT A
LEGAL DESCRIPTION

REAL PROPERTY SITUATE IN THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF PARCEL II, AS SAID PARCEL II IS DESCRIBED IN THAT DIRECTOR'S DEED TO THE CITY OF NEWARK RECORDED MARCH 3, 1960, FILED IN REEL 38, IMAGE 505, OF OFFICIAL RECORDS OF ALAMEDA COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EASTERNMOST CORNER OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON PARCEL MAP 4423 RECORDED MARCH 27, 1985, FILED IN BOOK 152 OF MAPS, AT PAGE 73, ON FILE IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY;

THENCE, FROM SAID POINT OF BEGINNING, ALONG THE NORTHEASTERLY PROJECTION OF THE SOUTHEAST LINE OF SAID PARCEL 1, NORTH 33°07'38" EAST, 15.01 FEET TO A POINT ON THE NORTHEAST LINE OF VACATED TIMBER STREET (FORMERLY CEDAR ROAD) AS DESCRIBED IN RESOLUTION NO. 1786 RECORDED OCTOBER 14, 1969, FILED IN REEL 2495, IMAGE 540, AS DOCUMENT NO. 69-116111 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AND THE **POINT OF BEGINNING** FOR THIS DESCRIPTION;

THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID NORTHEAST LINE OF VACATED TIMBER STREET, NORTH 54°51'22" WEST, 495.95 FEET TO AN INTERSECTION WITH THE NORTHEASTERLY PROJECTION OF THE SOUTHEAST LINE OF THE LANDS OF ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT AS DESCRIBED IN THAT DEED RECORDED NOVEMBER 12, 1957, FILED IN BOOK 8517, AT PAGE 377, AS DOCUMENT NO. AM111925 OF OFFICIAL RECORDS OF ALAMEDA COUNTY;

THENCE, ALONG SAID NORTHEASTERLY PROJECTION, NORTH 35°12'20" EAST, 9.29 FEET TO A POINT ON THE NORTHEAST LINE OF SAID PARCEL II (38 OR 505);

THENCE, ALONG SAID NORTHEAST LINE, SOUTH 54°51'29" EAST, 495.61 FEET;

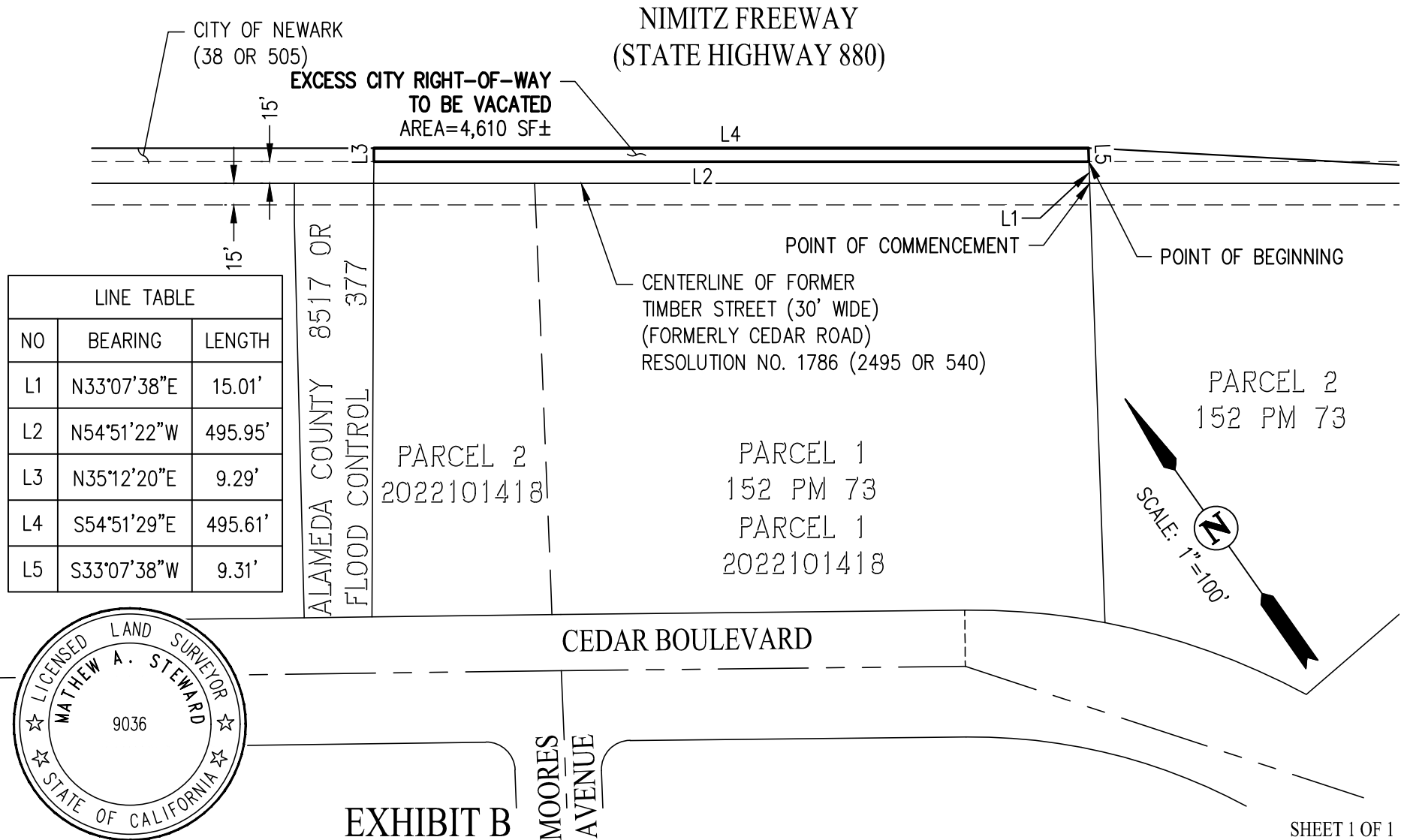
THENCE, SOUTH 33°07'38" WEST, 9.31 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 4,610 SQUARE FEET OF LAND, MORE OR LESS.

ATTACHED HERETO IS EXHIBIT B, A PLAT TO ACCOMPANY LEGAL DESCRIPTION, AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

MATHEW A. STEWARD, P.L.S.
L.S. NO 9036



PLAT TO ACCOMPANY LEGAL DESCRIPTION

LANDS OF THE CITY OF NEWARK
EXCESS CITY RIGHT-OF-WAY TO BE VACATED
NEWARK, ALAMEDA COUNTY, CALIFORNIA

JANUARY 27, 2023



CIVIL ENGINEERS ■ SURVEYORS ■ PLANNERS

SAN RAMON (925) 866-0322
ROSEVILLE (916) 788-4456
WWW.CBANDG.COM

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this “**Agreement**”) is entered into as of February ____, 2023 (the “**Effective Date**”), by and between the City of Newark, a California municipal corporation (“**Seller**” or “**City**”), and Cedar Blvd Townhomes, LLC, a Delaware limited liability company (“**Buyer**”). Seller and Buyer may each be referred to herein as a “Party” or collectively as the “Parties.”

RECITALS

- A. City is the owner of that certain strip of real property located adjacent to Interstate 880 in Newark, California, as further described and depicted in Exhibit A, attached hereto and incorporated herein, including all easements, rights, privileges, tenements and rights of way of record appurtenant thereto (together, collectively, the “Property”).
- B. The Property consists of two adjoining segments. The first segment is a portion of former Moores Avenue and Timber Street right-of-way that was previously vacated by City Council Resolution 1786 dated March 13, 1969. The second segment is property conveyed to the City by the State of California by Director’s Deed recorded March 3, 1960 that was not a part of former Moores Avenue and Timber Street public right-of-way. The City has determined the Property is excess property given that it serves no public benefit or use.
- C. Buyer plans to construct a residential development on property Buyer owns adjacent to the Property (the “Project”). Acquisition of the Property by the Buyer will help facilitate the residential development.
- D. The Property is exempt surplus land pursuant to Government Code section 54221(f)(1)(E) because it is a former right-of-way being conveyed to the owner of an adjacent property. Accordingly, the sale of the Property is not subject to the requirements of the Surplus Land Act, Government Code Section 54220 *et seq.*
- E. Buyer has offered to purchase the Property for One Hundred Fifty-six Thousand Dollars (\$156,000), which is equal to the appraised value of the Property as determined by the appraisal dated January 6, 2023 completed by Valbridge Property Advisors, and the City has accepted such offer.
- F. Buyer agrees to purchase the Property, and Seller agrees to sell the Property to Buyer, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained in this Agreement, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged by the parties, Seller and Buyer hereby agree as follows:

1. INCORPORATION OF RECITALS AND EXHIBITS. The Recitals set forth above and the Exhibits attached to this Agreement are each incorporated into the body of this Agreement as if set forth in full.

2. PURCHASE AND SALE.

2.1 Agreement to Buy and Sell. Subject to the terms and conditions set forth herein, Seller agrees to sell the Property to Buyer, and Buyer hereby agrees to acquire the Property from Seller.

2.2 Purchase Price. The purchase price for the Property to be paid by Buyer to Seller (the "**Purchase Price**") is One Hundred Fifty-six Thousand Dollars (\$156,000). The Purchase Price will be paid in immediately available funds to Seller at Closing.

2.3 Independent Consideration. As independent consideration for Seller's entering into this Agreement to sell the Property to Buyer, Buyer shall deliver the sum of Ten Dollars (\$10.00) to Seller through Escrow ("**Independent Consideration**"). In the event that this Agreement is terminated for any reason, Seller shall retain the Independent Consideration; in the event that Buyer does not terminate this Agreement as aforesaid, the Independent Consideration shall be applied to the Purchase Price at Closing.

3. ESCROW.

3.1 Escrow Account. Buyer has opened, or within three (3) business days of the Effective Date shall open, an escrow account (the "**Escrow**") maintained by First American Title Company (the "**Title Company**"), 4750 Willow Road, Suite 275, Pleasanton CA 94588 Attn: Tammi Buna, or such other title company as approved by the City (the "**Escrow Holder**"), with interest accruing to the benefit of Buyer. Escrow Holder shall perform all escrow and title services in connection with this Agreement.

3.2 Opening of Escrow. Within three (3) business days after the Effective Date, the Parties will deposit into Escrow the fully executed Agreement, or executed counterparts thereto. The date such fully executed Agreement is received by Escrow Holder will be deemed the "**Opening of Escrow**" and Escrow Holder will give written notice to the Parties of such occurrence.

3.3 Satisfaction of Due Diligence Contingency. Buyer shall have the right, in its sole discretion, to terminate this Agreement for any reason prior to the expiration of the Due Diligence Contingency Period (as defined in Section 4.2 below). Buyer hereby agrees to provide written notice to Seller prior to the expiration of the Due Diligence Contingency Period if Buyer disapproves any due diligence items or approves all due diligence items ("**Approval Notice**"). If Buyer disapproves any items through the delivery of the Approval Notice to Seller before 5:00 p.m. on the last day of the Due Diligence Contingency Period, this Agreement shall terminate, and all amounts deposited by Buyer into escrow, together with interest thereon, if any, will be returned to

Buyer, and neither party shall have any further rights or obligations hereunder except those which expressly survive the termination hereof. Notwithstanding the foregoing, if Buyer fails to timely deliver the Approval Notice to Seller, it will be conclusively presumed that Buyer has approved all such items, matters or documents.

4. PROPERTY DISCLOSURE REQUIREMENTS.

4.1 Condition of Title/Preliminary Title Report. Within ten (10) days of Opening of Escrow, Escrow Holder will deliver a Preliminary Title Report for the Property (the “**Preliminary Report**”) to Buyer and Seller. Buyer will review the Preliminary Report and approve all of the following exceptions to title (the “**Permitted Exceptions**”): (a) standard printed exceptions in the Preliminary Report; (b) general and special real property taxes and assessments constituting a lien not yet due and payable; (c) exceptions created by Buyer or by any subtenant of Buyer; (d) any other exceptions approved by Buyer in writing.

4.2 Due Diligence Contingency Period. Buyer will have thirty (30) days from the Effective Date (the “**Due Diligence Contingency Period**”) to complete physical inspections of the Property and due diligence related to the purchase of the Property. There is no access to the Property from a public street, and Seller cannot provide Buyer with access to the Property. If Buyer desires to inspect the Property, Buyer is responsible for obtaining necessary permission to travel across an adjacent property. Seller shall provide to Buyer copies of all reasonably available and known documents relating to the ownership and operation of the Property, including but not limited to agreements, plans, permits and reports (environmental, structural, mechanical, engineering and land surveys) that Seller has in its possession not later than five (5) days following the Effective Date. Buyer hereby agrees to indemnify and hold Seller harmless for any damage to the Property caused (but not merely revealed) by Buyer’s inspections.

4.3 Environmental and Natural Hazards Disclosure. California Health and Safety Code Section 25359.7 requires owners of non-residential real property who know, or have reasonable cause to believe, that any release of hazardous substances are located on or beneath the real property to provide written notice of same to the buyer of real property. Other applicable laws require Seller to provide certain disclosures regarding natural hazards affecting the Property. Seller agrees to make all necessary disclosures required by law.

5. CLOSING AND PAYMENT OF PURCHASE PRICE.

5.1 Closing. The closing (the “**Closing**” or “**Close of Escrow**”) will occur on the date (the “Closing Date”) that is one hundred twenty (120) days after the City Council’s approval of the Project’s site plan, tentative subdivision map, and environmental review pursuant to the California Environmental Quality Act (together, collectively, the “**Entitlements**”), or such earlier date as parties may mutually agree. The Closing Date may also be extended by mutual agreement of the Parties in writing. If

Close of Escrow has not occurred by the Closing Date, Seller or Buyer may elect to terminate this Agreement.

5.2 Buyer's Conditions to Closing. Buyer's obligation to purchase the Property is subject to the satisfaction of all of the following conditions or Buyer's written waiver thereof (in Buyer's sole discretion) on or before the Closing Date:

(a) Seller has performed all obligations to be performed by Seller pursuant to this Agreement.

(b) Seller's representations and warranties herein are true and correct in all material respects as of the Closing Date.

(c) The Title Company is irrevocably committed to issue a CLTA Title Policy to Buyer, effective as of the Closing Date, insuring title to Buyer in the full amount of the Purchase Price subject only to the Permitted Exceptions.

(d) Project Approval.

5.3 Seller's Conditions to Closing. The Close of Escrow and Seller's obligation to sell and convey the Property to Buyer are subject to the satisfaction of the following conditions or Seller's written waiver (in Seller's sole discretion) of such conditions on or before the Closing Date:

(a) Buyer has performed all obligations to be performed by Buyer pursuant to this Agreement before Closing Date.

(b) Buyer's representations and warranties set forth herein are true and correct in all material respects as of the Closing Date.

(c) Buyer owns fee title to the property located at 38600 Cedar Boulevard (APN 092A-2585-012-01 & 092A-2585-031-00), and has provided Seller with a copy of the deed or other written instrument transferring title of such property to Buyer.

5.4 Conveyance of Title.

(a) Seller will deliver marketable fee simple title to Buyer at the Closing, subject only to the Permitted Exceptions.

(b) The Property will be conveyed by Seller to Buyer in an "AS IS" condition, with no warranty, express or implied, by Seller as to the physical condition including, but not limited to, the soil, its geology, or the presence of known or unknown faults or Hazardous Materials or hazardous waste (as defined by state and federal law); provided, however, that the foregoing shall not relieve Seller from disclosure of any such conditions of which Seller has actual knowledge.

5.5 Deliveries at Closing.

(a) Deliveries by Seller. Seller shall deposit into the Escrow for delivery to Buyer at Closing:

- (i) a grant deed;
- (ii) an affidavit or qualifying statement which satisfies the requirements of paragraph 1445 of the Internal Revenue Code of 1986, as amended, any regulations thereunder (the "**Non-Foreign Affidavit**");
- (iii) a California Franchise Tax Board form 590 to satisfy the requirements of California Revenue and Taxation Code Section 18805(b) and 26131;
- (iv) such resolutions, authorizations, or other documents or agreements relating to Seller as shall be reasonably required by Title Company; and
- (v) all other documents required by this Agreement to complete the Closing.

(b) Deliveries by Buyer. Buyer shall deposit into the Escrow at Closing immediately available funds in the amount, which together with the Independent Consideration and the Deposit plus interest thereon, if any, is equal to:

- (i) the Purchase Price as adjusted by any prorations between the Parties;
- (ii) Buyer's share of the escrow fees and recording fees;
- (iii) fees owed by Buyer to any broker;
- (iii) the cost of the Title Policy;
- (iv) such resolutions, authorizations, or other documents or agreements relating to Buyer as shall be reasonably required by Title Company; and
- (v) all other documents required by this Agreement to complete the Closing.

(c) Closing. Upon Closing, Escrow Holder shall: (i) record the grant deed; (ii) disburse to Seller the Purchase Price, less Seller's share of any escrow fees, costs and expenses; (iii) deliver to Buyer the Non-Foreign Affidavit, the California Certificate and the original recorded grant deed; (iv) distribute to brokers identified by the each Party in writing such funds as are due to the Broker pursuant to such writing; and (iv) distribute to itself the payment of escrow fees and expenses required hereunder.

(d) Closing Costs. Buyer shall pay all escrow fees (including the costs of preparing documents and instruments), title report costs, and recording fees. Buyer will pay title insurance and any applicable transfer tax. Seller is a public agency and is exempt from the payment of transfer taxes. All other costs and fees shall be paid in accordance with custom and practice in Alameda County.

(e) Pro-Rations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) property taxes will be prorated as of the Close of Escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Buyer, regardless of when or to whom notice thereof is delivered (Buyer is a public agency exempt from the payment of property taxes and shall not be responsible for the payment of any portion of property taxes assessed on the Property); and (ii) any bond or assessment that constitutes a lien on the Property at the Close of Escrow will be assumed by Buyer. Seller is a public agency exempt from the payment of property taxes and shall not be responsible for the payment of any property taxes through prorations.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS.

6.1 Seller's Representations, Warranties and Covenants. In addition to the representations, warranties and covenants of Seller contained in other sections of this Agreement, Seller hereby represents, warrants and covenants to Buyer that the statements below in this Section 6.1 are each true and correct as of the date hereof and as of the Closing Date:

(a) Authority. Seller is a California municipal corporation, lawfully formed, in existence and in good standing under the laws of the State of California. Seller has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. The Seller explicitly represents and warrants that it has the full right to sell or otherwise dispose the Property to Buyer. This Agreement has been duly executed by Seller, and upon delivery to and execution by Buyer is a valid and binding agreement of Seller.

(b) Encumbrances. Seller has not alienated, encumbered, transferred, mortgaged, assigned, pledged, or otherwise conveyed its interest in the Property or any portion thereof, nor entered into any Agreement to do so, and there are no liens, encumbrances, mortgages, covenants, conditions, reservations, restrictions, easements or other matters affecting the Property, except as disclosed in the Preliminary Report. Seller will not, directly or indirectly, alienate, encumber, transfer, mortgage, assign, pledge, or otherwise convey its interest prior to the Close of Escrow, nor shall Seller enter into any written commitment or agreement which would affect the Property or any portion thereof prior to the Close of Escrow, as long as this Agreement is in force.

(c) There are no agreements affecting the Property except those which have been disclosed by Seller. There are no agreements which will be binding on the Buyer or the Property after the Close of Escrow, which cannot be terminated on thirty (30) days prior written notice.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Seller contained in this Agreement are conditions

precedent to Buyer's obligation to proceed with the Closing hereunder. The foregoing representations and warranties shall survive the expiration, termination, or close of escrow of this Agreement and shall not be deemed merged into the deed upon closing.

6.2 Buyer's Representations and Warranties. In addition to the representations, warranties and covenants of Buyer contained in other sections of this Agreement, Buyer hereby represents, warrants and covenants to Seller that the statements below in this Section 6.2 are each true as of the Closing Date:

(a) Buyer is California limited liability company. Buyer has the full right, capacity, power and authority to enter into and carry out the terms of this Agreement. This Agreement has been duly executed by Buyer, and upon delivery to and execution by Seller shall be a valid and binding agreement of Buyer.

The truth and accuracy of each of the representations and warranties, and the performance of all covenants of Buyer contained in this Agreement are conditions precedent to Seller's obligation to proceed with the Closing hereunder.

7. REMEDIES In the event of a breach or default under this Agreement by Seller, if such breach or default occurs prior to Close of Escrow, Buyer reserves the right to either (a) seek specific performance from Seller or (b) to do any of the following: (i) to waive the breach or default and proceed to close as provided herein; (ii) to extend the time for performance and the Closing Date until Seller is able to perform; or (iii) to terminate this Agreement upon written notice to Seller, whereupon Seller shall cause Escrow Holder to return to Buyer any and all sums placed into the Escrow by Buyer, and except for the rights and obligations expressly provided to survive termination of this Agreement, neither party shall have any further obligations or liabilities hereunder. In the event of a breach or default hereunder by Buyer and the closing does not occur due to such default, Seller shall retain the Independent Consideration, and Buyer shall be responsible for any fees owed to the Title Company and Escrow Officer. The Parties agree that Seller shall have no other remedies. IN NO EVENT SHALL EITHER PARTY BE ENTITLED TO LOST PROFITS OR CONSEQUENTIAL DAMAGES AS A RESULT OF THE OTHER PARTY'S BREACH OF THIS AGREEMENT.

8. BROKERS. If either Party retained a real estate broker in the sale of the Property or the negotiation of this Agreement, that Party shall pay compensation to such broker as specified in a separate written agreement between the broker and the Party. Buyer shall indemnify, hold harmless and defend the Seller from any and all claims, actions and liability for any breach of the preceding sentence, and any commission, finder's fee, or similar charges arising out of Buyer's conduct.

9. ASSIGNMENT. Neither Seller nor Buyer may assign its rights or delegate its duties under this Agreement without the express written consent of the other, which consent may be withheld for any reason.

10. MISCELLANEOUS.

10.1 Attorneys' Fees. If any party employs counsel to enforce or interpret this Agreement, including the commencement of any legal proceeding whatsoever (including insolvency, bankruptcy, arbitration, mediation, declaratory relief or other litigation), the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs (including the service of process, filing fees, court and court reporter costs, investigative fees, expert witness fees, and the costs of any bonds, whether taxable or not) and shall include the right to recover such fees and costs incurred in any appeal or efforts to collect or otherwise enforce any judgment in its favor in addition to any other remedy it may obtain or be awarded. Any judgment or final order issued in any legal proceeding shall include reimbursement for all such attorneys' fees and costs. In any legal proceeding, the "prevailing party" shall mean the party determined by the court to most nearly prevail and not necessarily the party in whose favor a judgment is rendered.

10.2 Interpretation. This Agreement has been negotiated at arm's length and each party has had the opportunity to have this agreement reviewed and revised by legal counsel to each of the Parties. Accordingly, each party hereby waives any benefit under any rule of law (including Section 1654 of the California Civil Code) or legal decision that would require interpretation of any ambiguities in this Agreement against the drafting party.

10.3 Survival. All indemnities, covenants, representations and warranties contained in this Agreement shall survive Close of Escrow.

10.4 Successors. Except as provided to the contrary in this Agreement, this Agreement shall be binding on and inure to the benefit of the Parties and their successors and assigns.

10.5 Governing Law & Venue. This Agreement shall be construed and interpreted in accordance with the laws of the State of California. Venue for any dispute arising out of this Agreement shall be the state or federal courts in Alameda County, California.

10.6 Integrated Agreement; Modifications. This Agreement contains all the agreements of the Parties concerning the subject hereof any cannot be amended or modified except by a written instrument executed and delivered by the parties. There are no representations, agreements, arrangements or understandings, either oral or written, between or among the parties hereto relating to the subject matter of this Agreement that are not fully expressed herein.

10.7 Severability. If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such provisions or part thereof shall be stricken from this Agreement, any such

provision shall not be affected by the legality, enforceability, or validity of the remainder of this Agreement.

10.8 Notices. Any delivery of this Agreement, notice, modification of this Agreement, consent, approval, waiver, or other communication that either party desires or is required to give to the other party or any other person shall be in writing. Any such communication may be served personally, or by nationally recognized overnight delivery service (i.e., Federal Express) which provides a receipt of delivery, by electronic mail transmission, or by prepaid, first class mail, return receipt requested to the party's address as set forth below:

To Seller: City of Newark
37101 Newark Blvd.
Newark, CA 94560
Attn: City Manager
Email: _____

To Buyer: Cedar Blvd Townhomes, LLC
316 Aliso Avenue
Newport Beach, CA 92663
Attn: Jason Kliewer]
Email: jason@waymarkdev.com

To Escrow Holder: First American Title Company
4750 Willow Road, Suite 275
Pleasanton, CA 94588
Attn: Tammi Buna
Email: Tbuna@firstam.com

Any such communication shall be deemed effective on the day of personal delivery or on the date of first refusal to accept delivery as reflected on the receipt of delivery or return receipt, as applicable, or, if by electronic mail transmission, when sent. The foregoing addresses may be changed by notice given in accordance with this Paragraph.

10.9 Time. Time is of the essence to the performance of each and every obligation under this Agreement.

10.10 Days of Week. If any date for exercise of any right, giving of any notice, or performance of any provision of this Agreement falls on a Saturday, Sunday or holiday, the time for performance will be extended to 5:00 p.m. on the next business day of the City of Union City.

10.11 Waivers. Any waiver by any party shall be in writing. No waiver will be implied from any delay or failure to take action on account of any default by any

party. Consent by any party to any act or omission by another party shall not be construed to be a consent to any other subsequent act or omission.

10.12 Signatures/Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

10.13 Date and Delivery of Agreement. Notwithstanding anything to the contrary contained in this Agreement, the parties intend that this Agreement shall be deemed effective, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed, or delivered, as of the Effective Date.

10.14 Representation on Authority of Parties. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by Buyer and Seller as of the Effective Date.

SELLER

City of Newark
a California Municipal Corporation

By: _____
David Benoun, City Manager

BUYER

Cedar Blvd Townhomes, LLC
a Delaware limited liability Company

By: _____

Title: _____

Attest:

Sheila Harrington, City Clerk

Approved as to Form:

Kristopher J. Kokotaylo, City Attorney

EXHIBIT A
PLAT & LEGAL DESCRIPTION

MAY 18, 2022
JOB NO. 2531-000

EXHIBIT A
LEGAL DESCRIPTION
CITY OF NEWARK PROPERTY AREA

REAL PROPERTY SITUATE IN THE CITY OF NEWARK, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

BEING A PORTION OF TIMBER STREET (FORMERLY CEDAR ROAD) AS SHOWN ON THAT MAP ENTITLED "MAP SHOWING THE SUBDIVISION OF A PART OF THE FARM LANDS OF THE TOWN OF NEWARK, RECORDED JULY 15 1911 AND FILED IN BOOK 26 OF MAPS, AT PAGE 37, IN THE OFFICE OF THE COUNTY RECORDER OF ALAMEDA COUNTY, AS SAID STREET WAS VACATED IN RESOLUTION NO. 1786 RECORDED OCTOBER 14, 1969, FILED IN REEL 2495, IMAGE 540, OF OFFICIAL RECORDS OF ALAMEDA COUNTY, AND A PORTION OF SURVEY NO. 118 ON THE OFFICIAL CONNECTED PLAT OF THE EX-MISSION OF SAN JOSE, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE CENTERLINE OF SAID FORMER TIMBER STREET, SAID POINT BEING THE NORTHEAST CORNER OF PARCEL 1, AS SAID PARCEL 1 IS SHOWN AND SO DESIGNATED ON PARCEL MAP 4423 RECORDED MARCH 27, 1985 AND FILED IN BOOK 152 OF MAPS, AT PAGE 73, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, FROM SAID POINT OF BEGINNING, ALONG SAID CENTERLINE OF FORMER TIMBER STREET, SAID LINE BEING THE NORTHERN LINE OF SAID PARCEL 1 AND THE NORTHERN LINE OF PARCEL 2 AS DESCRIBED IN THAT GRANT DEED RECORDED FEBRUARY 9, 2010 AS DOCUMENT NUMBER 2010038059 OF OFFICIAL RECORDS OF ALAMEDA COUNTY, NORTH 54°51'22" WEST, 496.49 FEET TO THE NORTHEAST CORNER OF THE PARCEL OF LAND DESCRIBED IN THAT DEED TO ALAMEDA COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT (A.C.F.C) RECORDED NOVEMBER 12, 1957, FILED IN BOOK 8517, AT PAGE 377, OF OFFICIAL RECORDS OF ALAMEDA COUNTY;

THENCE, LEAVING SAID CENTERLINE OF FORMER TIMBER STREET, ON THE NORTHEASTERLY PROJECTION OF THE SOUTHEASTERN LINE OF SAID A.C.F.C. PARCEL, NORTH 35°12'20" EAST, 24.29 FEET TO A POINT ON THE SOUTHERN LINE OF NIMITZ FREEWAY (STATE HIGHWAY 880) AS SHOWN ON THAT RIGHT OF WAY RECORD MAP R-10289.4 DATED APRIL 28, 2005;

THENCE, ALONG SAID SOUTHERN LINE OF NIMITZ FREEWAY, SOUTH 54°51'29" EAST, 495.61 FEET;

THENCE, LEAVING SAID SOUTHERN LINE OF NIMITZ FREEWAY, ON THE SOUTHWESTERLY ALONG THE NORTHEASTERLY PROJECTION OF THE EASTERN LINE OF SAID PARCEL 1 (152 M 73), SOUTH 33°07'38" WEST, 24.32 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 12,054 SQUARE FEET OR 0.28 ACRES OF LAND, MORE OR LESS.

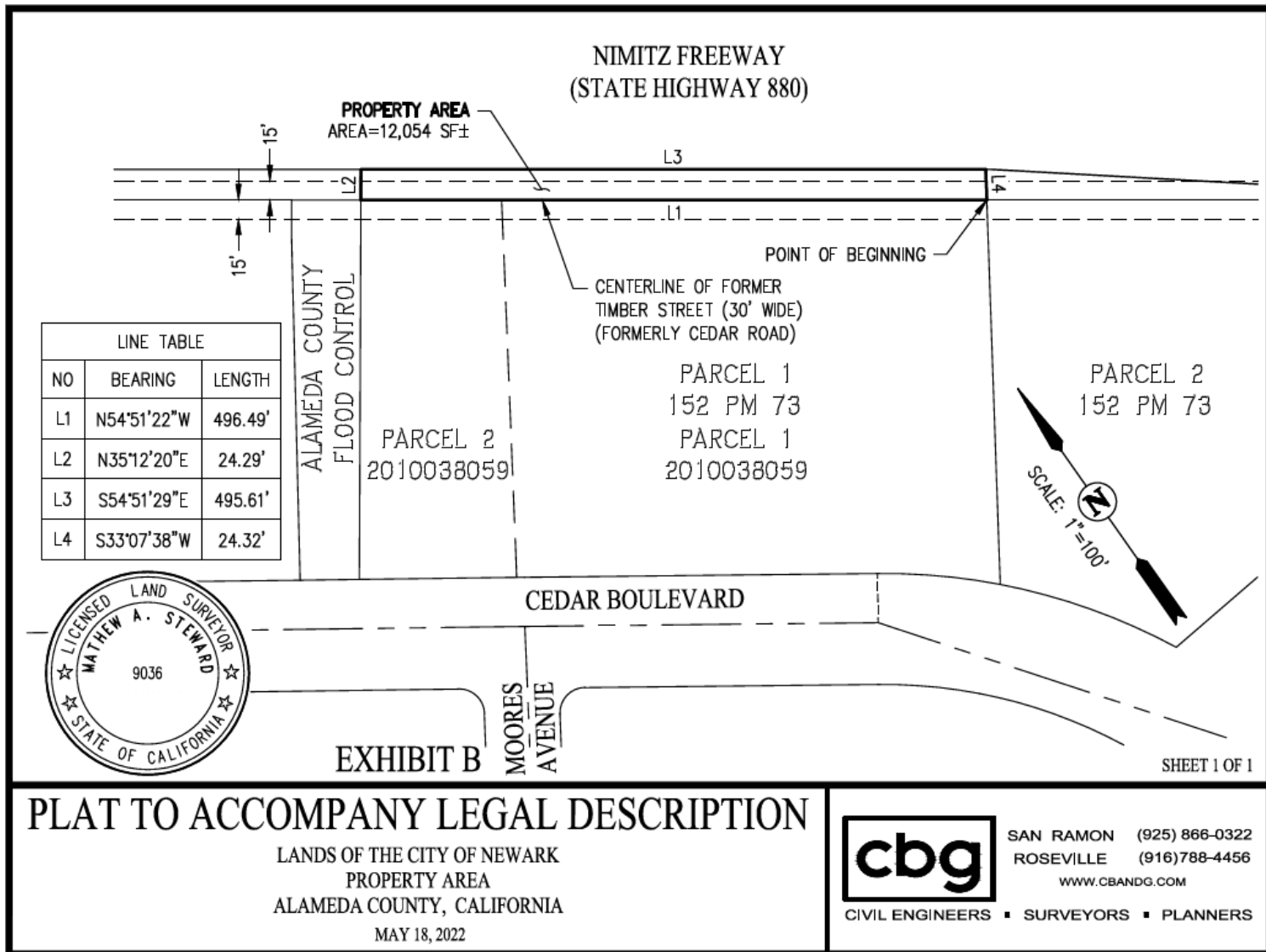
Page 1 of 2

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ATTACHED HERETO IS EXHIBIT B, A PLAT TO ACCOMPANY LEGAL DESCRIPTION,
AND BY THIS REFERENCE MADE A PART HEREOF.

END OF DESCRIPTION

MATHEW A. STEWARD, P.L.S.
L.S. NO. 9036



JOB NO. 2531-000

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STAFF REPORT

Item D. 4.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Nicholas Cuevas, Recreation and Community Services Manager
SUBJECT Adopt a resolution authorizing the City Manager to execute Task Order No. 26 to the Joint Powers Agreement with the City of Fremont for case management services

SUMMARY AND RECOMMENDATION

Staff recommends that the City Council, by resolution, authorize the City Manager to execute Task Order No. 26 to the Joint Powers Agreement with the City of Fremont for case management services.

BACKGROUND

The City has contracted with the City of Fremont for case management services since July 1, 1997. Case management services provides assessments and resources to homebound Newark seniors. Referrals are received from the City's Police and Recreation & Community Services Departments as well as the Alameda County Fire Department. As first responders, City and County staff encounter elderly that need assistance on many levels. Case management services often result in the elimination of repeated call-outs for crisis situations that require public safety response. This allows safety personnel to focus on other business within the City, thereby not straining public safety resources.

DISCUSSION/ANALYSIS

Case management is a vital component of the services offered through the City of Newark Senior Services program. It targets frail, homebound Newark seniors, striving to keep the elder person in their own home rather than being institutionalized. An assessment is made of the senior's overall well-being, including health (physical and mental), financial, transportation and/or housing needs, personal safety issues, and the ability to care for themselves, either on their own or with assistance. If appropriate, a care plan for services is developed to assist the senior with any services that are needed and to provide ongoing monitoring of the senior and the services put in place. With ever-increasing demands on City staff, case management services provides resources for the City's most vulnerable residents that would otherwise not be available.

Based on the number of cases opened during the current fiscal year, it appears the annual appropriation of \$5,000, equaling one and one half hour of service per week, will be sufficient to meet the needs of Newark clients. If demand exceeds the available

funding, new clients may be placed on a waiting list or directed to other fee-based agencies until the case load can accommodate them.

FISCAL IMPACT

Funding in the amount of \$5,000 has been allocated for Fiscal Year 2023 in the 2022-2024 Biennial Budget and Capital Improvement Plan.

REVIEW AND APPROVAL

Prepared by - Nick Cuevas, Recreation & Community Services Manager

Reviewed by - Lenka Hovorka, Assistant City Manager

Reviewed by - Krysten Lee, Finance Director

Reviewed by - Kristopher J. Kokotaylo, City Attorney

Approved by - David J. Benoun, City Manager

Attachments

Case Management Task Order
Resolution

TASK ORDER NO. 26 TO JOINT POWERS AGREEMENT BETWEEN THE CITY OF NEWARK AND THE CITY OF FREMONT

This Task Order No. 26 ("Task Order") is made and entered into by and between the City of Newark, a municipal corporation ("Newark"), and the City of Fremont, a municipal corporation ("Fremont").

RECITAL

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

NOW, THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. INCORPORATION BY REFERENCE.** This Task Order hereby incorporates by reference all terms and conditions set forth in the Agreement.
- 2. SCOPE OF TASK ORDER.** Fremont shall perform the services described in Exhibit "A," attached hereto and incorporated herein by reference, in accordance with the terms and conditions of the Agreement.
- 3. PAYMENT.** For services performed by Fremont in accordance with this Task Order, Newark will compensate Fremont in accordance with the terms and conditions of the Agreement, in an amount not to exceed \$5,000 (five thousand dollars), as described in Exhibit "B," attached hereto and incorporated by reference.
- 4. SIGNATURES.** The individuals executing this Task Order represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Task Order on behalf of the respective legal entities of the Newark and Fremont.

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

CITY OF FREMONT

Signature: _____

By: Christina Briggs

Title: Assistant City Manager

Date: _____

CITY OF NEWARK

Signature: _____

By: David Benoun

Title: City Manager

Date: _____

APPROVED AS TO FORM:

Signature: _____

By: Heather Lee

Title: Senior Deputy City Attorney II

APPROVED AS TO FORM:

Signature: _____

By: Kristopher Kokotaylo

Title: City Attorney

EXHIBIT A TO TASK ORDER NO. 26
SCOPE OF SERVICES – Case Management Services

2022-2023 Program Year

1. GENERAL DESCRIPTION: TIME

1.1. To assist frail elderly residing in Newark to remain living independently in their homes for as long as possible. This service is an individualized service that assists low income, functionally impaired older adults in obtaining needed health, economic, and social services to retain independent living in the community, thereby delaying or preventing institutionalization.

2. PERSONNEL

- a. Personnel to be supplied will include a professional Case Manager and whenever feasible a Case Management intern, as approved by Newark. Case management services provided will include but are not limited to the services outlined below (see paragraph 3).

3. SERVICE REQUIREMENTS

- a. Services that offer individualized casework that promote and maintain the optimum level of functioning in the least restrictive setting possible are to be provided to the frail elderly residents of Newark who are in need of assistance.

- b. Services that the Case Manager and Case Management intern will provide include:

- (1) Comprehensive Needs Assessment

- A comprehensive evaluation of the older person's health, financial, environmental, and social needs through home visits and telephonic means.

- (2) Care Planning

- Based on the assessment, a care plan is developed that is realistic, attainable, and affordable. The development of the care plan is a cooperative effort between the older person, the case manager, the family, and any others involved in the care of that person.

- (3) Service Coordination

- Services identified in the care plan are arranged and coordinated, drawing on the client's family or other social supports wherever practical.

- (4) Follow Up

- Follow up on services is provided to ensure that services are obtained and provided adequately to meet the needs of the client, modifying the care plan when necessary.

- (5) Monitoring

- After the care plan has been implemented, ongoing monitoring of the client situation is provided to determine progress and whether modification of the care plan is needed.

- c. Schedule

- (1) A Case Manager will be assigned to Newark throughout the life of the Agreement, unless otherwise requested by Newark. The Case Manager will provide one and one-half hours of service per week to Newark. A case manager or case management intern will be available to provide service and phone consultation on an as needed basis each week, Monday through Friday.

d. Specific Program Goals

- (1) Various forms of outreach will be completed by the Case Manager intern including providing educational talks to target groups, writing short articles for local media, and other outreach as needed.
- (2) Contractor will provide information and referrals to Newark.
- (3) All cases, under normal circumstances, will be screened and assisted by the Case Management intern.
- (4) Documentation of case management services provided to each client will be kept in a manner consistent with the Contractor's existing practice. Service statistics will be maintained and submitted to City of Newark staff on a monthly basis, and as otherwise requested. Fremont will obtain agreement from clients to provide Newark access to all records of Newark residents, including written summaries and copies of records.

EXHIBIT B TO TASK ORDER NO. 26
Budget

2022-2023 Program Year

The City of Newark will pay the City of Fremont for personnel and overhead costs associated with the Case Management Program. Costs are itemized below.

PERSONNEL

Part Time Case Manager	\$4,037
\$51.76/hr. x 1.5 hrs/wk x 52 weeks	

TOTAL PERSONNEL COSTS	<u>\$4,037</u>
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Overhead	\$ 963
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TOTAL BUDGET	\$5,000
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RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK AUTHORIZING THE CITY MANAGER
TO EXECUTE TASK ORDER NO. 26 TO THE JOINT
POWERS AGREEMENT WITH THE CITY OF FREMONT
FOR CASE MANAGEMENT SERVICES

WHEREAS, the City of Newark entered into yearly agreement with the City of Fremont for case management services, beginning in 1997; and

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

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

WHEREAS, the City of Newark wishes to continue case management services for the 2022-2023 program year.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the City Manager is hereby authorized to execute Task Order No. 26 to the Joint Powers Agreement with the City of Fremont for Case Management Services, attached hereto and incorporated herein by reference.



STAFF REPORT

Item D. 5.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Jayson Imai, Assistant City Engineer
SUBJECT Adopt a resolution approving and authorizing the City Manager to execute a Memorandum of Agreement and Funds Transfer Agreement with the Federal Highways Administration for Thornton Avenue Complete Streets, Project No. 1284

SUMMARY AND RECOMMENDATION

Thornton Avenue Complete Streets, Project No. 1284 was recently accepted into the final program of projects for the Federal Highway Administration (FHWA) Central Federal Lands Highways Division (CFLHD) California Federal Lands Access Program (FLAP). The project would construct a new two-way separated Class IV cycle track and pedestrian walkway along the western edge of Thornton Avenue between Gateway Boulevard and Hickory Street to improve pedestrian and bicycle access to the Don Edwards National Wildlife Refuge.

The FHWA CFLHD requires project sponsors accepted into the California Federal Lands Access Program to enter into a Memorandum of Agreement (MOA) and Funds Transfer Agreement (FTA). The estimated total cost of the project is \$11,964,000. Per the terms of the MOA and FTA, Newark would provide \$3,166,871 in cash funds to meet the required local match of 26.47%. FLAP would provide the remaining \$8,797,129.

The 2022-2024 Biennial Budget and Capital Improvement Plan includes sufficient appropriations from Gas Tax Fund 201 to provide the next required local match installment of \$420,871 due in April 2023. Additional recommendations would be presented to Council during the development of future Biennial Budget and Capital Improvement Plans to identify funding for the final local match installment of \$2,722,000 due in July 2028.

Staff recommends that the City Council, by resolution, approve and authorize the City Manager to execute a Memorandum of Agreement and Funds Transfer Agreement with the Federal Highways Administration for Thornton Avenue Complete Streets, Project No. 1284.

BACKGROUND

In May 2021, the Public Works Engineering Division submitted an application to the Federal Highways Administration's (FHWA) California Federal Lands Access Program (FLAP) for Thornton Avenue Complete Streets, Project No. 1284. FLAP funds projects that provide access to, are adjacent to, or are located within Federal Lands owned or maintained by a state, county, or local government, with the goal of supplementing local resources for improving public roads, trails, and other transportation facilities. Priority is given to projects which provide access to high-use Federal recreation sites or Federal economic generators.

FLAP was established under the Moving Ahead for Progress in the 21st Century Act (MAP-21) and continued under the Fixing America's Surface Transportation Act (FAST) and new Infrastructure Investment and Jobs Act (IIJA). Construction funding from FLAP is currently programmed for Fiscal Year 2029; however, the actual year funds are obligated for construction may shift due to changes to the program or program funding. Because FLAP is currently authorized under IIJA, which is set to expire on September 30, 2026, FLAP would have to be extended, renewed, or grandfathered into a similar program through additional federal legislation.

Thornton Avenue Complete Streets, Project No. 1284 would replace the existing Class II buffered bike lanes on Thornton Avenue between Gateway Boulevard and Hickory Street with a two-way separated Class IV cycle track along the western edge of Thornton Avenue to improve bicycle safety and access to/from the Don Edwards National Wildlife Refuge (Refuge). The City's Pedestrian & Bicycle Master Plan identifies the construction of Class IV bicycle facilities on Thornton Avenue between Willow Street and State Route 84 as the highest priority bicycle project for the City. At the time Newark's FLAP application was initially prepared, there was a lack of bicycle facilities on Thornton Avenue in the vicinity of the Refuge. Bicyclists were instead forced to ride on adjacent gravel shoulders, and those wanting to turn left into or out of the Refuge to Thornton Avenue were forced to compete with a large number of trucks and vehicles traveling at high speeds. In October 2021, due to the uncertainty of whether Newark's application would be accepted for FLAP funding and the need to rehabilitate the pavement on this section of Thornton Avenue, staff installed new Class II buffered bike lanes along both directions of Thornton Avenue between Gateway Boulevard and Hickory Street as an interim safety measure as part of 2020-2021 Asphalt Concrete Street Overlay Program, Project No. 1250.

Thornton Avenue Complete Streets, Project No. 1284 would also improve pedestrian access and safety to and from the Refuge by constructing a new five-foot (5') wide pedestrian trail adjacent and parallel to the new Class IV two-way cycle track along the western edge of Thornton Avenue between Gateway Boulevard and Hickory Street.

Similar to bicyclists, pedestrians are currently forced to walk on the gravel shoulders along this section of Thornton Avenue due to a lack of formal pedestrian facilities.

Access to the new pedestrian and bicycle facilities along the western edge of Thornton Avenue would be provided through project improvements made at the signalized intersection of Thornton Avenue and Gateway Boulevard, and through the construction of a new pedestrian/bicycle signal near Hickory Street.

In December 2022, FHWA informed staff that the California Program Decisions

Committee accepted Newark's application for Thornton Avenue Complete Streets, Project No. 1284 into the final program of projects for the California Federal Lands Access Program. The FHWA Central Federal Lands Highway Division (CFLHD) requires project sponsors accepted into the California Federal Lands Access Program to enter into a Memorandum of Agreement (MOA) and Funds Transfer Agreement (FTA) and comply with all funding requirements as set forth in the agreements.

DISCUSSION/ANALYSIS

Funds administered through FLAP differ from traditional funding or grant programs in that program funds are not awarded directly to the jurisdiction, nor is the jurisdiction responsible for delivering the project. Instead, per the terms of the MOA, FHWA CFLHD staff would lead overall project delivery, including engineering design, construction contracting, and construction administration. FHWA CFLHD would design the project, develop final construction documents, perform all environmental studies required under federal law, and obtain necessary regulatory permits as allowed by law. In addition, FHWA CFLHD would advertise and award the construction contract and provide construction management and engineering throughout the duration of the project. Per the terms of the MOA, the City's role would be to assist and coordinate with FHWA CFLHD staff, provide oversight and review of all documents prepared, provide any requested data or historical documents pertaining to the project, serve as lead agency and complete all CEQA documentation, acquire local and state permits as needed, acquire right-of-way and temporary easements required to construct the project, and maintain the improvements in perpetuity after completion of the project.

The estimated total cost of the project is \$11,964,000. As discussed above, this includes costs associated with engineering design, construction, construction administration, contingency, and cost escalation to Fiscal Year 2029 dollars, which is the anticipated year construction funds will be made available. Per the terms of the MOA and FTA, Newark would provide \$3,166,871 in cash funds to meet the required local match of 26.47%. FLAP would provide the remaining \$8,797,129.

As mentioned above, the City would serve as lead agency for CEQA compliance for the project. Although bicycle and pedestrian facilities are categorically exempt from CEQA, the Public Resources Code and State CEQA Guidelines clarify that this exemption should not be used when the project is located within an environmentally sensitive area. Therefore, an Initial Study (IS) would be the assumed class of action under CEQA. The City would be responsible for all costs associated with development of the required CEQA studies and documentation outside of the required local match. In addition, the City would be responsible for costs associated with the appraisal and acquisition of all required rights-of-way and easements required to construct the project. No right-of-way acquisition is anticipated; however, slope easements and temporary construction easements for roadway embankments that encroach onto adjacent federal land managed by the US Fish & Wildlife Service (USFWS) for the Refuge may be necessary.

Although construction of the project is not anticipated to occur until 2029, City and FHWA CFLHD staff jointly agreed that work on project design, environmental clearance

and permitting should begin at this time due to potential complexities in obtaining environmental, regulatory, and jurisdictional approvals. The project is directly adjacent to established wetlands and experiences tidal influence from the San Francisco Bay; therefore, the project will be initiating discussions at this time with jurisdictional and resource agencies such as the State Water Resources Control Board (SWRCB), San Francisco Bay Conservation & Development Commission (BCDC), US Army Corps of Engineers, and California Department of Fish & Wildlife.

FISCAL IMPACT

As discussed above, the estimated total cost of the project is \$11,964,000 in Fiscal Year 2029 dollars. Per the terms of the MOA and FTA, Newark would provide \$3,166,871 in cash funds to meet the required local match of 26.47%. In addition, Newark would be responsible for all costs associated with CEQA compliance and right-of-way acquisition for the project.

The transfer of funds to FHWA is broken down into three installments. The first installment of \$24,000 was made in January 2022 as the City's local match share of the joint preliminary scoping effort completed with FHWA CFLHD and USFWS staff prior to final project selection into the California FLAP. The next installment of \$420,871 is due in April 2023 and would be used towards engineering design and securing environmental clearance and regulatory permitting for the project. The 2022-2024 Biennial Budget and Capital Improvement Plan includes sufficient appropriations from Gas Tax Fund 201 for Thornton Avenue Complete Streets, Project No. 1284 to provide the required initial local match commitment for this first installment.

The third transfer of funds to FHWA would not be due until July 2028. This final installment of \$2,722,000 would be used towards project construction and construction administration. The 2022-2024 Biennial Budget and Capital Improvement Plan does not currently include sufficient funds for Thornton Avenue Complete Streets, Project No. 1284 to provide this third and final required local match commitment; however, Engineering Division staff will continue to explore and seek other funding opportunities to leverage and augment the FLAP funds received, including those administered by the State and Alameda County Transportation Commission (ACTC). Per the terms of the MOA and FTA, the City cannot use additional federal funds to provide the required local match. Based on state and county direct local distribution and discretionary funding opportunities anticipated over the next five years, staff remains confident that additional funding recommendations for Thornton Avenue Complete Streets, Project No. 1284 can be presented to Council during the development of future Biennial Budget and Capital Improvement Plans. By approving and entering into the FTA with FHWA, the City would commit to transferring the third and final installment of \$2,722,000 by the anticipated July 2028 start of construction.

REVIEW AND APPROVAL

Prepared by - Jayson Imai, Assistant City Engineer
Reviewed by - Soren Fajeau, Public Works Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

CA MOA Thornton Ave Reso
Memorandum of Agreement
Funds Transfer Agreement

RESOLUTION NO.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
NEWARK APPROVING AND AUTHORIZING THE CITY
MANAGER TO EXECUTE A MEMORANDUM OF
AGREEMENT AND FUNDS TRANSFER AGREEMENT WITH
THE FEDERAL HIGHWAYS ADMINISTRATION FOR
THORNTON AVENUE COMPLETE STREETS, PROJECT NO.
1284

WHEREAS, the Federal Highways Administration Central Federal Lands Highways Division (“FHWA CFLHD”) administers the California Federal Lands Access Program to fund projects that provide access to, are adjacent to, or are located within Federal Lands owned or maintained by a state, county, or local government, with the goal of supplementing local resources for improving public roads, trails, and other transportation facilities; and

WHEREAS, the City of Newark submitted an application to the FHWA CFLHD California Federal Lands Access Program for Thornton Avenue Complete Streets, Project No. 1284 (“Project”); and

WHEREAS, the Project will construct a new two-way separated Class IV cycle track and pedestrian walkway along the western edge of Thornton Avenue between Gateway Boulevard and Hickory Street to improve pedestrian and bicycle access to the Don Edwards National Wildlife Refuge; and

WHEREAS, the FHWA CFLHD accepted the Project into its final program of California Federal Lands Access Program projects; and

WHEREAS, the FHWA CFLHD requires project sponsors accepted into the California Federal Lands Access Program to enter into a Memorandum of Agreement to establish the responsibilities of each party in the development, construction and future maintenance of the Project; and

WHEREAS, the FHWA CFLHD also requires project sponsors accepted into the California Federal Lands Access Program to enter into a Funds Transfer Agreement to confirm the project sponsor’s commitment to provide to the FHWA CFLHD its required local match per the conditions set forth in the Memorandum of Agreement; and

WHEREAS, the City of Newark’s required local match of 26.47% of anticipated project costs will be made in two installments, with the initial installment of \$420,871 due in April 2023 and the second and final installment of \$2,722,000 due in July 2028.

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Newark that the Memorandum of Agreement and Funds Transfer Agreement with FHWA CLFHD and the California Federal Lands Access Program for the Project are approved and that the City Manager, or designee, is authorized to execute such agreements.

FEDERAL LANDS ACCESS PROGRAM
PROJECT MEMORANDUM OF AGREEMENT
1/18/2023

Project / Facility Name: CA FLAP NWK 10(1)

Project Route: Thornton Avenue Bike Improvements

State: California

County: Alameda

Owner of Federal Lands to which the Project Provides Access: Don Edwards San Francisco Bay National Wildlife Refuge (United States Fish and Wildlife Service (USFS))

Entity with Title or Maintenance Responsibility for Facility: City of Newark

Type of Work:

Preliminary Engineering: Environmental compliance, preliminary and final design, all necessary permits

Right of Way: Acquisition of all right of way and easements needed for the project

Construction/Construction Contracting: Acquisition by contract of construction work in accordance with the plans, specifications, and estimate

Construction Engineering: Administration of the construction contract

This Agreement does not obligate (commit to) the expenditure of Federal funds nor does it commit the parties to complete the project. Rather, this Agreement sets forth the respective responsibilities as the project proceeds through the project development process.

Parties to this Agreement: Federal Highway Administration, Central Federal Lands Highway Division (FHWA-CFLHD), City of Newark, and Don Edwards San Francisco Bay National Wildlife Refuge (USFWS).

The Program Decision Committee approved this project on

November 9, 2022

Date

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1/18/2023

AGREED:

David Benoun, City Manager
City of Newark

Date

Matt Brown, Project Leader
Don Edwards San Francisco Bay NWR Complex
United States Fish and Wildlife Service

Date

Judy Salomonson
Chief of Business Operations
FHWA-CFLHD

Date

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A. PURPOSE OF THIS AGREEMENT

This Agreement documents the intent of the parties and sets forth the anticipated responsibilities of each party in the development, construction, and future maintenance of the subject project. The purpose of the Agreement is to identify and assign responsibilities for the environmental review, design, right-of-way, utilities, acquisition and construction as appropriate for this programmed project, and to ensure maintenance of the facility for public use if improvements are made. The parties understand that any final decision as to design or construction will not be made until after the environmental analysis required under the National Environmental Policy Act (NEPA) is completed (this does not prevent the parties from assigning proposed design criteria to be studied in the environmental review process.) Any decision to proceed with the design and construction of the project will depend on the availability of appropriations at the time of obligation and other factors, such as issues raised during the environmental review process, a natural disaster that changes the need for the project, a change in Congressional direction, or other relevant factors.

If Federal Lands Access Program funds are used for the development or construction of this project, City of Newark agrees to provide a matching share equal \$3,166,871 of the total cost of the project, as detailed more fully in Sections J and K below.

B. AUTHORITY

This Agreement is entered into between the signatory parties pursuant to the provisions of 23 U.S.C. 204.

C. JURISDICTION AND MAINTENANCE COMMITMENT

The City of Newark has jurisdictional authority to operate and maintain the existing facility and will operate and maintain the completed project at its expense.

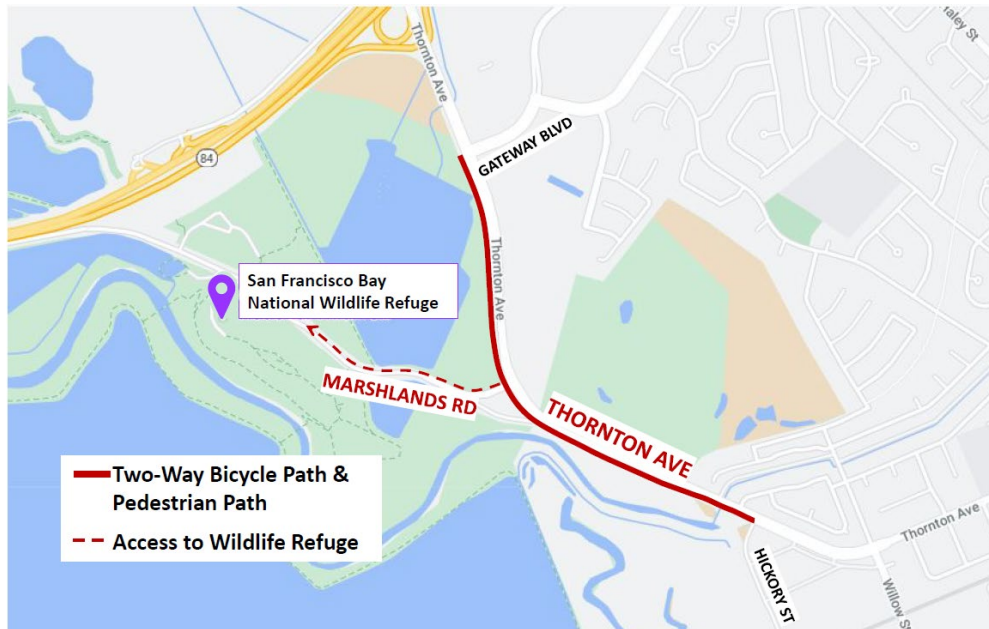
D. FEDERAL LAND MANAGEMENT AGENCY COORDINATION

The City of Newark has coordinated project development with the United States Fish and Wildlife Service (USFWS). The USFWS support of the project is documented in the California Federal Lands Access Program Project Application for this project submitted by City of Newark to FHWA-CFLHD. Each party to this agreement has a primary role in the environmental review process, design, or construction shall coordinate their activities with the FWS.

E. PROJECT BACKGROUND/SCOPE

The purpose of this project is to improve bicycle and pedestrian access to the Don Edwards San Francisco Bay National Wildlife Refuge.

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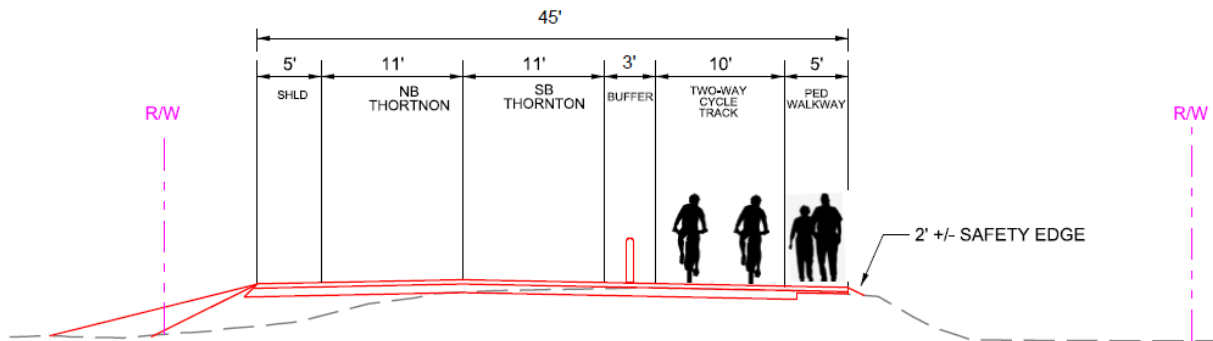
The scope of this project includes:

- Reconstruct and widen Thornton Avenue from Gateway Blvd to Hickory St to 45 feet total to accommodate pedestrians and bicycles
- Construct 0.93 miles of a new 10-foot-wide, two-way cycle track and an adjacent 5-foot-wide pedestrian pathway along Thornton Avenue, separated from traffic with a horizontal asphalt buffer and bollards
- Grade roadway to accommodate stormwater runoff and grade pedestrian path for ADA compliance
- HAWK signal and crosswalk at Thornton Ave. and Hickory Street
- Modifications to the existing traffic signal at the Gateway Blvd intersection

Highway Design and Safety

Typical Section and Alignment: Thornton Avenue is currently a two-lane roadway with 11' travel lanes and 5' Class II bike lanes separated from traffic by a 1.5' wide painted buffer (35' total paved width). The existing alignment is relatively straight with a flat profile and one superelevated curve near the Marshlands Road intersection. To accommodate pedestrians and cyclists, the typical roadway section includes a 45' paved width (*as shown below*).

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The roadway widening will require shifting the centerline crown and reprofiling the superelevated curve near the Marshlands Road intersection. Additionally, the pavement cross slope for the cycle track and pedestrian walkway will be reconstructed to ensure ADA compliance. Furthermore, the grading of the roadway surface will be evaluated during design to control stormwater runoff for treatment (e.g. directing flow into bioretention swales)

Roadside safety will be evaluated during design to determine if trees and utility poles require removal and if guardrail is warranted at drainage crossings or other roadside features.

Other: The project will involve improvements at two roadway intersections, one access point to a boat launch parking lot, and a new HAWK crosswalk.

The north end of the project is at the intersection with Gateway Blvd. Intersection improvements involve modifications to the existing traffic signal to include bicycle detection and pavement markings to designate green bicycle boxes.

The middle portion of the project involves the intersection with Marshlands Road (entrance to the Don Edwards NWR). Intersection improvements will involve signing and striping for the pedestrian crosswalk.

Approximately 400' south of the Marshland Road intersection is an access point to a boat launch parking lot that will require fencing and gate modifications to improve way-finding for the pedestrians and cyclists that use the proposed Thornton Avenue cycle-track and pathway.

The southern end of the project is located approximately 700' north of the Hickory Street intersection and will involve installation of a HAWK signal and associated signing and striping.

Safety and Design Exceptions: The roadway, cycle-track, and pedestrian pathway will be designed in accordance with AASHTO guidelines. Design exceptions will involve holding the existing 11' vehicle lane (22' traveled way) width rather than widening to a 24' traveled way and providing a 5' shoulder rather than an 8' shoulder based on the 15,000+ projected ADT.

Pavement

The proposed pavement section for project estimating purposes is 4" asphalt over 12" roadway aggregate based on City guidance for typical local soil R-value and traffic index. Final design of the pavement section

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will be based on site soil samples and City provided traffic index to correlate with the projected traffic volume of 15,340 vehicles per day provided in the application.

Right of Way

The City owns the right-of-way for Thornton Avenue and is responsible for maintenance. The right-of-way is typically 165 feet wide north of the Marshlands Road intersection and 80 feet wide south of the intersection. The right-of-way was transferred to the City in the early 1990s from Caltrans.

No right-of-way acquisition is anticipated for the proposed project. Temporary construction easements and slope maintenance easements may be obtained for roadway embankments that extend onto the adjacent federal land managed by the US Fish & Wildlife Service for the Don Edwards National Wildlife Refuge.

Utilities

Existing utilities within the Thornton Avenue corridor include underground water, sanitary sewer, and fiber optic lines along with overhead electric and telecommunication lines. The proposed road widening is anticipated to have limited utility impacts involving adjusting manhole covers to grade and relocation of two streetlights, one power service pole to the sewer pump station, and one guy wire pole.

The City owns the streetlights and relocation will be a project cost. The power service and guy wire will be relocated by the utility owner at their expense. The power transmission poles along the southwestern edge of Thornton Avenue will be protected in place; however, if relocation becomes necessary then PG&E would be responsible for the costs and it would extend the project design schedule.

Survey

The City has received permission from the Cargill Company to use their aerial photogrammetry survey that includes topographic contours and utility locations for the Thornton Avenue corridor and beyond. The 30% Design for the proposed cycle track and pedestrian pathway along Thornton Avenue will utilize the aerial survey and supplemental survey needs will be identified. Supplemental survey will be collected during alignment staking for the 30% Field Review.

Geotechnical

Geotechnical recommendations for the project will focus on grading of embankments for the roadway widening and potential retaining walls to avoid impacts to sensitive habitat or other right-of-way constraints. Soil investigation is anticipated to involve hand samples and/or test pits along with testing to verify R-value for pavement section design. Pavement cores may be collected to verify the existing structural section to support design evaluation and quantities of full depth reclamation, mill and variable depth overlay, or removal/disposal.

Hydrology/Hydraulics

The existing culverts along the corridor are owned and maintained by the Alameda County Flood Control District (ACFCD). The City contacted ACFCD during project Scoping and confirmed that they do not anticipate replacement of the culverts in the near future. The proposed Thornton Avenue improvements

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will seek to avoid impacts to the existing culverts and will not replace them; however, one 18-inch diameter culvert may need to be extended for the road widening embankment or a headwall may be considered. The project will not involve hydrology or hydraulic analysis for culverts.

According to the 2022 updated Municipal Regional Stormwater Permit for the San Francisco Bay Region, the project will be required to treat stormwater runoff from the paved surfaces prior to discharging to the adjacent environmentally sensitive areas. Developing stormwater treatment solutions within the environmentally constrained corridor will require early alternatives evaluation and coordination with the City for maintenance acceptance and the Regional Water Quality Control Board for regulatory approval. If constructing stormwater treatment facilities increase the project footprint and impacts to adjacent environmentally sensitive areas beyond acceptable permit thresholds, then an offsite treatment project or in-lieu fees may be needed.

Sea Level Rise, Tidal Influence, Tsunami, Flood

The San Francisco Bay experiences tidal influence and is likely to be impacted by future sea level rise. The National Oceanic and Atmospheric Administration sea level rise and coastal flooding impacts mapping tool (<https://coast.noaa.gov/slr/#>) indicates Thornton Avenue through the project area becomes inundated with a sea level rise between 5 and 6 feet. The State of California Sea-Level Rise Guidance (CA 2018) estimates a 5-foot sea level rise is not likely to occur for San Francisco Bay until sometime after the year 2150 even under high emissions scenarios. At a 5-foot depth of sea level rise, residential and commercial developments in the Bay Area have become inundated.

Another overarching guidance document is *Bay Adapt: Regional Strategy for A Rising Bay* (BCDC 2021), which identifies the guiding principles and actions to address sea level rise in the Bay Area. The project will require permitting through the BCDC, which requires the project to identify steps to provide “reasonable protection” to persons and property against sea level rise (BCDC 2022). Coordination with the BCDC will occur early in the project development process to understand what “reasonable protection” measures should be considered for the project.

Environment and Permits

Because the project includes FLAP funding and is located in California, environmental clearance will be required under both NEPA and CEQA. The anticipated NEPA class of action is an FHWA Categorical Exclusion for the “construction of bicycle and pedestrian lanes, paths, and facilities” [23CFR §771.117.(c)(3)]. No statutory CEQA exemptions apply (see Public Resources Code Sections 21080 et seq., and State CEQA Guidelines Sections 15261 through 15285). Although a class 4 categorical CEQA exemption exists for bicycle and pedestrian facilities, CEQA exceptions to exemptions described in Public Resources Code Section 21084(c), (d), and (e) and State CEQA Guidelines Section 15300.2 clarify that class 4 exemptions should not be used when the project is located in an environmentally sensitive area. As a result, an Initial Study is the assumed class of action under CEQA. The City of Newark is the lead agency for CEQA, and CFHLD is the lead NEPA agency.

The segment of Thornton Ave to be widened as part of the project is bordered on both sides by the Don Edwards San Francisco Bay National Wildlife Refuge. Biological and aquatic resource field delineations will be completed to support the environmental clearances and permits; however, based on an initial query of National Wetlands Inventory data, tidal wetlands are assumed to be present extending all the way to the

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existing roadway prism on both sides of Thornton Avenue. The tidal marshland is likely to support habitat for at least two federally listed species (salt marsh harvest mouse, clapper rail) and Section 7 consultation with the USFWS will be undertaken as part of the NEPA/CEQA clearances. Consultation with USACE will be needed to support the Section 404 Clean Water Act permitting process.

In addition to biological and aquatic resources, potential use of Section 4(f) and 6(f) resources will be evaluated. The Refuge is identified as being purchased with LWCF funds and is assumed to be a Section 4(f) resource because of its status as a wildlife refuge. Right of way impacts to the Refuge should be avoided and minimized to reduce the potential for a 6(f) conversion and individual 4(f) evaluation. A cultural resource evaluation will ensure compliance with Section 106 of the Historic Preservation Act. The project is anticipated to benefit social and economic resources as it will improve pedestrian safety and mobility from the nearby residential areas into the Refuge.

Environmental Agencies to Consult

The project requires authorizations from numerous jurisdictional and resource agencies (Federal and State), each of which will issue environmental approvals or permits. Direct coordination with agencies will help facilitate timely receipt of approvals and permits.

Agency coordination is anticipated to need to occur with:

- Federal Highway Administration – Central Federal Lands Division
- Don Edwards National Wildlife Refuge
- US Fish and Wildlife Service
- US Army Corps of Engineers
- State Historic Preservation Office
- California Department of Fish and Game
- California State Water Resources Board
- San Francisco Bay Conservation and Development Commission

It is recommended that meetings be held with the applicable agencies to kick off the project once a level of design is achieved where environmental impacts can be identified with confidence to coordinate the approvals/permitting processes.

Construction

The construction duration is anticipated to be 5 months from September 1 thru January 31 due to limited operating periods for sensitive species on the adjacent Don Edward National Wildlife Refuge. CFLHD constructed the nearby La Riviere Marsh Bridge and Marshlands Road project in 2017/18 with this same construction season.

F. PROJECT BUDGET

Item	Estimated Cost	Comments
Preliminary Engineering (PE) and	\$1,689,600	Includes Scoping Costs

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Environmental Compliance		
ROW Acquisition & Utility Relocation	\$0	No costs anticipated
Construction Contract (CN)	\$7,329,000	FY 29 CN
Construction Engineering (CE)	\$1,479,600	
Contingency	\$1,465,800	20% Contingency
Total	\$11,964,000	

G. ROLES AND RESPONSIBILITIES

Responsible Party	Product/Service/Role	Comments
FHWA-CFLHD	• Develop and sign this Memorandum of Agreement • Manage project schedule and all project costs • Lead the development of the plans, specifications, and estimate (PS&E) in accordance with FHWA-CFLHD standards, policy and guidance (note that engineering deliverables prepared by federal employees will not be signed or stamped) • Document any design exceptions to the AASHTO standards, agreed upon by the project team, on FHWA-CFLHD's highway design standards form • Lead all federal environmental compliance (including, but not limited to, NEPA, the National Historic Preservation Act, and the Endangered Species Act) • Prepare and approve environmental documents and make project decisions based on the documents • Conduct ROW research and obtain title reports for private parcels as required • Prepare right-of-way plans, legal descriptions, and other documents required for a Highway Easement Deed and any private parcels to be acquired • Identify utility conflicts and prepare utility conflict maps	

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Responsible Party	Product/Service/Role	Comments
	• Conduct preliminary engineering towards the development of the PS&E construction contract package • Ensure all permits required for Federally constructed projects are obtained • Advertise and award the contract (bids will not be solicited by FHWA-CFLHD until maintaining agency has concurred with the plans and specifications and provided signed ROW and utility certifications) • Perform construction engineering/administration of the construction contract • Potentially enter into a formal partnering work session and agreement with all parties involved in the construction contract • Provide a Project Engineer on site for construction administration • Determine the need for any proposed changes to contract documents, evaluate change impacts, coordinate technical reviews as needed, and ensure that the construction is consistent with the PS&E • Ensure that the contractor will bear all expenses of maintaining traffic, other than snow removal and normal state, county, and city maintenance work • Verify adherence to environmental documents and permits • Set up and lead final inspection upon completion of construction	
City of Newark	• Review and sign this Memorandum of Agreement and other required financial agreements to satisfy match requirements or overmatch, if necessary, within sixty days of receiving the notification letter • Attend reviews and meetings • Provide available data, including on traffic, crashes, material sources, construction costs, agreements, and other technical subjects, within two weeks of request • Review the environmental documents, plans, estimate, and specifications at each phase of	

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Responsible Party	Product/Service/Role	Comments
	design, and provide comments within two weeks of receipt • Coordinate with FHWA-CFLHD on environmental related issues • Be the lead agency for CEQA and complete all compliance documentation and reviews and approve the CEQA document • Coordinate any mitigation measures resulting from CEQA with FHWA-CFLHD prior to finalizing or accepting the measures • Coordinate with the other parties to create an appropriate revegetation plan and provide a seed mix and any recommendations for soil amendments for inclusion in the Special Contract Requirements • In coordination with the FHWA-CFLHD project manager, ensure that completed PS&E documents are consistent with the intended outcome • Acquire and fund appropriate local and state permits prior to advertisement of the project <i>Note: there are some permits that the Federal government does not acquire as we are not the appropriate applicant or entity (we are precluded by law.</i> • Provide survey grade ROW mapping and a list of property owners (names and addresses) along the project corridor prior to project scoping • Review ROW plans and legal descriptions provided by FHWA-CFLHD • Acquire ROW and Temporary Construction Easements (TCEs) if necessary (<i>Any costs are to be borne by the applicant in addition to their match</i>) • Conduct value findings or appraisals for Fair Market Values (if needed) • Approve value findings or appraisals for Fair Market Values (if needed) • Prepare offers to landowners (if needed) • Conduct ROW negotiations as necessary to acquire adequate rights from private landowners (if needed)	

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Responsible Party	Product/Service/Role	Comments
	• Sign statement of legal sufficiency upon review of the draft Highway Easement Deed (if needed) • Accept and record the Highway Easement Deed upon receipt (if needed) • Complete all ROW activities prior to advertisement of the project (if needed) • Sign FHWA-CFLHD Right of Way Certification certifying that all rights on private property necessary to construct, operate, and maintain the road have been obtained • Obtain all rights necessary to construct, operate, and maintain the facility • Provide all available utility information and identify key points of contact for coordination with utility companies • Request utility surface locates prior to topographic survey by FHWA-CFLHD • Coordinate utility relocations if necessary per scope described above. <i>(Any costs are to be borne by the applicant (in addition to their match))</i> • Sign FHWA-CFLHD Utility Certification • Provide overall direction regarding agency policy and administration for the project • Concur with the final plans and specifications • Issue required encroachment permits at no cost to FHWA-CFLHD • Develop a public information plan in coordination with FHWA-CFLHD and the FLMA • If required, enter into a formal partnering work session and agreement with all parties involved in the construction contract • Designate a representative who will be the primary contact for FHWA-CFLHD's construction staff during construction • Consider proposed design changes, evaluate change impacts, and concur with changes as needed, ensuring that changes meet the requirements intended in the PS&E • Attend a final inspection and approve and provide final acceptance upon completion of construction	

FEDERAL LANDS ACCESS PROGRAM
PROJECT MEMORANDUM OF AGREEMENT
1/18/2023

Responsible Party	Product/Service/Role	Comments
	• Upon final acceptance of the project, assume responsibility of the NPDES permit until the Notice of Termination is filed and accepted • Provide long term maintenance and operation of the project upon completion • Perform reviews and provide information needed to support FHWA-CFLHD in resolution of contract disputes.	
USFWS	• Review and sign this Memorandum of Agreement within 60 days of receiving the notification letter • Attend reviews and meetings • Provide in a timely manner available data including but not limited to existing agreements or technical data • Review the environmental documents, plans and specifications at each phase of design, and provide comments within two weeks • In coordination with the FHWA-CFLHD project manager, ensure that completed PS&E documents are consistent with the intended outcome • Provide overall direction regarding FLMA policy and administration for the project • Concur with the final plans and specifications • If required, issue a right of entry and Letter of Consent to transfer a Highway Easement Deed within 4 months of receipt of request • Provide a fire plan for incorporation into the Special Contract Requirements or approve the use of standard specification language • Coordinate with FHWA-CFLHD to identify an appropriate revegetation plan and provide a seed mix and any recommendations for soil amendments for inclusion in the Special Contract Requirements • Provide support to FHWA-CFLHD (respond to questions regarding environmental issues), as requested, for the development of environmental documents • Develop a public information program in coordination with FHWA-CFLHD and the maintaining agency	

FEDERAL LANDS ACCESS PROGRAM
PROJECT MEMORANDUM OF AGREEMENT
1/18/2023

Responsible Party	Product/Service/Role	Comments
	• If required, enter into a formal partnering work session and agreement with all parties involved in the construction contract • Designate a representative who will be the primary contact for the FHWA-CFLHD's Construction staff • Continue to update and implement the public information program • Consider proposed design changes, evaluate change impacts, and concur with changes as needed, ensuring that changes meet the requirements intended in the PS&E • Attend final inspection upon completion of construction	

H. ROLES AND RESPONSIBILITIES—SCHEDULE

Responsible Lead	Product/Service/Role	Schedule Finish	Comments
City of Newark	Signed MOA and other financial documents	May 2023	
FHWA-CFLHD	Preliminary Design	December 2023	
FHWA-CFLHD	Environmental Compliance	January 2025	Development and completion of environmental studies and documentation
City of Newark	Signed ROW and Utility Certifications	March 2026	
FHWA-CFLHD	Final Design	July 2026	Development of PS&E
FHWA-CFLHD	Obtain appropriate Permits	June 2026	
City of Newark	Obtain appropriate local and state permits	June 2026	
FHWA-CFLHD	Advertise, Award and NTP	March 2029	FY 29 CN funding
FHWA-CFLHD	Administer Construction Contract	September 2029	Construction Engineering

I. PROPOSED DESIGN STANDARDS

Final design standards will be determined through the NEPA process.

FEDERAL LANDS ACCESS PROGRAM
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Criteria		Comments
Standard	AASHTO	
Functional Classification	Class IV Bike Lanes	
Surface Type	Asphalt	
Design Volume	15,000+ projected ADT (Vehicles)	

J. FUNDING

PROJECT FUNDING			
Funding Source	Estimated Funding	% of Total Project	Comments
Federal Lands Access Program	\$8,797,129	73.53%	
City of Newark	\$3,166,871	26.47%	Cash Match
Total	\$11,964,000		

City of Newark is responsible for support costs incurred in completing the roles and responsibilities detailed in Section G. These costs will not be included in the total project cost and are the financial responsibility of the applicant in addition to the funding as described in the table above.

If during implementation of the project it is determined that the total project cost exceeds \$11,964,000, the Central Federal Lands Highway Division, the City of Newark, and USFWS will either mutually agree to reduce the scope of the project or execute a modification to this agreement to change funding amounts.

K. MATCHING SHARE REQUIREMENTS

City of Newark will provide non-Federal matching funds of 26.47% of the total Federal Lands Access Program eligible project costs required for the project through construction contract completion, closeout, and resolution of any disputes, in an amount not to exceed that provided in separate funding agreements.

Matching or cost sharing requirements will be satisfied following the obligation of funds to the project as detailed above in Section J.

L. PROJECT TEAM MEMBERS—POINTS OF CONTACT

The following table provides the points of contact for this project. They are to be the first persons to deal with any issues or questions that arise over the implementation of each party's role and responsibility for this agreement.

FEDERAL LANDS ACCESS PROGRAM
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Name/Title	Organization	Phone Number/Email
Jayson Imai, Assistant City Engineer	City of Newark	(510) 578-4671 Jayson.imai.@newark.org
Matt Brown	USFWS	(510) 453-6695 Matthew brown@fws.gov
Chris Barr	USFWS	510-377-6144 chris_barr@fws.gov
Andrea Smith	USFWS	(916)215-0031 Andrea_smith@fws.gov
Matt Ambroziak FHWA Project Manager	FHWA-CFLHD	(720) 963-3619 matthew.ambroziak@dot.gov

M. CHANGES/AMENDMENTS/ADDENDUMS

The agreement may be modified, amended, or have addendums added by mutual agreement of all parties. The change, amendment, or addendum must be in writing and executed by all of the parties.

The types of changes requiring agreement of all parties include, but are not limited to, changes that significantly impact scope, schedule, or budget; changes to the local match, either in type or responsibility; and changes that alter the level of effort or responsibilities of a party. The parties commit to consider suggested changes in good faith. Failure to reach agreement on changes may be cause for termination of this agreement.

A change in the composition of the project team members does not require the agreement to be amended.

It is the responsibility of the project team members to recognize when changes are needed and to make timely notification to their management in order to avoid project delivery delays.

N. ISSUE RESOLUTION PROCEDURES MATRIX

Issues should be resolved at the lowest level possible. The issue should be clearly defined in writing and understood by all parties. Escalating to the next level can be requested by any party. When an issue is resolved, the decision will be communicated to all levels below.

FHWA-CFLHD	City of Newark	USFWS	Time
Matt Ambroziak, Project Manager	Jayson Imai Assistant City Engineer	Chris Barr/Andrea Smith Deputy Project Leader/Regional Transportation Coordinator	30 days
Wendy Longley, Project Management Branch Chief	Soren Fajeau Public Works Director	Matt Brown Project Leader	60 days

FEDERAL LANDS ACCESS PROGRAM
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FHWA-CFLHD	City of Newark	USFWS	Time
Curtis Scott, Chief of Engineering	David Benoun City Manager	Curt McCasland Assistant Regional Director	90 days

O. TERMINATION

This agreement may be terminated by a funding party upon 30 calendar days after written notice to the other parties. This agreement may also be terminated if either the environmental review (or other state environmental compliance) process or funding availability requires a change and the parties are not able to agree to the change. Any termination of this agreement shall not prejudice any rights or obligations accrued to the parties prior to termination. If Federal Access funds have been expended prior to termination, the funding parties' financial liabilities shall be in the amount of the applicable share percentages of the total reasonable costs expended on the project prior to the effective date of termination. Reasonable costs shall include all items/services rendered and the costs of any non-cancelable obligations incurred prior to the effective date of termination.

**FEDERAL HIGHWAY ADMINISTRATION
FEDERAL LANDS HIGHWAY**

FUNDS TRANSFER AGREEMENT

FHWA Agreement No.: 6982AF-22-K-500012, **Modification 0001**
CA FLAP NWK 10(1) Thornton Avenue Bike Improvements
January 18, 2023

Agency providing funding: City of Newark

Original Agreement amount: \$24,000.00

Modification 0001 Amount: \$3,142,871

Total Agreement Amount: \$3,166,871

Period of Performance: From January 13, 2022 to **December 19, 2031** ~~date of signature below to December 1, 2023~~

Agency receiving funding: Central Federal Lands Highway Division (CFLHD)

This Funds Transfer Agreement (FTA) is to confirm that the City of Newark has committed to provide, through electronic funds transfer, ~~\$24,000.00~~ **\$3,166,871** to CFLHD for Thornton Avenue Bike Improvements to meet the matching requirements and all conditions set forth in the Memorandum of Agreement (MOA) dated ~~11/24/21~~ **1/18/2023** and any future modifications to the MOA.

FUNDS TRANSFER SUMMARY					
Phase	Amount	Due	Received	Modification #	Comment
Scoping	\$24,000.00	3/1/2022	1/13/2022		
PE	\$420,871.00	4/7/2023		0001	30-100% PS&E
CE	\$392,000.00	7/28/2028		0001	
CN	\$2,330,000.00	7/28/2028		0001	FY 29 CN Includes 20% contingency
Total:	~~\$24,000.00~~ \$3,166,871.00				

AGENCY FINANCIAL AND CONTACT INFORMATION		
	City of Newark	Central Federal Lands Highway Division
UEI (Unique Entity Identifier)	J2JJNJAUE26	TNG9SCVNCUW5
Financial Contact Information		
Name	Gloria del Rosario	Suzanne Schmidt
Phone	(510) 578-4337	(720) 963-3356
E-mail	Gloria.delrosario@newark.org	Suzanne.schmidt@dot.gov
Address	37101 Newark Blvd., Newark, CA 94560	12300 W. Dakota Ave. Lakewood, CO 80228
Project Contact Information		
Name	Jayson Imai	Matt Ambroziak
Phone	(510) 578-4671	(720) 963-3619
E-mail	jayson.imai@newark.org	matthew.ambroziak@dot.gov

CFLHD is limited to recovery of the matching share of actual costs incurred, as reflected in the invoices provided by the CFLHD. Regardless of the estimated costs stated in the MOA, the City of Newark will

FEDERAL HIGHWAY ADMINISTRATION
FEDERAL LANDS HIGHWAY

FUNDS TRANSFER AGREEMENT

FHWA Agreement No.: 6982AF-22-K-500012, **Modification 0001**

CA FLAP NWK 10(1) Thornton Avenue Bike Improvements

January 18, 2023

provide 26.47% of the total Federal Lands Access Program cost required for the project, ~~or \$24,000.00, whichever is greater,~~ through the construction, closeout, and resolution of any disputes.

CFLHD shall not incur costs which result in matching funds exceeding the maximum cost stated in this Agreement without authorization by the Requesting Agency in the form of written modification to this Agreement.

David Benoun, City Manager	Date	Contracting Officer	Date
City of Newark		Central Federal Lands Highway Division	

CFLHD requests that these payments be made through the US Treasury's website <https://pay.gov>. Pay.gov can be used to make secure electronic payments to any Federal Government Agencies via credit card or direct debit. Payment shall be submitted referencing the FHWA Agreement Number.

Option 1 (Preferred Method)

Plastic card or Automatic Clearing House
Payment (ACH Direct Debit)

- Go to Treasury's website – <https://pay.gov>
- Search for Agency Name (Transportation Department)
- Select the appropriate Transportation Agency (Federal Highway Administration)
- Follow the form instructions to make your payment. Note, if making an ACH payment from your bank account, please select ACH Direct Debit as the payment type.

Option 2

Mail check payment to the following address for
Paper Check Conversion (PCC) processing:

Make Check Payable To:
DOT FHWA

Mailing Address:
DOT/FEDERAL HIGHWAY ADMINISTRATION
C/O MIKE MONRONEY AERONAUTICAL CENTER
6500 S. MacArthur Blvd.
ATTN: AMZ-324, HQS BLDG RM 265
Oklahoma City, OK 73169-6918
~~Enterprise Service Center~~
~~Federal Aviation Administration~~
~~ATTN: AMZ-324/HQ Room 181~~
~~6500 S. MacArthur Blvd.~~
~~Oklahoma City, OK 73169~~

Notice to customers making payment by check:

- Please notify cfl.finance@dot.gov if mailing a check.
- When you provide a check as payment you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.
- When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day we receive your payment and you will not receive your check back from your financial institution.

Privacy Act- A Privacy Act Statement required by 5 U.S.C. § 552a(e)(3) stating our authority for soliciting and collecting the information from your check, and explaining the purposes and routine uses which will

**FEDERAL HIGHWAY ADMINISTRATION
FEDERAL LANDS HIGHWAY**

FUNDS TRANSFER AGREEMENT

FHWA Agreement No.: 6982AF-22-K-500012, **Modification 0001**

CA FLAP NWK 10(1) Thornton Avenue Bike Improvements

January 18, 2023

be made of your check information, is available from our internet site at:

https://www.fiscal.treasury.gov/fsservices/gov/rvnColl/otcNet/rvnColl_otcnet.htm

or call toll free: at 1-866-945-7920 to obtain a copy by mail. Furnishing the check information is voluntary, but a decision not to do so may require you to make payment by some other method.



STAFF REPORT

Item F. 1.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Anne Stedler, Economic Development Manager
SUBJECT Adopt a resolution approving funding for small business assistance in the Old Town neighborhood and citywide, approve a fifth amendment to the Consulting Services Agreement for Spectrum Small Business Services, authorize the City Manager to execute marketing contracts for small business assistance, and approve the associated budget amendment to the 2022-2024 Biennial Budget for Fiscal Year 2023 and 2024

SUMMARY AND RECOMMENDATION

The Business and Marketing Assistance Programs discussed in this staff report are existing programs developed during the pandemic to support small retail and service businesses citywide. City Council first approved these programs on November 18, 2021. Staff recommends continuing the work citywide and the parallel ARPA-funded outreach to businesses in the Old Town neighborhood and nearby commercial areas in recognition of the disproportionate economic need and challenges these businesses face.

Staff recommends that the City Council adopt a resolution approving a Business and Marketing Assistance program citywide with outreach to the Old Town neighborhood and nearby commercial areas, approving the Fifth Amendment to the Consulting Services Agreement with Spectrum Small Business Services, authorizing the City Manager to execute contracts for marketing services, and authorizing an amendment to the 2022-2024 Biennial Budget for Fiscal Year 2023 and 2024 to provide funding from both American Recovery Plan Act (ARPA) funds and the City's General Fund.

BACKGROUND

On October 28, 2021, the City Council approved American Rescue Plan Act (ARPA) funding for the Old Town Business Assistance and Marketing Services Programs ("Old Town Business Assistance") in an amount of \$150,000 subject to City Council approval of the specific activities that would be proposed. On November 18, 2021, the City Council reviewed the specific activities proposed for Old Town and approved Resolution 11280 for Business and Marketing Assistance to small businesses. To date \$18,000 is expended, leaving ARPA funds of \$132,000 available for business assistance and marketing services in Old Town and the surrounding area. For citywide services, the City Council's November 18, 2021, action designated \$67,200 from the General Fund. The general fund support is now fully expended.

Most of the funds expended compensated Spectrum Small Business Services.

Spectrum has provided small business assistance citywide since October 27, 2020, under a Consulting Services Agreement (CSA) which authorized up to \$40,000 initially. It was amended May 26, 2021, to increase the not-to-exceed amount by \$9,800 to a total of \$49,800, and amended again at the Council's meeting of October 14, 2021, to increase the not-to-exceed amount by \$7,000 to \$56,800. The Third Amendment was approved by City Council November 18, 2021, amending the CSA not-to-exceed amount of \$56,800 by \$73,200 to a total not to exceed amount of \$130,000. Funding sources for the Third Amendment of the Spectrum CSA included ARPA (\$10,000), and the General Fund (\$63,200).

A Fourth Amendment was approved by the City Manager in Spring 2022 to address technical issues, but did not change the authorized budget or the scope of work.

DISCUSSION/ANALYSIS

Consulting Services Agreement with Spectrum Small Business Services

The proposed Fifth Amendment to the CSA with Spectrum Small Business Services would serve businesses in Old Town and nearby retail areas as well as businesses citywide through: (1) One-on-one advising to businesses; (2) Continuing Financial Resiliency and adding Business Planning workshops and small group sessions; (3) Developing and overseeing the digital platform and providing day-to-day use and analysis of the data; and (4) Building partnerships with other business assistance providers who can help deliver additional technical assistance.

The work proposed under the Fifth Amendment will be carried out during remaining months of FY 2023 and during FY 2024. The amount of Spectrum Small Business's work would be larger than work done to date because businesses are more responsive to the workshops and one-on-one advising, even without the incentive of grants.

This increased response from a portion of Old Town business owners has enhanced working relationships based on mutual understanding between business owners and the City staff. This is critical to implementing the Old Town Specific Plan commitment to help existing business owners thrive, weather the anticipated streetscape construction, and play a central role in an evolving retail district. Spectrum and staff assume responsibility to develop proactive and responsive City support that is increasingly welcome in Old Town.

The increased response to date among business owners follows: (1) two years of outreach; (2) business visits by City representatives; and (3) growing familiarity with business advisors, Michael Cohen and Mike Bull, and the outreach team. This ongoing interaction gradually builds working relationships critical to serving small businesses under the Old Town Specific Plan.

In addition to the small business services, Spectrum also provides a business advisor, Mr. Tom Fulcher, for mid-size businesses, as presented to Council in November 2021. Mr. Fulcher is an accomplished business professional and consultant, with expertise in developing off-shore business and funding for business expansion. This recommendation includes funding for Mr. Fulcher's work with mid-size businesses in

Newark.

Anticipated Consulting Services Agreement for Marketing Services

Marketing is important to Old Town to create identity and awareness for the district as a place and destination, and for business owners as a group providing goods and services. Staff is currently evaluating several marketing specialists and expects to recommend contracts for the City Manager's approval in the coming weeks. Contracts focused on Old Town and businesses in the surrounding neighborhood would be approved activities, and funded by the Council's multi-year ARPA allocation for Old Town in the October 27, 2021, Newark ARPA Recovery Plan. Possible marketing services are expected to include digital marketing, cross promotions, and specialized events or attractions focused on place-making. It is anticipated that the City Manager would execute CSA under his authority using ARPA funds for Old Town and resources from the General Fund for marketing support to the business community citywide.

Recommended Budget Amendment

In summary, Old Town and nearby areas would benefit by business and marketing assistance activities supported by a Budget Amendment for ARPA funds (Fund 382) in the amount of \$72,000 for FY 2023 and 2024 as follows:

- \$20,000 for Third Amendment to Spectrum Small Business Services CSA to provide workshops and one-on-one advising.
- \$12,000 for interpreters to support business and marketing assistance.
- \$10,000 for marketing services to benefit eligible small businesses collectively.
- \$30,000 for targeted business support based on business interviews and assessments.

The recommended Budget Amendment designating general funds to continue business assistance and marketing citywide would increase the Economic Development Division budget by \$130,000 as follows:

- \$80,000 for the Fifth Amendment for Spectrum Small Business Services CSA to provide workshops and business assistance to individual owners.
- \$10,000 for interpreters to support business and marketing assistance from general fund.
- \$40,000 for marketing expenses authorized under the City Managers authority using general fund resources.

FISCAL IMPACT

The City Council's October 28, 2021 approval of the multi-year ARPA Funding Plan designated \$150,000 to Old Town Business and Marketing Assistance. This staff report recommends a budget amendment of \$72,000 for FY 2023 and FY 2024 for activities presented in this staff report, with the remaining funds to be appropriated in FY 2025 in a separate action. The Old Town Specific Plan implementation is a long-term effort that extends beyond the December 31, 2024 ARPA deadline to commit funds. After that date, there may be reason to invest other funds in Old Town.

Citywide business assistance beyond the Old Town area has relied on general fund revenue. This report recommends increasing the Economic Development Division

budget by a budget amendment in the amount of \$130,000. The general fund revenue is the appropriate funding source available for city wide business assistance currently.

REVIEW AND APPROVAL

Prepared by - Anne Stedler, Economic Development Manager
Reviewed by - Steven Turner, Community Development Director
Reviewed by - Krysten Lee, Finance Director
Reviewed by - Kristopher J. Kokotaylo, City Attorney
Approved by - David J. Benoun, City Manager

Attachments

Spectrum CSA Fifth Amendment
Resolution

**FIFTH AMENDMENT TO THE
CONTRACTUAL SERVICES AGREEMENT
BETWEEN THE CITY OF NEWARK AND
SPECTRUM SMALL BUSINESS SERVICES, LLC**

This Fifth Amendment to Contractual Services Agreement between the City of Newark, a municipal corporation, ("City") and Spectrum Small Business Services, a Limited Liability Company ("Consultant"), (together sometimes referred to as "Parties") dated October 27, 2020, is entered into as of February __, 2023. The Contractual Services Agreement was previously first amended by the Parties effective March 29, 2021, second amended by the Parties effective September 1, 2021, third amended by the Parties effective October 15, 2021, and fourth amended by the Parties effective April 4, 2022.

RECITALS

WHEREAS, the Parties executed a Contractual Services Agreement (the "Agreement") to perform financial advising services to small businesses generally including: surveying, assessing, advising and referring small businesses during the COVID-19 pandemic for the purpose of increasing business survival rates and maintaining employment levels to the extent possible, including expanding the network of resources available to such small businesses, and creating strategic partnerships to additional resources not otherwise known and available to them; and

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

WHEREAS, the Parties desire to continue the services specified in Exhibit A, the Scope of Service; and

WHEREAS, the Agreement, as amended, provides a not-to-exceed compensation of One Hundred Thirty Thousand Dollars (\$130,000); and

WHEREAS, the not-to-exceed amount proposed in this amendment is an additional One Hundred Thousand Dollars (\$100,000.00) for a total not-to-exceed amount of Two Hundred Thirty Thousand Dollars (\$230,000); and

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

NOW, THEREFORE, the Parties hereby agree as follows:

1. Section 3.A. "Not-to-Exceed" Compensation, of the Agreement, is amended to increase the combined total of compensation and cost payable under the Agreement by One Hundred Thousand Dollars (\$100,000.00) from One Hundred Thirty Thousand Dollars (\$130,000) to a total of Two Hundred Thirty Thousand Dollars (\$230,000)
2. With the exception of the foregoing, all other terms and conditions in the Agreement, as amended, remain in force and effect.

Resolution No.

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWARK APPROVING BUSINESS AND MARKETING ASSISTANCE TO SMALL BUSINESSES, THE FIFTH AMENDMENT TO THE CONTRACTUAL SERVICES AGREEMENT WITH SPECTRUM SMALL BUSINESS SERVICES FOR BUSINESS CONSULTING SERVICES, AND AUTHORIZING A BUDGET AMENDMENT TO THE BIENNIAL BUDGET FOR 2022-2024 FOR FISCAL YEAR 2023 AND FISCAL YEAR 2024 TO PROVIDE FUNDING FOR THESE SERVICES FROM THE AMERICAN RECOVERY PLAN ACT (ARPA) AND THE GENERAL FUND.

WHEREAS, the City Council held a work session on October 7, 2021, to consider options for the use of Newark's \$11.8 million of the Coronavirus State and Local Fiscal Recovery Funds (SLFRF) allocation and the City's ARPA Recovery Plan (Recovery Plan) was formally approved on October 28, 2021; and

WHEREAS, the Recovery Plan designates \$150,000 for Old Town Business and Marketing Assistance with \$60,000 for Fiscal Year 2022 and \$90,000 for Fiscal Year 2023; and

WHEREAS, the ARPA funds will help implement the Old Town Specific Plan; and

WHEREAS, Business and Marketing Assistance and interpreter services provided citywide beyond the Old Town area and supported by the general fund need to be authorized by budget adjustment to continue such services during Fiscal Year 2023 and Fiscal Year 2024; and

WHEREAS, the City of Newark awarded a Contractual Services Agreement and executed a First, Second, Third and Fourth Amendment with Spectrum Small Business Services for business consulting services and the not-to-exceed amount of said Agreement needs to be increased \$100,000 to a total not-to-exceed amount of \$230,000 in order to continue the services in both Old Town and city-wide during FY 2023 and FY 2024.

NOW THEREFORE, BE IT RESOLVED that the City Council of the City of Newark hereby approves Business and Marketing Services for small businesses in Old Town and City-wide.

BE IT FURTHER RESOLVED that the City Council of the City of Newark hereby authorizes the City Manager to execute the Fifth Amendment to the Contractual Services Agreement for business assistance with Spectrum Small Business Services to increase the not-to-exceed amount by \$100,000 to \$230,000 in a form approved by the City Attorney.

BE IT FURTHER RESOLVED that the City Council does hereby approve an amendment to the 2022-2024 Biennial Budget and Capital Improvement Plan for Fiscal Year 2023 and Fiscal Year 2024 as follows:

- Increase General Fund Professional Services (110.50.051.510.6220) by \$130,000
- Decrease Fund Balance (110.3000) by \$130,000
- Increase ARPA Professional Services (382.50.051.510.6220) by \$72,000
- Decrease ARPA Awards Fund Balance (382.3000) by \$72,000



STAFF REPORT

Item H. 1.

DATE 02/23/2023
TO Honorable Mayor and City Council Members
FROM Jennifer Solito, Human Resources Director
SUBJECT Closed session for conference with Labor Negotiators pursuant to California Government Code Section 54957.6. Agency designated representatives: City Manager Benoun, Assistant City Manager Hovorka, and Human Resources Director Solito; Employee Group: the Newark Police Association
